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EMPLOYERS GET PARTIAL REPRIEVE FROM HEALTH CARE REFORM'S PROHIBITION ON RESCISSIONS

New Guidance on Administrative Rescissions and Treatment of Ex-Spouses

ATLANTA March 3, 2011 – Can an Employer rescind coverage for an employee's ex-spouse if HR was not notified of the divorce until much later? If an employer terminates an employee mid-month, but does not reconcile with the carrier until the end of the month, is that employer prohibited from terminating the ex-employee's health insurance retroactively to the termination date? These are just a couple of the questions brought on by Health Care Reform's Prohibition on Rescissions. For many employers, confusion over these questions has elicited a change to their practices regarding ineligible dependents.

The Patient Protection and Affordable Care Act (PPACA) states that for all plan years beginning on or after September 23, 2010, group health plans and insurers cannot rescind the coverage of an enrollee except in situations where fraud can be proven. Based upon this provision, a company cannot retroactively cancel health coverage for an employee or his dependents and cannot collect claims money for this period unless the company is prepared to prove intentional fraud on the part of the employee. Many employers, now, are re-evaluating their administrative practices as well as the way that they manage eligibility associated with their group health care plans. Assessment is specifically necessary as it relates to both employees terminated between reconciliation cycles and ex-spouses with whom HR was never notified of a divorce.

On October 8, 2010, the Department of Labor provided further clarification on how to apply this provision to common administrative practices and to ex-spouses. For those employers who are on a monthly reconciliation schedule with their carrier, the practice of rescinding coverage for employees whose termination date falls between reconciliation dates and where no premium payments have been made does not fall in to the category of a prohibited rescission. Although it is unclear as to exactly how long the Department of Labor will allow for this "administrative delay", the October 8th clarification is welcomed by employers as it allows some leeway in managing employee eligibility without unnecessarily increasing their exposure for terminated employees and their dependents.

Even more significant, however, was the clarification regarding ex-spouses. For employers whose plans do not cover ex-spouses (and very few do), employers retain the ability to rescind coverage back to the point in time that the marriage was terminated, even if they were not notified of the change in status and COBRA payments are not being made.

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Among employers who have not conducted a Dependent Eligibility Verification project, ex-spouses typically constitute 1/3 of the 5-12% ineligible dependents on any group health care plan. Based upon average claims, these ineligible dependents account for \$93,067 in annual claims per 1,000 dependents covered.¹

Since the financial case for rescinding coverage and collecting claims money is clearly compelling, the question then becomes whether or not an employer has the resources to dedicate to this undertaking. An employer should consider the potential difficulties associated with researching each employee's circumstances and retroactively changing paychecks and W2s to account for differences in employee contributions. For larger employers, this may be a viable option. However, many smaller employers are left in the same position they were in before this clarification was given, as they lack the internal resources to effectively identify, rescind and collect.

Best practices indicate that plan sponsors should consider contracting with a 3rd party provider of eligibility management solutions to ensure a clean plan through a one-time audit of their dependent population. This process uncovers any ex-spouses participating in the plan. The employer is then able to choose whether or not to allocate resources to retroactive collection. After ensuring a clean plan through a dependent eligibility verification, the employer should then adopt an ongoing maintenance program to keep ineligible spouses, as well as other ineligible dependents, from participating on a go forward basis. Periodic re-verification of spouses will keep recently divorced spouses from remaining on a plan even if they were eligible during the original full eligibility verification cycle.

ContinuousHealth is an independent organization located in Atlanta Georgia that uses proprietary technology to help employers optimize their investments in employee benefits programs – especially in light of health care reform. ContinuousHealth has performed over 200 Dependent Eligibility Verification projects. ContinuousHealth's newest product, CHROME Compass, provides employers the insights necessary to optimize their plans in light of the new mandates and opportunities created in the post-healthcare reform era. ContinuousHealth distributes its products through an exclusive network of certified Brokers and Consultants.

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¹ "U.S. Health Care Cost Rate Increases Reach Highest Levels in Five Years, According to New Data from Hewitt Associates." September 27, 2010.