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From: Gary Cohen, Acting Director, Office of Oversight

Title: Insurance Standards Bulletin Series--INFORMATION

Subject: CCIIO Supplemental Guidance (CCIIO 2011 – 1E): Exemption for Health Reimbursement Arrangements that are Subject to PHS Act Section 2711

Markets: Group

I. Purpose

Section 2711 of the Public Health Service Act (PHS Act), as added by the Affordable Care Act,¹ generally prohibits group health plans and health insurance issuers offering group or individual health insurance coverage from imposing lifetime or annual limits on the dollar value of essential health benefits (as defined in section 1302(b) of the Affordable Care Act), but allows “restricted annual limits” with respect to essential health benefits for plan years (in the individual market, policy years) beginning before January 1, 2014. Interim final regulations (IFR) that implement section 2711 were issued on June 28, 2010. 26 C.F.R. § 54.9815-2711T; 29 C.F.R. § 2590.715-2711; 45 C.F.R. § 147.126. Consistent with statutory direction given under section 2711(a)(2), the IFR provided that these restricted annual limits may be waived by the Secretary of Health and Human Services if compliance with the IFR would result in a significant decrease in access to benefits or a significant increase in premiums.

The Center for Consumer Information and Insurance Oversight (CCIIO)² issued guidance on September 3, 2010, November 5, 2010, December 9, 2010, and June 17, 2011 to describe the process by which a group health plan or health insurance issuer may apply for a waiver or a waiver extension of the restriction on annual limits on the dollar value of essential health benefits. The June 17, 2011 supplemental guidance describes the conclusion of the annual limit waiver application process.

¹ The Patient Protection and Affordable Care Act, Public Law 111-148, was enacted on March 23, 2010 and was amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111-152, enacted on March 30, 2010 (collectively “the Affordable Care Act”). The Affordable Care Act adds section 715(a)(1) to the Employee Retirement Income Security Act (ERISA) and section 9815(a)(1) to the Internal Revenue Code (the Code) to incorporate the provisions of part A of title XXVII of the PHS Act into ERISA and the Code, and make them applicable to group health plans, and health insurance issuers providing health insurance coverage in connection with group health plans.

² CCIIO was formerly called the Office of Consumer Information and Insurance Oversight.

CCIIO has received questions as to whether the restriction on annual limits applies to Health Reimbursement Arrangements (“HRAs”). The purpose of this supplemental guidance is to exempt as a class HRAs that are subject to section 2711 of the PHS Act from having to apply individually for waivers or waiver extensions from the restrictions on annual limits applicable to plan years beginning before January 1, 2014.

II. Types of HRAs

An HRA is a self-insured medical reimbursement plan funded solely by employer contributions and not through salary reduction that:

- 1) Reimburses some or all of the medical care expenses (as defined in 26 U.S.C. § 213(d)) of participating employees, spouses and dependents up to a maximum dollar amount for a coverage period; and
- 2) Allows participants to carry forward unused amounts remaining at the end of the coverage period for use in subsequent coverage periods.

For further information regarding HRAs, see IRS Notice 2002-45, 2002-2 C.B. 93, and Revenue Ruling 2002-41, 2002-2 C.B. 75.

While section 2711 of the PHS Act generally applies to group health plans and health insurance issuers offering group or individual health insurance coverage,³ the preamble to the IFR distinguishes between stand-alone HRAs and HRAs integrated with other group health coverage. The preamble to the IFR states that when an HRA is integrated with other health coverage, if the other coverage alone would meet the requirements of section 2711, the HRA need not satisfy the requirements of section 2711. Patient Protection and Affordable Care Act: Preexisting Condition Exclusions, Lifetime and Annual Limits, Rescissions, and Patient Protections, 75 Fed. Reg. 37188, 37190-91 (June 28, 2010).

III. HRAs Eligible for the Exemption

All HRAs set limits on the amount that can be spent and, we believe, those limits would always be less than the applicable restricted annual limit amounts. Accordingly, applying the restrictions on annual limits set forth in section 2711 and the IFR to HRAs would result in a significant decrease in access to HRA benefits. Therefore, this guidance exempts as a class all HRAs that are subject to the requirements of section 2711 and that were in effect prior to September 23, 2010 from having to apply individually for an annual limit waiver for plan years beginning on or after September 23, 2010 but before January 1, 2014.⁴

³ Section 2711 of the PHS Act and the IFR relating to prohibition on annual limits, including the special rules regarding restricted annual limits, do not apply to individual health insurance coverage that is a grandfathered health plan under section 1251 of the Affordable Care Act.

⁴ An HRA that is integrated with other health coverage that complies with section 2711 and its implementing regulations would not need a waiver.

If an employer that maintains an HRA also maintains other coverage, whether or not that coverage is integrated with the HRA, that other coverage must meet the requirements of section 2711 or obtain a waiver.⁵ All waiver and waiver extension applications must be received by September 22, 2011, as set forth in the June 17, 2011 guidance.

An HRA that is exempt from applying for an annual limit waiver still must comply with the record retention and Annual Notice requirements to participants and subscribers set forth in the supplemental guidance issued on June 17, 2011. For instructions on these requirements for HRAs, please refer to the “Technical Instructions for the Waiver Extension and Waiver Application Process,” available at: <http://cciio.cms.gov/resources/other/index.html#alw>.

If you have any questions regarding this Bulletin, please e-mail the CCIIO mailbox at AnnualLimitWaiver@cms.hhs.gov (use “HRA Exemption” as the subject of the email).

⁵ If a waiver is obtained for other coverage that is integrated with an HRA, the waiver applies to the combined coverage and no separate waiver is needed for the HRA.