FEDERAL HEALTHCARE REFORM:

PATIENT PROTECTION AND AFFORDABLE CARE ACT
LIFETIME AND ANNUAL LIMITS

Blue Cross Blue Shield of Rhode Island

On Tuesday, March 23, President Obama signed into law the "Patient Protection and Affordable Care Act" ("PPACA") which had been passed by the House just days earlier. A reconciliation bill was signed by the President on March 30, 2010. The PPACA as amended by the reconciliation bill is collectively referred to as the "Act" in this summary. The Departments of Health & Human Services, Treasury and Labor issued Interim Final Regulations ("IFR") implementing lifetime and annual limits on June 28, 2010. This summary provides an overview of the lifetime and annual limits provisions of the Act as clarified by the IFR.

Summary:	Group (insured and self funded) and individual health plans may not impose **lifetime limits** on the dollar value of "essential health benefits." Individuals who have previously reached a lifetime limit must be afforded the opportunity to re-enroll in coverage as described more fully below. In addition, group (insured and self funded) and individual health plans may not impose **annual limits** on the dollar value of "essential health benefits." Unlike lifetime limits, PPACA and the IFR allow for Restricted Annual Limits on "essential health benefits" so long as the limits remain above the threshold set by the IFR (described in full below). The Restricted Annual Limits will be phased out entirely by 2014, at which time no annual limits may be placed on "essential benefits." Nothing in PPACA or IFR prohibits plans from placing either lifetime or annual limits on non-essential health benefits. Further, the IFR is silent as to whether plans can impose a per visit or per procedure limit. (§ 1001 of PPACA; § 2711 of PHSA; 45 C.F.R. § 147.126)
Scope:	Applicable to all individual plans and group plans, whether insured or self-funded. These limits do not apply to Health Reimbursement Arrangements (HRAs), Health Savings Accounts (HSAs), Health Flexible Spending Arrangements (FSAs) or Medical Savings Accounts (MSAs). (§ 1001 of PPACA; § 2711 of PHSA; 45 C.F.R. § 147.126)
Definition of "Essential Health Benefits":	The IFR does not define the term "essential health benefits." Instead, it merely cross-references the definition provided by § 1302 of PPACA, which states that "such benefits shall include at least the following general categories and the items and services covered within the categories: (A) Ambulatory patient services. (B) Emergency services. (C) Hospitalization. (D) Maternity and newborn care. (E) Mental health and substance use disorder services, including behavioral health treatment. (F) Prescription drugs. (G) Rehabilitative and habilitative services and devices. (H) Laboratory services. (I) Preventive and wellness services and chronic disease management. (J) Pediatric services, including oral and vision care." The Preamble to the IFR provides that, for plan years beginning before the issuance of more defining regulations, the agencies "will take into account good faith efforts to comply with a reasonable interpretation of the term 'essential health benefits.'" However, the plan or issuer must consistently apply its definition of the term.
Condition-Based Exclusions:	Both the Preamble and the IFR clarify that an exclusion of all benefits for a condition is still allowed. Once benefits are provided for a condition, however, the restrictions on lifetime and annual maximums apply. (45 C.F.R. § 147.126(b)(2))

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Restricted Annual Limits:	The three-year phased approached for Restricted Annual Limits under the IFR allows a plan to set annual limits on the dollar value of "essential benefits" so long as that limit is not less than: • $750,000 for policy years beginning on or after Sep. 23, 2010, but before Sep. 23, 2011; • $1.25 million for policy years beginning on or after Sep. 23, 2011, but before Sep. 23, 2012; • $2 million or policy years beginning on or after Sep. 23, 2012, but before Jan. 1, 2014. Policy years beginning on or after Jan. 1, 2014 may not include *any* annual limits on "essential health benefits." The Preamble to the IFR clarifies that these limits shall apply on an individual basis and cannot be applied to a family as a whole.
Restricted Annual Limits – Waiver Program:	The IFR established a waiver program, to be administered by the Secretary of HHS, should a plan's compliance with the Restricted Annual Limits would result in significant decrease in access to benefits or a significant increase in premiums. The waiver program only applies for policy years beginning before Jan. 1, 2014. (45 C.F.R. § 147.126(d)(3))
Notice and Re-Enrollment Period:	Plans must notify those individuals whose coverage ended due to reaching a lifetime limit and who would otherwise be eligible for coverage. This notice must explain that the lifetime limit no longer applies and that they are eligible to re-enroll in coverage. The notice may be provided to the member or the subscriber of the plan. The eligible individual must be afforded a one-time re-enrollment period of least 30 days that must begin no later than the first day of the plan year beginning on or after September 23, 2010 (i.e. Jan. 1, 2011 for calendar year plans). The individual must be afforded the opportunity to enroll in all the benefit packages available to similarly situated individuals who did not lose coverage due to the lifetime limit. The plan cannot require the re-enrolling individual to pay more for the coverage than similarly situated individuals. The Preamble specifies that, in the individual market, this re-enrollment requirement would only apply if a family member reached the lifetime limit while other family members remain in the coverage. (45 C.F.R. § 147.126(e))
Grandfathering:	The prohibition of **lifetime limits** applies whether or not a plan qualifies as a grandfathered plan under the Act. The prohibition of **annual limits** and the Restricted Annual Limit provision applies to group plans regardless of their grandfathered status. However, if an individual plan qualifies as grandfathered under the Act, the rules related to annual limits do not apply. (45 C.F.R. § 147.126(f)) (*See* Fact Sheet on Grandfathering for more guidance.)
Effective Date:	Plan years beginning on or after September 23, 2010.
References:	PPACA: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h3590enr.txt.pdf Reconciliation: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h4872pcs.txt.pdf IFR: http://frwebgate2.access.gpo.gov/cgi-bin/PDFgate.cgi?WAISdocID=yivFG2/0/2/0&WAISaction=retrieve

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