Preventive Care Under the Affordable Care Act

For more information regarding this or any other employment-related issue, please contact your Vorys attorney or a member of the Vorys Labor and Employment Group by calling 614.464.6400.

Most Patient Protection and Affordable Care Act (ACA) mandates apply to both grandfathered and non-grandfathered health plans. However, the following mandates are only applicable to non-grandfathered health plans:

- For plan years starting on or after September 23, 2010:
  - Mandatory first dollar coverage of preventive services.
  - New appeals standards, including external appeal rights (to be established by future regulations).
  - Nondiscrimination rules apply to insured plans.
  - Offer coverage to adult children to age 26. (Grandfathered plans also have to offer coverage to adult children to age 26 but, for the next three years, only if the child isn't eligible for employment-based coverage other than through a parent.)
  - Patient protections (coverage of out-of-network emergency room care at network levels; a plan cannot require preauthorization for OB/GYN care; a plan must allow an individual to select any participating primary care physician).
- After guidance is issued:
  - Annual quality of care reports and transparency disclosures.
- For plan years starting on or after January 1, 2014:
  - Cost sharing limited (out-of-pocket maximum pegged to HSA-compatible HDHP; deductibles limited to $2,000 individual and $4,000 family, indexed).
  - Mandatory coverage of clinical trial expenses related to cancer and other life-threatening diseases.

The rules for preserving grandfathered status are restrictive (See Vorys *Labor and Employment Alert*: Grandfathering under the Affordable Care Act). Many employers are weighing the difficulty of maintaining grandfathered status against the burden of the mandates applicable to non-grandfathered health plans. New regulations on mandatory coverage of preventive services help with the evaluation.

Required preventive care benefits: If your health plan becomes non-grandfathered, it will have to cover:

- items and services recommended by the United States Preventive Services Task Force;
- routine immunizations recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention; and
- with respect to infants, children, adolescents and women, preventive care and screenings listed in guidelines by the Health Resources and Services Administration.

Full text of the regulations and details of the recommendations and guidelines are available at http://www.HealthCare.gov/center/regulations/prevention.html. A plan can use reasonable medical management techniques to determine the frequency or setting of the care when not specified in the recommendation or guideline.

Interestingly, the November 2009 changes to the United States Preventive Services Task Force recommendations for breast cancer screening, mammography and prevention are disregarded so these treatments will still be preventative care to be covered without cost.

No cost sharing on in-network preventive care: Preventive care will have to be provided in-network on a first dollar basis (without a copay, coinsurance or deductible). However, a plan may impose cost sharing on out-of-network preventive care – or may exclude out-of-network preventive care altogether. Any other rule would have been problematic for the typical PPO or EPO model.

If an office visit includes both preventive care and other care, cost sharing depends on how the care is billed (separately or as one encounter). For care that is billed together, the "primary purpose" of the visit will determine whether the visit must be treated as preventive care (no cost sharing) or other care (normal cost sharing).

Changes to the preventive care recommendations and guidelines: A non-grandfathered plan will have to provide coverage of any preventive care service added to the recommendations and guidelines as of the first plan year beginning on or after the date that is one year after publication of the new recommendation or guideline. Your plan can end first dollar coverage if a service is dropped from the recommendations and guidelines – but the agencies caution that you must give 60-days advance notice of the change.

Other developments impacting health plans

Mental health parity: The DOL posted a new FAQ on its website July 1, 2010 (available at http://www.dol.gov/ebsa/faqs/faq-mhpaea.html) providing a useful liberalization of the mental health parity regulations issued February 2, 2010. The February 2, 2010 regulations required that office visits and all other outpatient medical and surgical services be aggregated in one category to determine the predominant cost sharing mechanism (i.e., copay or coinsurance). If no cost sharing mechanism was predominant (i.e., no one type of cost sharing applied to two-thirds of the outpatient medical and surgical services), then a plan was required to provide first dollar coverage for mental health/substance abuse office visits and outpatient services. The FAQ now permits office visits to be considered separately from other outpatient services. The mental health parity regulations, as liberalized by the FAQ, apply the first plan year starting on or after July 1, 2010.

HITECH: A number of requirements under the Health Information Technology for Economic and Clinical Health Act (HITECH) went into effect February 17, 2010. Proposed regulations on these requirements were finally issued July 14, 2010 (available at www.gpo.gov/fdsys/pkg/FR-2010-07-14/html/2010-16718.htm). Fortunately, the regulations will not be effective until six months after they are republished in final form. And, the deadline for updating a business associate agreement is one year after the regulations are published in final form, provided that the business associate agreement complied with pre-HITECH regulations.

COBRA: Congress has not extended eligibility for the subsidy of COBRA premiums past May 31, 2010. Although an extension is still possible, it is looking unlikely. The DOL reissued a pre-subsidy model COBRA election form (available at http://www.dol.gov/ebsa/compliance_assistance.html).