



**DATE:** October 7, 2010  
**TO:** Our Valued Client Partners & Friends  
**FROM:** HIB Account Team  
**RE:** **LEGISLATIVE UPDATE 2010-19: HCR - Amending Plan Documents – Action Required**

We are pleased to bring you our **Legislative Update 2010-19: HCR - Amending Plan Documents – Action Required**. This update provides information on what employers should to be in compliance with Health Care Reform. As always, please feel free to contact your HIB Account Team for assistance.

**Health Care Reform - Amending Plan Documents - Action Required**

As of September 23, 2010, the Health Care Reform Laws (HCR) impose new obligations under the Employee Retirement Income Security Act (ERISA) disclosure rules, while bringing new disclosure obligations to non-ERISA plans through the Public Health Service Act (PHSA) and the Health Insurance Portability and Accountability Act (HIPAA). Plan Sponsors of both private and public agency plans, whether insured or self-funded, must amend their official plan documents to incorporate the changes.

**THE SHORT VERSION**

Group health plans must comply with the numerous provisions of the Law (as shown below) for plan years beginning on or after September 23, 2010. Since these provisions are substantive, Plan Sponsors must disclose them in their written plan documents pursuant to ERISA Section 402(a) as well as in summary plan descriptions pursuant to ERISA Section 102(b). Plan Sponsors of public agency plans must also comply with various provisions under PHSA and HIPAA, in addition to various state laws.

Provision	Citation	Effective Date	Applicable to Grandfathered Plans?	
			NO	YES
<b>Dependent coverage for children under age 26</b>	PHSA § 2714; HCERA § 2301	PY Beginning on or after September 23, 2010		<input checked="" type="checkbox"/>
<b>Patient protections (primary care provider designations, ER services, etc.)</b>	PHSA § 2719A	PY Beginning on or after September 23, 2010	<input checked="" type="checkbox"/>	
<b>Preventive health services</b>	PHSA § 2713	PY Beginning on or after September 23, 2010	<input checked="" type="checkbox"/>	
<b>Preexisting Condition Limitation prohibition for those under age 19</b>	PHSA § 2704; PPACA §§ 1255, 10103	PY Beginning on or after September 23, 2010		<input checked="" type="checkbox"/>
<b>Lifetime limits on essential benefits prohibited</b>	PHSA § 2711	PY Beginning on or after September 23, 2010		<input checked="" type="checkbox"/>
<b>Annual limits on essential benefits restricted</b>	PHSA § 2711	PY Beginning on or after September 23, 2010 ( <i>full prohibition in 2014</i> )		<input checked="" type="checkbox"/>
<b>Prohibition on rescissions</b>	PHSA § 2712	PY Beginning on or after September 23, 2010		<input checked="" type="checkbox"/>
<b>Nondiscrimination for insured plans</b>	PHSA § 2716	PY Beginning on or after September 23, 2010	<input checked="" type="checkbox"/>	
<b>Appeals process</b>	PHSA § 2719	PY Beginning on or after September 23, 2010	<input checked="" type="checkbox"/>	



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For purposes of cafeteria plans with spending accounts, Plan Sponsors must amend their cafeteria plans to remove over-the-counter drug benefits as of January 1, 2011, and by no later than June 30, 2011. We will circulate a model amendment for this change shortly.

### GRANDFATHERED OR NOT!

Based on the proposed Interim Final Rules, a Plan Sponsor may lose or keep grandfathered status on a policy-by-policy basis (e.g. Kaiser plan remains grandfathered, but Anthem Blue Cross policy loses grandfathered status). As a convenience, we have drafted three separate sets of amendments and SMMs to accommodate the possible combinations:

- i All plans grandfathered;
- i All plans not grandfathered; and,
- i Mix of grandfathered and non-grandfathered plans.

### NOTICE REQUIREMENTS

Plan Sponsors must also provide numerous notices directly to plan participants, on or before the beginning of the first plan year on or after September 23, 2010. The governing agencies have developed [model notices](#) for this purpose in most instances. Please refer to our Update 2010-14 for a discussion of these notices. Since the model notice language is significantly different from the plan provisions in the plan documents, Plan Sponsors must comply with the notice requirements separately. For insured plans, it is our assumption that the policy issuers will assist in compliance with the notice requirements. Plan Sponsors of self-funded group health plans must take full responsibility for meeting the notice requirements.

### EXISTING WRAPAROUND PLAN DOCUMENTS

Plan Sponsors can achieve compliance for the health care component plans incorporated in wraparound plan documents by amending their existing wraparound documents and, as applicable, circulating a summary of material modification. We have attached an Amendment for adoption by Plan Sponsors whose wraparound documents were prepared by our firm, along with a summary of material modification.

### STAND ALONE HEALTH PLANS

To amend stand alone self-funded health plans, a Plan Sponsor may use our model general wraparound plan documents subject to their review by the Sponsor's legal counsel. For insured plans, plan issuers will amend their own policies, as issued to their policyholders.



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**MODEL PLAN AMENDMENTS**

To assist Plan Sponsors, we have prepared the following amendments for review by their own counsel and incorporation into plan documents and summary plan descriptions (see links below):

Plan Status	Amendment and Summary Material Modification
1. Documents produced elsewhere and the plan believes all its health plans components are grandfathered	<a href="#">Grandfathered Amendment and SMM</a>
2. Documents produced elsewhere and the plan believes all its health plans components are <u>NOT</u> grandfathered	<a href="#">Non-grandfathered Amendment and SMM</a>
3. Documents produced elsewhere and the plan believes some of its health plans components are grandfathered and some are not grandfathered	<a href="#">Mixed Amendment and SMM</a>

Please feel free to contact us with any questions.

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