



# Sierra Pacific Industries

Health Benefits • P.O. Box 496011 • Redding, CA 96049-6011 • (530) 378-8200

July 21, 2010

Office of Health Plan Standards and Compliance Assistance  
Employee Benefits Security Administration  
Room N-5653, U.S. Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210

Attention: RIN 1210-AB43

Dear Sir/Madam

Thank you for the opportunity to comment on the Patient Protection and Affordable Care Act: Preexisting Condition Exclusions, Lifetime and Annual Limits, Rescissions, and Patient Protections Interim Final rules.

Sierra Pacific Industries is a family-owned lumber company based in northern California which has been in business for well over 50 years. Sierra Pacific Industries (SPI) sponsors a self-insured health benefits plan for its employees and their family members. The Sierra Pacific Industries Health Benefits Plan has provided coverage for more than 35,000 lives since 1979.

We agree as a plan and as a company that inappropriate rescission of insurance for individuals is harmful and that guidance is important in order to protect patients who lose insurance coverage due to something arbitrary and immaterial. We also agree that there should be specific rules governing when it is appropriate to rescind coverage and when it is inappropriate. We are concerned however that without further clarification concerning the issue of eligibility, that the rescission protections created in these interim final rules may have left an unintended area of ambiguity which could create the potential for harm.

As you are aware, plans (insured and self-insured) have rules relating to eligibility. Benefits may be limited to employees only or benefits may be available for employees, their spouses and/or dependent children. The plan will define what it means to be an "eligible spouse" and an "eligible dependent". The plan will also identify what events will cause a spouse or dependent to no longer be eligible to participate in the plan. For instance, the plan may no longer consider a spouse to be eligible for benefits as of the date that the spouse is separated from the employee, or a plan may allow coverage for a spouse to remain in affect until a divorce is final. In either case, the employee would have an obligation to provide the plan notice of this event. If the employee does not provide notice to the plan within 60 days, the spouse's right to continuation coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA) could be forfeited.

Let us give you a hypothetical example of where harm could occur:

Employee John Smith works for a company that provides benefits for spouses in its health insurance plan. The plan's eligibility provisions state that as of the date of divorce, an employee's spouse is no longer

eligible for benefits. The plan language also requires the employee to notify the company immediately should the employee and his/her spouse become divorced and warns the employee of the possible forfeiture of continuation coverage (COBRA) rights should notification not be provided within 60 days. However, employee John does not notify his company about his divorce until 5 years after it occurs. During this 5-year period, the plan pays over \$500,000 in medical bills for the employee's ex-spouse.

In this scenario, the employee's attorney could argue that a termination of the ex-spouse's coverage retroactive to the date of divorce would be considered a rescission. The attorney could also argue that it is an unlawful rescission as there was no fraud – as "fraud" requires intent and the employee simply overlooked notifying the plan. The attorney could also argue that neither was there a misrepresentation of material fact as the employee notified the plan of the divorce on the date that he realized his oversight; and clearly at the time that the employee applied for coverage 10 years ago he supplied the correct marital status on his application. The attorney could also argue that the plan therefore cannot rescind the ex-spouse's coverage prior to the date of notice - 5 years after the divorce.

In the interim final rules it may have been intended that a cessation of coverage due to ineligibility be a normal part of operations and not a rescission even if it is retroactive (to a date of divorce for example), but we did not find this clear. Please understand that our request is not to create a justification for an ambiguous eligibility rescission. We believe that where there are clear eligibility requirements in a plan; and where the employee is required to notify the plan of a change in eligibility; and where the employee notifies the plan after the fact; that ending coverage retroactive to the event should be considered an allowable rescission. As an allowable rescission, the plan would still be required to provide a 30-day opportunity for the parties to provide information and explore their rights.

In our experience most situations in which an employee notifies the plan of a separation/divorce well after the event it is not a deliberate attempt to fraud the plan. In most cases, this type of "omission" is not intentional and would not be viewed as a misrepresentation of material fact. However, it is our belief that it is not reasonable for a plan to be required to extend benefits to an individual beyond when they were no longer eligible for benefits simply because an employee did not notify the plan timely of the change in eligibility.

As stated previously, it may have been the intention of the regulations to allow a plan to end benefits as of the date that an individual no longer meets the eligibility requirements of the plan; however clarification in this area would serve to eliminate any doubt for both employees and their plans.

Sincerely,

A handwritten signature in blue ink that reads "Ann Carter". The signature is fluid and cursive, with the first name "Ann" and last name "Carter" clearly legible.

Ann Carter  
Health Benefits Plan Supervisor