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ABC REGULATORY ALERT – FALL 2010

ABC's quarterly Regulatory Alert provides a roundup of recent regulations and enforcement actions from the U.S. Department of Labor (DOL), Environmental Protection Agency (EPA), Department of Health and Human Services (HHS), and other federal agencies. Below are brief summaries of current issues, as well as links to more detailed information and guidance. If you have questions, contact Sean Thurman, ABC's Manager of Regulatory Affairs, at thurman@abc.org or Karen Livingston, ABC's Director of Policy, at livingston@abc.org.

Additional information and resources are available on ABC's [Regulatory Affairs page](#).

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OSHA Issues Long-Awaited OSHA Cranes & Derricks Standard

The Occupational Safety and Health Administration (OSHA) Aug. 9 [issued a final rule](#) updating work practice, training and certification requirements for crane and derrick safety in the construction industry.

The biggest change to the 40-year-old standard is the requirement that all crane operators be certified and trained, either through an accredited testing organization or an audited qualification program offered by the employer.

Contractors must comply with the work practices portion of the OSHA rule by

Nov. 8, 2010, but have until Nov. 8, 2014, to comply with the operator training and certification requirements. State-plan OSHA programs have six months to bring their standards into compliance. It is important to note that OSHA's final rule will not preempt existing or future state rules and local ordinances that are more stringent than the federal rule.

For more on the final rule, including an overview of the major provisions of the rule, visit [ABC Newsline](#) or [OSHA's Cranes and Derricks resource page](#).

EPA Lead Renovation Requirements In Effect; Certification Enforcement Delayed

The Environmental Protection Agency (EPA) now requires contractors performing renovation, repair or painting (RRP) projects that disturb more than 6 feet of lead-based paint in pre-1978 homes and child-occupied facilities to be trained and certified in specific work practices designed to prevent exposure to lead-based paint.

On June 18, 2010, following pressure from construction businesses, lawmakers and industry trade groups, EPA [announced](#) it would delay enforcement of the RRP certification requirements until October 2010. (Although the final rule implementing the program initially took effect in April, a lack of accredited training providers prevented many contractors from obtaining the necessary certifications.)

The agency stresses, however, that contractors performing work that triggers the lead-safe rule will still be expected to comply with the rule's work practice requirements during the certification safe harbor. Fines for noncompliance can reach up to \$37,500 per day.

Information regarding compliance is available on [EPA's Lead RRP resource page](#).

Numeric Requirement Scrapped from EPA Stormwater Runoff Guidelines

As a result of legal action taken by construction industry representatives, the EPA Aug. 16 [announced](#) it will scrap the numeric requirements set in its final rule controlling pollutants and stormwater runoff from construction sites and come up with a more reasonable requirement for the industry.

While the numeric limits have been removed pending further review, the other provisions of the rule remain intact, including adherence to the rule's non-numeric effluent limitations in residential and commercial construction, as well as road, highway and infrastructure work.

EPA officials informed ABC that although the rule officially took effect Feb. 1, 2010, the actual provisions will not go into effect until each state updates its construction general permit (CGP).^{*} A table of [state CGP expiration dates](#) has been provided by EPA.

^{}Exceptions are Idaho, Massachusetts, New Hampshire and New Mexico, which use a CGP issued by federal EPA. EPA plans to update its CGP in June 2011.*

Health Care Interim Rule: Grandfathered Health Plans

The Departments of Health and Human Services, Labor and Treasury [issued interim final rules](#) for group health plans and health insurance coverage relating to status as a “grandfathered health plan” under provisions of the Patient Protection and Affordable Care Act (PPACA).

Under PPACA, “grandfathered health plans” are certain plans and insurance coverage that existed on March 23, 2010. Grandfathered plans are required to comply with some, but not all, of the health reforms contained in PPACA.

The rules also provide that routine changes—such as adding new benefits or making modest adjustments to existing benefits—will not cause a plan to lose grandfathered status. However, grandfathered plans will not maintain their status if significant changes are made that reduce benefits or increase costs. Grandfathered plans must also follow certain document retention and disclosure provisions in order to maintain their status.

