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## **COMPLIANCE PAINS IN YOUR HIP(AA)!**

**By: Matt W. Zeigler, Esq.**

Last month's article dealt with the June 1st deadline requiring employers to provide notice to employees of group health plans. The purpose of the notice is to provide certification for periods of health care plan coverage for employees, former employees and COBRA beneficiaries who terminate employment or retire after May 31, 1997. The new legislation making these provisions is called the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

This new act also requires certain requirements under summary plan descriptions, which will be discussed later in this article.

Sample model notices and certificates are available upon request from Michigan Food News or through our office at (248) 643-9530.

This month's article focuses on what changes may be required under your current health insurance plan to insure that there are no illegal exclusions of health benefits to newly hired employees based on preexisting conditions. This article will also focus on notice requirements mandated by the new law on summary plan descriptions.

### **HOW DOES HIPAA AFFECT EXISTING HEALTH INSURANCE PLANS?**

HIPAA prohibits exclusion of coverage based on certain preexisting conditions for newly hired employees. Under the new law, a preexisting condition exclusion under a group health care policy may not be imposed for more than 12 months (18 months for a late enrollee).

Moreover, the 12 month or 18 month exclusion period may be further reduced by any previous health care plan coverage. The prior coverage is commonly referred to as "creditable coverage" and encompasses any coverage in existence after July 1, 1996.

Also, under the new law, an exclusion will be permissible only if it relates to a physical or mental condition for which medical advice, diagnosis, care or treatment was recommended or received within 6 months before enrollment in the new plan.

Further, genetic status will not be an excludable condition unless diagnosis was rendered within the 6-month period.

Finally, newborns may not be excluded if covered under a health plan within 30 days of birth, and adoptees (under age 18) may not be excluded if covered within 30 days of adoption. Likewise, pregnancy may not be excluded.

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An important caveat to the new limitations on preexisting conditions is whether there is an intervening break in prior coverage of 63 days or more. If that occurs, coverage from the prior employer is "creditable coverage" only from the time after the break in coverage occurred. Likewise, the preferred status of newborns and adoptees may be compromised if a 63-day break in coverage has occurred.

### **WHEN WILL HIPAA AFFECT THE EXISTING HEALTH PLAN?**

Group health plans must comply with all nondiscrimination, preexisting condition and crediting of prior health coverage requirements at the beginning of the first plan year, starting after June 30, 1997. For example, if a new plan year starts January 1st, HIPAA's provisions will not apply until January 1, 1998.

### **HOW DOES HIPAA AFFECT SUMMARY PLAN DESCRIPTIONS?**

There are significant changes in the ERISA required disclosures in Summary Plan Descriptions. Effective for plan years beginning on or after July 1, 1997, disclosures are required in the summary plan descriptions indicating who administers the plan and its name and address. Furthermore, reference to Department of Labor offices must be made available to participants so that they may contact them for information on their rights under HIPAA.

In addition, accelerated notices to health care plan participants called "Summary Material Modifications" are required for certain health plan changes such as:

- Mother/newborn coverage changes following January 1, 1998; and
- Change in preexisting condition requirements, required special enrollment dates, etc.

Again, sample model notices are available through Michigan Food News, our law firm or your network of professional advisors.