



# EMPLOYEE BENEFITS CLIENT ALERT

August 2, 2010

## **Health Care Reform Preventive Care Mandate**

Under the Patient Protection and Affordable Care Act of 2010 ("PPACA"), group health plans (other than grandfathered plans) must provide preventive services to participants without any cost-sharing requirements, including copayments, deductibles or coinsurance. This mandate applies to nongrandfathered calendar-year plans beginning January 1, 2011. On July 14, 2010, the Departments of Labor, Health and Human Services ("HHS") and Treasury jointly released interim final regulations (the "Interim Rules") implementing the preventive services mandate of the PPACA. The Interim Rules clarify what preventive services plans must cover, how cost-sharing applies to these types of services, how these rules apply to out-of-network providers, and how new recommendations become effective. This Client Alert summarizes the guidance set forth in these Interim Rules.

### **Recommended Preventive Services**

The PPACA requires group health plans to provide the following types of preventive services, called "Recommended Preventive Services":

- Evidence-based items or services that are rated A or B in the current recommendations of the United States Preventive Services Task Force.
- Routine immunizations for children, adolescents and adults that are recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention (the "CDC").
- Evidence-based preventive care and screenings for infants, children and adolescents that are supported by the Health Resources and Services Administration (the "HRSA").
- Preventive care and screenings for women that are supported by the HRSA. HHS is developing these guidelines and expects to issue them no later than August 1, 2011.

Rather than including an exhaustive list of the Recommended Preventive Services, the Interim Rules rely on a Preventive Care Web site: <http://www.healthcare.gov/center/regulations/prevention/recommendations>, which is maintained to include the most current Recommended Preventive Services. The Web site contains a detailed listing of Recommended Preventive Services as well as immunization schedules from the CDC and comprehensive guidelines from the HRSA. Some of the Recommended Preventive Services that nongrandfathered group health plans must provide without cost-sharing include the following:

- screening and counseling to reduce alcohol misuse
- interventions during pregnancy and after birth to promote and support breast-feeding



- screening for colorectal cancer
- behavioral dietary counseling for adult patients with known risk factors for cardiovascular and diet-related chronic disease
- screening to detect defects in visual acuity in children younger than age 5
- folic acid supplements for all women capable of pregnancy
- screening for hearing loss and congenital hypothyroidism in all newborns
- sexually transmitted infection screenings
- counseling related to aspirin use and tobacco cessation

## Other Important Aspects of the Interim Rules

**Services Billed in Conjunction with General Office Visits.** The Interim Rules contain various rules relating to the treatment of Recommended Preventive Services that are billed in conjunction with other services. In general, if a Recommended Preventive Service is billed separately from an office visit, the plan may impose cost-sharing for the office visit but not for the Recommended Preventive Services. If, however, a Recommended Preventive Service is not billed separately from an office visit, the determination of whether the plan may impose any cost-sharing is determined based upon the participant's primary purpose for the visit. Where the *primary purpose* of the office visit is to obtain Recommended Preventive Services, the plan may not impose any cost-sharing for the office visit charge. On the other hand, where the primary purpose for the office visit is to discuss a specific medical complaint, and the physician also happens to provide some Recommended Preventive Service during the visit, the plan may impose cost-sharing for the office visit charge.

**Out-of-Network Providers.** If a plan utilizes a network of providers, the plan is not required to provide coverage for Recommended Preventive Services provided by out-of-network providers. Furthermore, plans may impose cost-sharing on Recommended Preventive Services from out-of-network providers.

**Future Recommended Preventive Services.** The Interim Rules build in a transition period for plans to incorporate new Recommended Preventive Services. When new Recommended Preventive Services are promulgated and take effect, a plan does not have to provide the Recommended Preventive Services until the first plan year beginning one year after the effective date of the new recommendation. Therefore, employers only need to make changes to coverage and cost-sharing once per year.

## Going Forward

Employers should consult with their plan service providers to discuss the necessary changes to nongrandfathered plans before the beginning of the next plan year. Employers should ensure that plan amendments are timely adopted and that a summary of material modification or new summary plan descriptions are issued to plan participants. For more information regarding grandfathered status or to determine whether the Interim Rules apply to your plan, please see our previous Client Alerts in this series, including [Health Care Reform and Grandfathered Plan Status or Health Care Reform, What Changes Will We See This Year?](#) among various other [Client Alerts](#) issued by the Employee Benefits Practice Group.

## Additional Information

If you wish to visit with us about the latest health care reform guidance, please contact your Kutak Rock LLP attorney or a member of our Employee Benefits Practice Group listed below. For more information on our Employee Benefits practice and for recent Employee Benefits news and alerts, please visit us at [www.kutakrock.com](http://www.kutakrock.com).



**John E. Schembari**  
john.schembari@  
kutakrock.com



**Peter C. Langdon**  
peter.langdon@  
kutakrock.com



**Juliana Reno**  
juliana.reno@  
kutakrock.com



**Michelle M. Ueding**  
michelle.ueding@  
kutakrock.com



**Kathryn M. Magli**  
kathryn.magli@  
kutakrock.com



**William C. McCartney**  
william.mccartney@  
kutakrock.com



**Margaret A. Olsen**  
margaret.olsen@  
kutakrock.com



**Autumn Long**  
autumn.long@  
kutakrock.com

Kutak Rock LLP | The Omaha Building | 1650 Farnam Street | Omaha, NE 68102-2186 | (402) 346-6000

This Employee Benefits Client Alert is a publication of Kutak Rock LLP. This publication is intended to notify our clients and friends of current events and provide general information about employee benefits issues. The Kutak Rock LLP Employee Benefits Client Alert is not intended, nor should it be used, as legal advice, and it does not create an attorney-client relationship.

©Kutak Rock LLP 2010  
All Rights Reserved

This communication may be considered advertising in some jurisdictions.