The following changes to a plan, as it existed on March 23, 2010, will cause the plan to lose grandfathered status:

- changing insurance companies; raising co-insurance charges;
- increasing copayments by more than the greater of \$5 (adjusted annually for medical inflation) or a percentage equal to medical inflation plus 15 percentage points;
- raising deductibles by more than a percentage equal to medical inflation plus 15 percentage points;
- decreasing employer contributions by more than five percentage points;
- adding or tightening an annual dollar limit; or
- eliminating or significantly cutting benefits to diagnose or treat a particular condition.

Further, to retain grandfathered status, the rule provides that a plan must maintain records that document the plan or policy terms that were in effect on March 23 and those records must be made available for examination by a participant, beneficiary, individual policy subscriber or state or federal agency official. In addition, plans are required to include a statement saying the plan “believes it is a grandfathered plan.” The [statement](#) should be included in any plan materials distributed to participants that describe benefits under the plan.

According to the rules, good faith efforts to comply will be taken into consideration and, under a grace period, an employer may modify or revoke any changes made prior to June 14 that would cause a plan to lose its grandfathered status.

On Aug. 16, 2010, ABC, as part of a coalition of small business representatives, filed [comments](#) with HHS, DOL, and Treasury, expressing concern regarding the rules.

For more on the interim final rules, visit [ABC Newsline](#) or the [DOL website](#).

Health Care Interim Rule: Extension of Dependent Coverage Up to Age 26

On May 13, 2010, the Departments of Health and Human Services, Labor and Treasury [issued interim final rules](#) relating to dependent coverage of children up to age 26 under PPACA. The rules generally apply to group health plans and group health insurance issuers, and individual health insurance issuers for plan or policy years beginning on or after Sept. 23, 2010.

PPACA requires plans and issuers that offer dependent coverage to offer coverage to enrollees' adult children up to age 26, regardless of student status, residency or financial dependency.

Beginning before Jan. 1, 2014, grandfathered health plans may deny coverage to adult children if they are eligible for employer-sponsored coverage.

Plans or issuers are required to provide [written notice](#) of the new rule, including the opportunity for adult children up to age 26 to enroll (an enrollment period of at least 30 days). The enrollment opportunity and written notice must be provided no later than the first day of the first plan year beginning on or after Sept. 23, 2010.

For more on the interim final rules, including a fact sheet, visit the [DOL website](#). In addition, information on the tax treatment of health coverage for children up to age 27 is available on the [Internal Revenue Service website](#).

Health Care Interim Rule: Preexisting Condition Exclusions, Lifetime and Annual Limits, Rescissions, and Patient Protections

The Departments of Health and Human Services, Labor and Treasury [issued interim final rules](#) for group health plans and health insurance issuers regarding preexisting condition exclusions, lifetime and annual dollar limits on coverage, rescissions, and patient protections under provisions of PPACA.

Under the rules, group health plans and health insurance issuers are prohibited from imposing any preexisting condition exclusions. For individuals under age 19, the prohibition applies to plan years beginning on or after Sept. 23, 2010. For individuals age 19 and over, the prohibition applies to plan years beginning on or after Jan. 1, 2014. The provision applies to all plans, except grandfathered individual health insurance coverage.

In general, PPACA prohibits annual dollar limits on coverage; however, "restricted annual dollar limits" are allowed for coverage of essential health benefits for plan years beginning before Jan. 1, 2014. The regulations provide a three-year phase out for restricted annual dollar limits: \$750,000 for plan or policy years beginning on or after Sept. 23, 2010 but before Sept. 23, 2011; \$1.25 million for plan or policy years beginning on or after Sept. 23, 2011 but before Sept. 23, 2012; and \$2 million for plan or policy years beginning on or after Sept. 23, 2012 but before Jan. 1, 2014.

