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"LIMITED BENEFIT" MEDICAL PLANS: LAST CALL FOR PPACA WAIVER REQUESTS

A "limited benefit plan" (or, as some people refer to it, a "mini-med plan") is a type of medical plan that offers very limited benefits. Although doctor visits and hospital stays are typically covered, benefits are capped at a fairly low dollar amount. For example, benefits might be capped at $10,000 per year. Limited benefit plans are typically offered by employers who have a significant number of either part-time employees or employees whose hours greatly vary from week to week. This describes many employers in the restaurant industry and, in our experience, limited benefit plans are common in that industry. Most of our clients do not offer a limited benefit plan to their employees, but a small number do.

If you are an employer that is offering a limited benefit plan to any of your employees, there is an important deadline that you need to know about. The deadline is Thursday, September 22, 2011. That is the date, as described in more detail below, by which you must seek a waiver from the government to continue offering a limited benefit plan to your employees. If you miss this deadline, you will no longer be able to offer such a plan.

The thing that makes limited benefit plans popular is that coverage under such plans costs a lot less than coverage under a traditional "major medical plan." The reason for the lower cost is simple: less coverage is being provided. If a person who is covered under a limited benefit plan has a serious medical problem that requires hospitalization or an extended course of medical treatments, the coverage that is available under a limited benefit plan with a $10,000 annual limit (or even a $50,000 annual limit) could be exhausted before treatment for the underlying medical problem has been completed.

Although this type of annual limit was permitted in the past, at least under federal law, Congress changed the rules when it enacted the Patient Protection and Affordable Care Act of 2010 ("PPACA") in March 2010. Beginning in 2014, annual limits on "essential health benefits" will no longer be permitted. Between now and then, annual limits are still permitted, but only if the limit is at least $750,000 for plan or policy years beginning before September 23, 2011, at least $1.25 million for plan or policy years beginning before September 23, 2012, and at least $2 million for plan years beginning before January 1, 2014.

This clearly leaves out any type of limited benefit plan. (We should note that lower annual limits are still permitted for dental and vision plans, for health flexible spending accounts, and for certain other types of group health plans, but a typical

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limited benefit plan that provides coverage for doctor and hospital visits will not fit into any of these exceptions.)

As a result, the only way a limited benefit plan can still be offered is if the plan receives a "waiver" from the Department of Health and Human Services ("HHS") pursuant to authority that was delegated to HHS by Congress. If a waiver is granted, a limited benefit plan can still be offered (but only through the end of 2013).

Earlier this year, HHS announced that the deadline for applying for a waiver is September 22, 2011.

If you are an employer that is offering a limited benefit plan to your employees and you want to continue to be able to offer that limited benefit plan in the future, this means the following:

- If you haven't already applied for a waiver, you need to do so by September 22, 2011.
- If you have already received a waiver, you need to apply for a renewal of your waiver by September 22, 2011.

If you don't do one of the above, you will need to discontinue your limited benefit plan.

If you want to apply for a waiver, you must do so online, and you must do so by September 22, 2011. (We would suggest not waiting until the last minute so that you will have a cushion in case anything goes wrong.) Instructions for applying for a waiver are available online at the HHS website at: http://cciio.hhs.gov/resources/files/071111_alw_technical_instructions.pdf.

As with almost anything connected with PPACA, the rules addressing annual limits on essential health benefits are complicated and can quickly become very technical. We have tried to present a "plain English" summary of those rules as they relate to limited benefit plans and we have, for that reason, left out a number of details.

If you have questions regarding annual limits under PPACA, the waiver program for limited benefit plans, or the impact of health care reform on employers, please feel free to contact Steven Smith, Eric Namee, Ruhe Wadud Rutter, or Brad Schlozman at 316-267-2000.