

CLIENT ALERT

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PPACA Guidelines Governing the Ability of Employers to Make Retroactive Terminations.....

Part of the Affordable Care Act prohibits employers from making retroactive terminations (Rescissions) in certain situations. This part of the act becomes effective on the plan's first renewal on or after September 23, 2010 and affects all plans that are subject to health care reform regardless of their grandfathered status.

An employer cannot retroactively terminate a participant's coverage if:

- The participant was covered through plan error and
- The participant paid premium or contributed to the cost of the plan

In this situation, the participant may only be terminated on a prospective basis.

Retroactive terminations may be made if they are done as part of a monthly reconciliation of eligibility and:

- The participant did not pay any premium or contribution towards the cost of the plan

Retroactive terminations may also be made in cases of an act, practice or omission on the part of the participant that:

- Constitutes fraud, or
- A material misrepresentation of fact

In these cases, retroactive terminations may be made but you must:

- Provide written notification to the participant with at least 30 days advance notice of the retroactive termination. This provides the participant the opportunity to explore their rights to contest the termination or look for alternative coverage
- The notification must include the information for the participant regarding how to appeal the termination.

IMPORTANT INFORMATION REGARDING HOW CHB GROUP WILL HANDLE RETROACTIVE TERMINATIONS PROVIDED TO US BY OUR CLIENTS

It is up to the Employer to ensure that when a retroactive termination is reported to CHB Group, and therefore the carrier, that the criteria for requesting the retroactive termination is satisfied. CHB Group will consider any such request as already confirmed compliant by the party submitting the request. We strongly urge all of our clients to make sure they are proactively auditing their medical premium statements and reporting terminations in a timely manner or as soon as reasonably possible.

Nothing in the Health Reform legislation changes the insurers' obligation to accept retroactive terminations beyond their normal guidelines. Insurers typically only allow for retroactive terminations back 60 days.

This information is from the Interim Final Rule published in the *Federal Register* on June 28, 2010. Note that additional comments have been requested and additional guidance is expected sometime in the future, as well as guidance regarding the form and content of the "advance notice of retroactive termination" notification. Additional information can be found at:

June 28, 2010 *Federal Register* <http://edocket.access.gpo.gov/2010/pdf/2010-15278.pdf>

Department of Labor Website www.dol.gov/ebsa

On the next page is an excerpt from the DOL's FAQ Sections (<http://www.dol.gov/ebsa/faqs/faq-aca2.html>)

DISCLAIMER - *This information is provided as an informational service and is not considered insurance, legal or tax advice. If you would like more information, please do not hesitate to contact our office or your corporate accountant or attorney.*

Rescissions

Q7: The Affordable Care Act (through Public Health Service Act section 2712) generally provides that plans and issuers must not rescind coverage unless there is fraud or an individual makes an intentional misrepresentation of material fact. A rescission is defined as it is commonly understood under the law – a cancellation or discontinuance of coverage that has a retroactive effect, except to the extent attributable to a failure to pay timely premiums towards coverage.

Is the exception to the statutory ban on rescission limited to fraudulent or intentional misrepresentations about prior medical history? What about retroactive terminations of coverage in the “normal course of business”?

The statutory prohibition related to rescissions is not limited to rescissions based on fraudulent or intentional misrepresentations about prior medical history. An example in the Departments’ interim final regulations on rescissions clarifies that some plan errors (such as mistakenly covering a part-time employee and providing coverage upon which the employee relies for some time) may be cancelled prospectively once identified, but not retroactively rescinded unless there was some fraud or intentional misrepresentation by the employee.

On the other hand, some plans and issuers have commented that some employers’ human resource departments may reconcile lists of eligible individuals with their plan or issuer via data feed only once per month. If a plan covers only active employees (subject to the COBRA continuation coverage provisions) and an employee pays no premiums for coverage after termination of employment, the Departments do not consider the retroactive elimination of coverage back to the date of termination of employment, due to delay in administrative record-keeping, to be a rescission.

Similarly, if a plan does not cover ex-spouses (subject to the COBRA continuation coverage provisions) and the plan is not notified of a divorce and the full COBRA premium is not paid by the employee or ex-spouse for coverage, the Departments do not consider a plan’s termination of coverage retroactive to the divorce to be a rescission of coverage. (Of course, in such situations COBRA may require coverage to be offered for up to 36 months if the COBRA applicable premium is paid by the qualified beneficiary.)

Taken from:

<http://www.dol.gov/ebsa/faqs/faq-aca2.html>

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