Restricted annual dollar limits apply to all plans, except grandfathered individual market policies. For plan years beginning on or after Jan. 1, 2014, annual dollar limits on coverage of essential health benefits are prohibited.

Further, group health plans and health insurance issuers are prohibited from imposing lifetime limits on essential health benefits. The rules stipulate that [written notice](#) must be given to individuals stating that the lifetime limit on the dollar value of all benefits no longer applies and that a 30 day enrollment period exists for individuals whose coverage ended as a result of reaching a lifetime

limit under the plan. For plan years beginning on or after Sept. 23, 2010, the prohibition on lifetime limits applies to all plans, including grandfathered plans.

The interim final rules also include information about prohibition on rescissions, choice of health care professional, and emergency services.

For more on the interim final rules, visit [ABC Newsline](#) or the [DOL website](#).

Health Care Interim Rule: Coverage of Preventive Services

The Departments of Health and Human Services, Labor and Treasury [issued interim final rules](#) that require health plans and issuers to cover “recommended preventive services” and eliminate cost-sharing requirements, such as a deductible, copayment or co-insurance, on those measures.

The rules take effect Sept. 17, 2010, and generally apply to plans and issuers for plan years beginning on or after Sept. 23, 2010. Grandfathered health plans are not subject to these rules.

According to the rules, recommended preventive services include, but are not limited to: blood pressure screening for adults; colorectal cancer screening for adults over 50; breast cancer mammography screenings every one to two years for women over 40; and autism screening for children at 18 months and 24 months.

HHS has issued a list of ["recommended preventive services"](#) that are required to be covered under the rules, and the agency is developing women’s prevention guidelines, which will be issued in August 2011. The rules also clarify the cost-sharing requirements when a recommended preventive service is provided during an office visit.

For more on the interim final rules, visit [ABC Newsline](#) or the [DOL website](#).

Health Care Interim Rule: Internal Claims and Appeals and External Review Processes

The Departments of Health and Human Services, Labor and Treasury [issued interim final rules](#) that implement requirements relating to internal claims and appeals, as well as external review processes for group health plans and health insurance coverage in the group and individual markets, under PPACA.

The rules take effect Sept. 21, 2010, and generally apply to group health plans, group health insurance issuers and individual health insurance issuers for plan and policy years beginning on or after Sept. 23, 2010. Grandfathered health plans are not subject to these rules.

The rules require group health plans and health insurance issuers to implement an effective internal claims and appeals process. These rules also apply to group health plans that are not currently covered by the Employee Retirement Income Security Act (ERISA).

Group health plans and health insurance issuers offering group coverage must comply with requirements under the DOL claims procedure, as well as six new requirements set forth by the regulations (for additional information on these six

requirements, see the *ABC Newsline* article linked below). The rules also require a plan and issuer to provide continued coverage pending the outcome of an internal appeal.

In addition to complying with all of the requirements for the internal claims and appeals process that apply to group health coverage, issuers offering individual health coverage must also comply with three more requirements set forth by the rules (for additional information on these three requirements, see the *ABC Newsline* article linked below).

The regulations also provide that plans and issuers must comply with either a state external review process or the federal external review process. On Aug. 26, further [guidance](#) was issued regarding [interim procedures](#) for the federal external review process.

For more on the interim final rules, visit [ABC Newsline](#) or the [DOL website](#).

ABC Health Care Webinar: September 28

Do you want to learn more about requirements of the Patient Protection and Affordable Care Act (PPACA)?

Join health care expert Andrea O'Brien of Venable, LLP, on Tuesday, Sept. 28, 2010, at 12 p.m. (ET), for a webinar: [Health Care Reform Law Updates and Regulations](#).

O'Brien and fellow Venable attorneys will offer valuable insights on recently issued health care regulations and other PPACA development. Find out how these updates could affect your company, your employees, and the health coverage you provide to those employees and their families.

For more information and to register, visit ABC's [Webinars webpage](#).

Contact the ABC meetings department at meetings@abc.org with any questions.

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