

# *New Must-Know Info Employers Need Before Offering Travel Insurance, Plan Limits and Short-Term Insurance*

**Offering extra perks**, such as travel insurance and different kinds of short-term limited-duration insurance, to employees **could actually land employers in hot legal water** – unless employers know how to navigate the new proposed regulations recently released by the Departments of the Treasury, Labor, and Health and Human Services (the “Departments”).

The Departments are actually trying to help out employers by offering better definitions of all the different kinds of insurance being offered these days. Too often, some supplemental insurance plans that normally wouldn’t be beholden to requirements in the Affordable Care Act (“ACA”) are including extra “value-added” kinds of **features that actually cross into large-group health plan territory**. And that can **trigger a slew of ACA requirements** that wouldn’t normally apply to these supplemental plans.

So **how can employers be in the know? How can they protect themselves** from extra legal obligations while also providing competitive benefits packages to their employees?

This guide to the Departments’ new proposed regulations will address the government’s latest guidance on travel insurance, lifetime and annual limits, and short-term limited-duration insurance. The guidance is **proposed to take effect for plan years that begin on and after January 1, 2017**, and employers and plan sponsors may rely on the proposed regulations until the final rules become effective. That gives employers and plan sponsors a little time to review the supplemental benefit plans they’re currently offering or thinking about offering to ensure these plans comply with all applicable plan requirements. Comments about the proposed rules may be submitted through August 9, 2016.

## **Travel Insurance**

Regulators expressed concern about certain travel insurance products that also offer limited health benefits. The proposed regulations seek to define travel insurance as insurance coverage for personal risks that are related specifically to planned travel. These risks may include, but aren’t limited to:

- Interruption or cancellation of a trip or event
- Loss of baggage or personal effects
- Damages to accommodations or rental vehicles
- Sickness, accident, disability, or death occurring during travel, provided that the health benefits are not offered on a standalone basis and are incidental to other coverage

By this definition, travel insurance would not include comprehensive medical protection for travelers with trips lasting six months or longer, including expatriates and deployed military personnel.

## **Lifetime and Annual Limits**

While individual and small group market plans must provide benefits in all 10 of the ACA Essential Health Benefit (“EHB”) categories<sup>1</sup>, large group health plans, self-funded group health plans and grandfathered plans are not required to do so. Instead, these plans are prohibited from placing annual and lifetime dollar limits on what EHB they do offer. Under the ACA, large group health plans, self-funded plans and grandfathered plans can determine which benefits qualify as EHB by

designating one of the plans they offer as a benchmark plan. Whatever benefits are considered EHB in their benchmark plan determine which benefits they aren't allowed to put lifetime and annual limits on.

Under the ACA, each state and the District of Columbia must go through this process of designating a benchmark plan to establish EHB in its individual and small group markets. Large group health plans, self-funded group health plans and grandfathered plans may select a plan in any state or the District of Columbia or one of the three federal employees' health benefit plans to be its benchmark.

Often, the carrier for a large group health plan will designate a plan in the state where the company is located as the benchmark plan, while a self-funded plan sponsor may have more latitude in this regard. For example, a self-funded plan that wishes to cover bariatric surgery up to a certain dollar limit will seek to select a benchmark plan that does not include bariatric surgery as an EHB.

The proposed regulations clarify that the EHB in a state benchmark plan are also supposed to incorporate state-required benefit mandates enacted on or before December 31, 2011. If one of the federal employees' benefit plans is selected as the benchmark, that plan would need to be supplemented to ensure that all 10 mandated EHB are included.

### Short-Term Limited-Duration Insurance

This type of insurance was generally designed for individuals transitioning from one job to another. These policies typically provide coverage for a period of less than 12 months with an expiration date specified in the contract (taking into account any extensions the policyholder may elect without the carrier's consent). Short-term insurance is exempt from the ACA market reforms and may contain annual and/or lifetime limits on EHB, is exempt from pre-existing condition limitations, and can be medically underwritten.

With the emergence of the state and Federal ACA marketplaces to purchase individual insurance, the need for these types of transitional policies was expected to become less prevalent. However, in some circumstances, the opposite appears to be happening.

The Departments expressed concern that these short-term limited-duration policies are being purchased by individuals as their primary source of coverage with insurers extending coverage beyond a 12-month period. For certain consumers, most notably healthier individuals, the combination of a short-term policy and the individual mandate penalty is a less expensive option for acquiring health coverage, which can adversely impact the risk pool for ACA compliant coverage. And that, in turn, can lead to higher insurance premium costs.

In response, the proposed regulations will revise the definition of short-term limited-duration insurance to require the coverage be less than three months in duration, including any period for which the policyholder renews or has the option to renew, with or without the consent of the insurer. The policy must also include a disclaimer in at least 14-point font indicating the plan does not provide Minimum Essential Coverage ("MEC") and that an additional tax payment may be owed.

<sup>1</sup>States must ensure that the EHB package covers items and services in the 10 benefit categories specified in the Affordable Care Act ("ACA"), which include: (1) ambulatory patient services, (2) emergency services, (3) hospitalization, (4) maternity and newborn care, (5) mental health and substance use disorder services, (6) prescription drugs, (7) rehabilitative and habilitative services and devices, (8) laboratory services, (9) preventive and wellness services, as well as chronic disease management, and (10) pediatric services including oral and vision care.

### ADDITIONAL INFORMATION

Information contained in this Update is not intended to render tax or legal advice. Employers should consult with qualified legal and/or tax counsel for guidance with respect to matters of law, tax and related regulation. Cherry Bekaert Benefits Consulting, LLC provides comprehensive consulting and administrative services with respect to all forms of employee benefits, risk management, qualified and non-qualified retirement plans, private client services, transaction services, and compensation and human resources.

**For additional information about our services, please contact Kyle Frigon at 404-733-3256 or via email at: [kfrigon@cherrybekaertbenefits.com](mailto:kfrigon@cherrybekaertbenefits.com).**