

May 5, 2010

## MEMORANDUM TO CLIENTS

**Re: Health Care Reform Insurance Web Portal Interim Final Rule**

On May 5, 2010, the Department of Health and Human Services ("HHS") issued an interim final rule related to the Insurance Web Portal requirements in the Patient Protection and Affordable Care Act ("PPACA"). 75 Fed. Reg. 24470 (2010). The interim final rule is effective May 10, 2010. HHS has indicated that it intends to collect far more than the statutorily-required information for the web portal and has set forth an aggressive time-table for the initial information collection.

PPACA requires HHS, by July 1, 2010, to establish an internet website ("web portal") through which individuals and small businesses may identify health insurance coverage. On May 5, 2010, HHS issued an interim final rule with a comment period to implement the web portal requirements. The web portal is intended to help individuals and small businesses identify private health insurance options in their states, and to assist individuals in determining if they may be eligible for a public program, including existing state high risk pools, new high risk pools, Medicaid, Medicare and the Children's Health Insurance Program. The web portal is also supposed to include consumer education information to help individuals better understand insurance terms and the choices available to them currently.

In addition to information on health insurance options, the new Web portal will provide information on the small business tax credits available for 2010 and beyond. It also will provide information on the Early Retiree Reinsurance Program, including instructions on how businesses that provide coverage to non-Medicare retirees age 55 and older can enroll to receive reinsurance payments to stabilize coverage for this at-risk population.

Because of the short time frame for its implementation, HHS has decided to launch the web portal in phases. The first phase will be implemented on July 1. The second phase will be implemented in October 2010. HHS plans annual and periodic updates to the web portal after the initial implementation and intends the web portal to evolve with time.

For phase 1, the interim final rule requires health insurance issuers to provide to HHS health insurance product information in the individual and small group market. Health insurance issuers are entities that are licensed to engage in the business of insurance in a state and that are subject to state law which regulates insurance. The requirement only applies to insurers in the individual and small group market.

By May 21, 2010, HHS will require issuers to submit

- corporate and contact information, such as corporate addresses and websites;
- administrative information, such as enrollment codes;

- enrollment data by product;
- product names and types, such as Preferred Provider Organization (PPO) or Health Maintenance Organization (HMO);
- whether enrollment is currently open for each product;
- geographic availability information, such as product availability by zip code or county;
- customer service phone numbers;
- website links to the issuer website;
- brochure documents such as benefit summaries, and provider networks;
- and financial ratings, such as those offered by financial rating firms including AM Best, Standards and Poor, and Moody's, if available.

Submission of this data must be made in accordance with instructions issued by HHS. The instructions do not yet appear to be available on the Office of Consumer Information and Insurance Oversight.

For phase 2, to be launched in October, HHS intends to include detailed pricing and benefit information. The preamble to the regulation suggests that medical loss ratios, quality and performance information and more state-specific information are likely also to be included in phase 2 or in future updates. The submission date for the additional data collected for phase 2 is September 3, 2010. The issuer's CEO or CFO must electronically certify the completeness and accuracy of all data submitted in phase 2 and any data submitted for future updates of the web portal.

After phase 2, HHS will require issuers to perform an annual verification and update of the data they submitted. In addition, issuers will be required submit updated data whenever they change premiums, cost-sharing, types of services covered, coverage limitations, or exclusions for one or more of their individual or small group portal plans. Issuers that develop new health insurance products between annual verifications will be required to submit pricing and benefit information for the new product within 30 days of opening enrollment.

Further, and most importantly, HHS intends to collect information beyond the statutorily-required information. Specifically, for 2011, HHS intends to collect information on the following: percent of individual market and small group market policies that are rescinded; the percent of individual market policies sold at the manual rate; the percent of claims that are denied under individual market and small group market policies; and the number and disposition of appeals on denials to insure, pay claims and provide required preauthorizations. This suggests that HHS views the portal as a mechanism for mandating that insurers submit a wide variety of sensitive information, with the intention of publishing the information for consumers to review.

HHS will host a webinar for issuers of health insurance in the individual and small group markets on data collection to support the web portal. Issuers are strongly encouraged to attend the training on data collection. Training for private insurance carriers will be conducted by webinar and conference call on **Friday, May 7, 2010** from 3:00pm - 4:30pm EST.

HHS has invited public comment on all relevant issues, including whether enrollment information should be considered confidential business information. Comments must be received by June 4, 2010.

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We have been working with clients to address questions regarding PPACA. Please let us know if you have questions. You may contact your regular Groom contact or any of the Health and Welfare practice group attorneys listed below:

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