

**FEDERAL HEALTHCARE REFORM:
PATIENT PROTECTION AND AFFORDABLE CARE ACT
PROHIBITION ON RESCISSIONS**



This summary provides an overview of the Patient Protection and Affordable Care Act (“PPACA”) prohibition on rescissions. The Departments of Health & Human Services (“HHS”), Treasury and Labor issued an Interim Final Rule (“IFR”) outlining the rescission prohibition on June 28, 2010. HHS issued additional clarifying FAQs on October 8, 2010.

Summary: Generally, an insurer or a group health plan may not *rescind* coverage except in the case of fraud or an intentional misrepresentation of material fact. (§1001 of PPACA; 45 C.F.R. §147.128)

Scope: This prohibition applies to individual plans and group plans, whether fully-insured or self-funded. (§1001 of PPACA; 45 C.F.R. §147.128)

Description: Under Section 1001 of PPACA, an insurer or a group plan may only *rescind* coverage if the individual (or a person seeking coverage on behalf of an individual) performs an act, practice, or omission that constitutes fraud or if the individual makes an intentional misrepresentation of material fact. (§1001 of PPACA; 45 C.F.R. §147.128)

The existence of a contestability period does not relieve the group or insurer from its obligations under this provision. (§1001 of PPACA; 45 C.F.R. §147.128)

These rules apply whether the *rescission* applies to a single individual, family or an entire group. (§1001 of PPACA; 45 C.F.R. §147.128)

Definition of Rescission: “*Rescission*” is defined by the IFR to mean: “a cancellation or discontinuance of coverage that has a retroactive effect.” (45 C.F.R. §147.128)

A cancellation is **not** a *rescission* if one of the following applies:

- The cancellation only has a prospective effect. (45 C.F.R. §147.128)
- The cancellation applies retroactively based on a failure to pay premiums. (45 C.F.R. §147.128)

HHS also clarified that retroactive terminations done in the normal course of business are **not** *rescissions*. Instead, groups may apply terminations retroactively if they are based on a delay in administrative record-keeping. For example, if a group’s human resource department only reconciles eligibility based on monthly data feeds, then terminations done as a result of such reconciliation may apply retroactively without violating this rule. (HHS, Second Set of FAQs, issued 10/8/10)

Effective Date: Plans years beginning on or after September 23, 2010. (§1001 of PPACA)

Grandfathering: The prohibition on *rescission* applies whether or not a plan qualifies as a grandfathered plan under PPACA.

Examples

The following are examples of how the *rescission* rule applies to common situations:

- A group provides health coverage to its full-time employees only. A worker switches from full-time to part-time status and continues to pay premiums. The group mistakenly continues to provide coverage to that employee even though she no longer is eligible. The group **cannot** retroactively cancel coverage because to do so would be an impermissible *rescission*. In this case, because the employee paid premiums, the group can only prospectively cancel her coverage. (45 C.F.R. §147.128(a)(3))
- A group provides health coverage to its active employees only. When an employee is terminated, the company no longer collects premiums from the terminated employee. The group **may** retroactively eliminate coverage as of the termination date. HHS does not view this as a *rescission*, but rather a retroactive termination “due to delay in administrative record-keeping...” (See HHS, Second Set of FAQs, issued 10/8/10)
- A group does not provide health coverage to ex-spouses. The group **may** retroactively terminate coverage for the ex-spouse of an employee as of the date of divorce if the group was not promptly notified of such divorce. HHS does not view this as a *rescission*, but rather a retroactive termination “due to delay in administrative record-keeping...” (See HHS, Second Set of FAQs issued 10/8/10)

References:

PPACA: <http://docs.house.gov/energycommerce/ppacacon.pdf>

IFR: <http://www.gpo.gov/fdsys/pkg/FR-2010-06-28/pdf/2010-15278.pdf>

HHS FAQs: http://www.hhs.gov/ociio/regulations/implementation_faq.html

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