

FAQS ABOUT THE AFFORDABLE CARE ACT IMPLEMENTATION – PART III

October 12, 2010

Set out below are two Frequently Asked Questions (FAQs) regarding implementation of the market reform provisions of the Affordable Care Act. They have been prepared jointly by the Departments of Health and Human Services, Labor and the Treasury. Like the FAQs issued on September 20, 2010 and on October 8, 2010, these FAQs answer questions from stakeholders with a view to helping people understand the new law and benefit from it, as intended.

The Departments anticipate issuing further responses to questions and other guidance under the Affordable Care Act in the future. We hope these publications will be helpful by providing additional clarity and assistance.

EXEMPTION FOR GROUP HEALTH PLANS WITH LESS THAN TWO CURRENT EMPLOYEES

Q1: Do the HIPAA statutory exemptions in effect since 1997 for group health plans with “less than two participants who are current employees” apply to the Affordable Care Act’s group market reforms?

Yes. The preamble to the interim final regulations on grandfathered plans¹ noted that statutory provisions in effect since 1997 exempting group health plans with “less than two participants who are current employees” from HIPAA also exempt such plans from the group market reform requirements of the Affordable Care Act. Accordingly, under the terms of these statutory provisions, group health plans that do not cover at least two employees who are current employees (such as plans in which only retirees participate) are exempt from the Affordable Care Act’s market reform requirements.

Q2: I am an employer who sponsors a number of plans including one for both my retirees and individuals on long-term disability. Before the Affordable Care Act, we treated our plan covering retirees and those on long-term disability as exempt under HIPAA. Can we continue to treat that plan as exempt?

The Departments have not issued guidance on this specific issue. In order to fully analyze the issue, and balance the goal of ensuring that the Affordable Care Act’s market reforms and patient protections are provided to eligible enrollees of group health plans with the goal of preventing disruption of existing coverage, the Departments will be issuing a request for information (RFI) very soon. The RFI will solicit comments from employers and other stakeholders to inform future guidance. After reviewing the comments submitted, the Departments intend to publish guidance on this issue in 2011.

¹ See 75 FR 34539-34540, published June 17, 2010.

Until guidance is issued, the Departments will treat plans described above as satisfying the exemption from HIPAA and the Affordable Care Act's group market reforms for plans with less than two participants who are current employees. To the extent future guidance on this issue is more restrictive with respect to the availability of the exemption than this interim relief, the guidance will be prospective, applying to plan years that begin some time after its issuance.

Pending such further guidance, a plan may adopt any or all of the HIPAA and Affordable Care Act market reform requirements without prejudice to its exemption. The Departments encourage such voluntary compliance.