Restrictions on Rescissions

**Summary:** Prohibits all plans from rescinding coverage except in instances of fraud or misrepresentation.

**Status update:** On October 8, 2010, the Department of Labor (DoL) issued a frequently asked questions (FAQ) regarding health reform and touched upon issues related to restrictions on rescissions.

**Next steps:**
- On June 22, 2010 -- The Departments of Health and Human Services, Labor, and Treasury released an interim final rule (IFR) regarding restrictions on rescissions among other items. The IFR was published in the Federal Register on June 28, 2010.
- Before August 27, 2010 – Comments due on IFR
- August 27, 2010 – effective date of new regulations
- October 8, 2010 -- The Department of Labor (DoL) issued a frequently asked questions (FAQ) regarding health reform and touched upon issues related to restrictions on rescissions.

**Additional information:**
- DOL’s October 8 FAQ – [http://www.dol.gov/ebsa/faqs/faq‐aca2.html](http://www.dol.gov/ebsa/faqs/faq‐aca2.html)
- President’s remarks regarding the “patients’ bill of rights” -- [http://www.whitehouse.gov/the‐press‐office/remarks‐president‐affordable‐care‐act‐and‐new‐patients‐bill‐rights](http://www.whitehouse.gov/the‐press‐office/remarks‐president‐affordable‐care‐act‐and‐new‐patients‐bill‐rights)

**Summary of Interim Final Rule (IFR):**

**Definition of rescission.** The IFR defines a “rescission” as a cancellation or discontinuance of coverage that is retroactive.

**Federal floor.** Under the statute and these interim final regulations, a group health plan, or a health insurance issuer offering group or individual health insurance coverage, must not rescind coverage except in the case of fraud or an intentional misrepresentation of a material fact. This standard sets a new Federal floor so additional State laws may apply, if they are more protective of individuals.

**Clarifications.** IFR clarifies that the rules of PHS Act section 2712 apply whether the rescission applies to a single individual, an individual within a family, or an entire group of individuals. Thus, for example, if an issuer attempted to rescind coverage of an entire employment-based group because of the actions of an individual within the group, the standards of these interim final regulations would apply. IFR also clarifies that the rules of PHS Act section 2712 apply to
representations made by the individual or a person seeking coverage on behalf of the individual. Thus, if a plan sponsor seeks coverage from an issuer for an entire employment-based group and makes representations, for example, regarding the prior claims experience of the group, the standards of these interim final regulations would also apply. IFR further clarifies that, to the extent that an omission constitutes fraud, that omission would permit the plan or issuer to rescind coverage under this section.

**Advance notice requirement.** In addition to setting a new Federal floor standard for rescissions, PHS Act section 2712 adds a new advance notice requirement. Specifically, section 2712 provides that coverage may not be cancelled unless prior notice is provided. The IFR provides that a group health plan, or a health insurance issuer offering group health insurance coverage, must provide at least 30 calendar days advance notice to an individual before coverage may be rescinded. The notice must be provided regardless of whether the rescission is of group or individual coverage; or whether, in the case of group coverage, the coverage is insured or self-insured, or the rescission applies to an entire group or only to an individual within the group. This 30-day period will provide individuals and plan sponsors with an opportunity to explore their rights to contest the rescission, or look for alternative coverage, as appropriate. The Departments expect to issue future guidance on any notice requirements under PHS Act section 2712 for cancellations of coverage other than in the case of rescission.

**Effective date.** The IFR applicable to rescissions will be effective for plan years beginning on or after September 23, 2010, and will apply not only to new coverage, but also to all grandfathered health plans.

**Long summary:**

**PHS Act sec. 2712. Prohibition on rescissions (as modified by sec. 2301 of HCERA).**

Prohibits a group health plan and a health insurance issuer offering group or individual coverage from rescinding such plan or coverage with respect to an enrollee once the enrollee is covered, except in the case of a covered individual who has performed an act or practice that constitutes fraud or makes an intentional misrepresentation of material fact as prohibited by the terms of the plan or coverage. Provides that the coverage may not be cancelled without giving prior notice to the enrollee.

**Legislative text:**

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"SEC. 2712. PROHIBITION ON RESCISSIONS.
"A group health plan and a health insurance issuer offering group or individual health insurance coverage shall not rescind such plan or coverage with respect to an enrollee once the enrollee is covered under such plan or coverage involved, except that this section shall not apply to a covered individual who has performed an act or practice that constitutes fraud or makes an intentional misrepresentation of material fact as prohibited by the terms of the plan or coverage. Such plan or coverage may not be cancelled except with prior notice to the enrollee, and only as permitted under section 2702(c) or 2742(b).
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