

## CLIENT ALERT

### Final Health Coverage Portability Regulations Clarify Preexisting Condition Exclusion Requirements

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In 1996, Congress enacted the Health Insurance Portability and Accountability Act (HIPAA) (Pub. L. No. 104-191), which, among other things, improved portability of group health plan coverage. On December 30, 2004 the Department of Labor, the Department of Health and Human Services, and the Department of the Treasury ("the agencies") jointly issued final regulations for health coverage portability. 69 FR 78719. The final regulations replaced interim final regulations issued in April 1997 (62 FR 16894) and clarified in December 1997 (62 FR 67688). The final regulations apply to group health plans for plan years beginning on or after July 1, 2005.

The agencies commented that the final regulations do not significantly change the framework of the interim rule issued in April 1997. Rather, the final regulations "implement changes to improve the portability of health coverage while seeking to minimize burdens on group health plans and group health insurance issuers." Among the more significant changes to the interim rule are:

- Group health plans and group health insurance issuers must implement written procedures that can be used by individuals to request certificates of coverage.
- Group health plans and group health insurance issuers must include with certificates of creditable coverage an educational statement on HIPAA portability rights. Model language is set forth in the final regulation.
- General notices of preexisting conditions must include information on the length of the plan's look-back period, the maximum preexisting condition exclusion period under the plan, and the address or telephone number of a person to contact to obtain additional information regarding preexisting condition exclusions. The final regulation includes model language that group health plans and group health insurance issuers may use to satisfy these requirements.
- Certain "plan benefit restrictions" operate as preexisting condition exclusions; such plan provisions must be changed to comply with HIPAA's limitations on preexisting condition exclusions. One example identified by the agencies is a plan provision that excludes benefits for pregnancy until twelve months after an individual becomes eligible for plan benefits. The agencies emphasized that preexisting condition exclusions cannot be applied to pregnancy.
- Group health plans and group health insurance issuers must offer "special enrollment" under certain circumstances, such as when individuals lose eligibility in their previous plans due to lifetime benefit limits or because of a move outside of a plan's service area.

The final regulations are available at <http://www.dol.gov/ebsa/regs/fedreg/final/2004028112.pdf>.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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