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**To:** [E-OHPSCA715.EBSA](#)  
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Gentlemen:

This email contains comments on the Interim Regulations on Lifetime and Annual Limits Under the Patient Protection and Affordable Care Act, 29 C.F.R. section 2590.715-2711, RIN 1210-AB43.

The interim regulations generally proscribe a group health plan subject to ERISA from having any lifetime or annual limit on the dollar amount of any benefits for a covered individual. The regulation does allow annual limits on the dollar amount of certain specific covered benefits so long as the benefits are not essential health benefits and the limits are otherwise permitted under applicable Federal or State law. Further, there is a three year phase-in of the prohibition on annual limits.

Nothing in the interim regulations address whether a group health plan that provides for in-network coverage and out-of-network coverage may impose lifetime or annual limits on the dollar amount of out-of-network coverage where there are no lifetime or annual limits on in-network coverage. In an informal discussion with an individual at the U.S. Department of Labor, they indicated that because the interim regulations are silent on the issue, it was their opinion that any lifetime or annual limits on out-of-network coverage would be prohibited (except for any annual limits that might otherwise be allowable under the regulations), despite the fact that the group health plan has no lifetime or annual limits on in-network coverage.

For the following reasons, I believe that such opinion is incorrect and contrary to the legislative intent of the Patient Protection and Affordable Care Act:

1. If a group health plan cannot have lifetime and annual limits on the dollar amount of benefits provided out-of-network, even though there are no limits on in-network coverage, then exclusive provider organization (EPO) plans would essentially be outlawed by the Act. EPOs provide that a covered individual **MUST** use an in-network provider for there to be coverage. If a covered individual uses an out-of-network provider, the EPO plan will not cover the medical costs. They are born by the covered individual. Accordingly, EPO plans provide a zero lifetime limit and a zero annual limit on out-of-network coverage. There is nothing in the legislative history of the Patient Protection and Affordable Care Act that indicates that the Act is meant to outlaw EPO plans. Therefore, a prohibition on lifetime or annual limits on the dollar amount of coverage for out-of-network coverage where there are no limits on in-network coverage would be contrary to the Act.

2. Interim regulations were published in the Federal Register on July 19, 2010 which address the requirement of the Act that a group health plan must cover certain preventive care services without imposing any cost-sharing requirements on a covered individual. Those regulations specifically allow a group health plan that uses a network of providers to continue to (i) impose cost-sharing requirements where those preventive care services are provided out-of-network; or (ii) preclude coverage where the preventive care services are provided out-of-network. The preventive care services regulations clearly recognize that group health plans with in-network and out-of-network coverage are better able to control costs if coverage is provided

in-network. Allowing group health plans with out-of-network coverage to continue to impose lifetime or annual limits would be consistent with this approach taken in the preventive care services regulations.

The interim regulations should be amended to provide that a group health plan that has no lifetime or annual limits on in-network coverage may continue to impose lifetime or annual limits on out-of-network coverage.

Regards,

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