



## Compliance Corner

January 14, 2014

### HEALTH CARE REFORM

## Agencies Clarify Definition of "Excepted Benefits" for PPACA and HIPAA Exclusion Purposes

On Dec. 20, 2013, the U.S. Department of the Treasury, DOL and HHS jointly issued proposed regulations relating to the definition of "excepted benefits" under several federal laws, including PPACA and HIPAA. As background, excepted benefits are generally exempt from PPACA and HIPAA's requirements, including the prohibition on annual and lifetime dollar limits for essential health benefits, the prohibition on excessive waiting periods, the requirement to cover certain preventive care with zero cost-sharing, and PPACA's reinsurance and PCOR fees. Importantly, offering excepted benefits does not satisfy the employer's obligations under the employer mandate, and coverage under an excepted benefit does not satisfy the individual's obligations under the individual mandate (although such coverage does not disqualify that individual from premium tax credit eligibility).

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## CMS Announces New Hardship Eligibility for Individuals with Cancelled Policies

### FAQ

With the Jan. 31, 2014, Forms W-2 deadline approaching, are employers who filed fewer than 250 Forms W-2 in the previous calendar year still exempt from reporting the cost of health plan coverage on Forms W-2?

[Read the answer »](#)

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On Dec. 19, 2013, CMS issued a memo outlining the options available to individuals with cancelled health insurance policies. PPACA requires policies to contain a number of consumer protections starting in 2014, resulting in many non-conforming policies being cancelled.

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## DOL Issues FAQs Related to PPACA and Mental Health Parity

On Jan. 9, 2014, the DOL issued 12 new frequently asked questions and answers related to preventive services, wellness programs, cost-sharing, expatriate health plans, fixed indemnity insurance and mental health parity. It is Part XVIII of the department's FAQ series on PPACA's implementation. The guidance explains that the United States Preventive Services Task Force made a recommendation on Sept. 24, 2013, related to medications for risk reduction of primary breast cancer in women.

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## CMS Publishes FAQs Related to Minimum Participation Requirements

On Dec. 11, 2013, CMS published two FAQs related to minimum participation requirements for small group plans. As background, an insurer in the Small Business Health Options Program (SHOP) must offer guaranteed availability for small group plans during the annual enrollment period from Nov. 15 to Dec. 15 without regard to the group meeting minimum participation requirements. If an insurer offers such coverage during the annual period, it may restrict midyear applications in 2014 to only those groups that meet minimum participation requirements.

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## FAQs Address Reinsurance Fee for Retiree-only HRAs and Employees Enrolled in Medicare

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### REFERENCE

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On Dec. 19, 2013, CMS provided new FAQs within the Registration for Technical Assistance Portal (REGTAP) Library, an online portal designed to provide technical assistance and training related to the health insurance marketplace (also called the "exchange"). The new FAQs address the transitional reinsurance fee and how the fee applies in two situations.

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## FEDERAL UPDATES

### Proposed Regulations Require Health Plans to Certify Compliance with HIPAA's Electronic Transaction Standards and Operating Rules

On Jan. 2, 2014, HHS published proposed regulations to implement PPACA's statutory requirement for health plans to certify compliance with HIPAA's electronic transaction standards and operating rules. As background, HIPAA requires covered entities that transmit electronic health information in an electronic transaction to conduct the transaction in accordance with the standards and operating rules adopted by HHS for the transaction. PPACA requires health insurers and other HIPAA-covered health plans to certify compliance with the standards and operating rules for certain electronic transactions — specifically, for eligibility for a health plan, health care claim status and health care electronic funds transfers and remittance advice.

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### HHS Settlement of \$150,000 Includes Breach Notification Deficiencies for the First Time

On Dec. 26, 2013, HHS issued a press release announcing a settlement of \$150,000 for potential violations of the HIPAA Privacy, Security and Breach Notification rules. The announcement is significant because it is the first time the breach notification rules specifically have been cited during a settlement process. The breach notification rules were added to existing HIPAA requirements under the Health Information Technology for Economic and Clinical Health (HITECH)

Act, passed in 2009 as part of ARRA.

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## Supreme Court Upholds ERISA Plan Document Statute of Limitations for Benefit Claims

On Dec. 16, 2013, the U.S. Supreme Court held contractual limitations are enforceable in benefit plans governed by ERISA, provided the limitation is not unreasonably short or contrary to a controlling statute.

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## IRS Releases Updated Procedures for Determination Letters

On Jan. 2, 2014, the IRS released IRB 2014-1, which contained IRS Rev. Proc. 2014-6. The revenue procedure is a general update to IRS Rev. Proc. 2013-6 and provides the procedures for determination letters. Determination letters are letters issued by the IRS to retirement plans confirming whether or not said plan is in compliance with ERISA. The general update included minor changes that improve clarity, included correct references to IRS Rev. Proc. 2013-12 and added instructions for how to pay user fees via [www.pay.gov](http://www.pay.gov).

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