

# COMPLIANCE OVERVIEW

Provided by Cottingham & Butler

## Newborns' and Mothers' Health Protection Act (NMHPA)

The Newborns' and Mothers' Health Protection Act (NMHPA) was enacted in 1996 to provide protections to mothers and their newborn children with respect to the length of hospital stays after childbirth. Under the NMHPA, group health plans may not restrict mothers' and newborns' benefits for hospital stays after childbirth to less than:

- ✓ **48 hours** following a vaginal delivery; and
- ✓ **96 hours** following a delivery by cesarean section.

A group health plan may also not require a physician or other health care provider to obtain authorization from the plan for prescribing the minimum hospital stay for the mother or newborn. However, the health plan may impose cost sharing, such as deductibles or coinsurance, on hospital stays related to childbirth.

### LINKS AND RESOURCES

In October 2008, [final regulations](#) relating to the NMHPA were jointly issued by the Internal Revenue Service (IRS), Department of Labor (DOL) and Department of Health and Human Services (HHS). The regulations became effective for plan years beginning on or after Jan. 1, 2009.

### HIGHLIGHTS

#### COVERAGE REQUIREMENTS

- The NMHPA requires health plans to provide coverage for minimum hospital stays following childbirth.
- The attending provider, in consultation with the mother, may discharge the mother or newborn earlier than the 48 or 96 hours, as applicable.
- Health plans may not provide payments or rebates to a mother to encourage her to accept lesser benefits for a maternity stay.

#### NOTICE REQUIREMENT

- A health plan's SPD must describe the NMHPA's protections for mothers and newborns.
- The DOL has provided sample language for an SPD's description of the NMHPA's coverage requirements.



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## COVERAGE REQUIREMENTS

The NMHPA sets limits on benefits that are provided for hospital stays after childbirth. However, nothing in the law or regulations requires a mother to give birth in a hospital or stay in the hospital for a specific period of time after giving birth. Also, the NMHPA does not require group health plans to provide any benefits for hospital stays related to childbirth. However, if the plan provides these benefits, it must comply with the NMHPA's minimum requirements.

### *Hospital Length of Stay*

The final regulations clarify when a hospital stay connected with childbirth begins.

- When a delivery occurs in the hospital, the stay begins at the time of delivery, not at the time of admission or beginning of labor.
- If there are multiple births, the stay begins at the time of the last delivery.
- For deliveries that occur outside of the hospital, the stay begins at the time the mother or newborn is admitted.

The decision of whether a hospital stay is connected with childbirth is a medical decision to be made by the attending provider.

### *Attending Provider Definition*

The regulations provide an exception to the NMHPA's general rule regarding length of hospital stay for situations where the attending provider, in consultation with the mother, decides to discharge the mother or newborn earlier than 48 or 96 hours, as applicable.

The attending provider is "an individual who is licensed under applicable state law to provide maternal or pediatric care and who is directly responsible for providing such care to a mother or newborn child." The final regulations definitively state that the definition of attending provider does not include a plan, hospital, managed care organization or other issuer.

### *Prohibition on Incentives*

The NMHPA contains a number of prohibitions designed to prevent benefits from being improperly limited. The regulations clarify that a group health plan may not deny a mother or her newborn coverage under the plan to avoid the NMHPA's requirements or provide payments or rebates to a mother to encourage her to accept lesser benefits than those provided for by the NMHPA.

Also, a group health plan may not penalize an attending provider for giving care in accordance with the NMHPA or provide incentives to induce an attending provider to discharge a mother or newborn before the end of the required time period. However, a group health plan may negotiate with an attending provider the compensation for care provided for hospital stays related to childbirth in general.

## ***Authorization and Cost-sharing***

The final regulations state that a plan may not require a physician or other health care provider to obtain authorization for prescribing a hospital stay in accordance with the NMHPA. In addition, a group health plan may not restrict benefits for a portion of a hospital length of stay provided for by the NMHPA in a way that is less favorable than benefits for a previous portion of the stay.

The regulations do not prohibit imposing cost-sharing, such as deductibles or coinsurance, on hospital stays related to childbirth. However, the cost-sharing must be consistent for the entire stay and cannot be higher for a later portion of the mandated length of stay.

## **NOTICE REQUIREMENTS**

The notice requirements with respect to the NMHPA differ depending on the type of plan or coverage involved. The regulations explain the differences as follows:

- **ERISA Plans.** ERISA's rules for summary plan descriptions (SPDs) require all group health plans to describe the federal or state law requirements applicable to the plan relating to hospital lengths of stay in connection with childbirth for the mother or newborn. The DOL provided model language regarding the NMHPA in the SPD rules. See below for this model language.
- **State and Local Government Plans.** Plans that are subject to the NMHPA must provide a notice with specific language describing the federal requirements. The final regulations clarify that the notice can either be included in the plan document that describes benefits or in the type of document the plan generally uses to inform participants and beneficiaries of plan benefit changes. Further, any time a plan distributes one or both of these documents after providing the initial notice, the applicable statement must be included in one or both documents.
- **Health Insurance Issuers in the Individual Market.** Health insurance issuers in the individual market must also provide notice in the insurance contract containing specific language regarding the federal rules.

## **STATE INSURANCE MANDATES**

The NMHPA and the final regulations do not apply to health insurance coverage (and group health plans that provide benefits only through health insurance coverage) in certain states that have adopted laws similar to the NMHPA. The final regulations clarify that a state law qualifies for this exception if it requires the health insurance coverage to do one of the following:

- Provide for at least a 48-hour hospital length of stay after childbirth (96 hours for a cesarean delivery);
- Provide for maternity and pediatric care in accordance with guidelines for care following childbirth established by the American College of Obstetricians and Gynecologists, the American Academy of Pediatrics or any other established professional medical association; or

- Require, in connection with coverage for maternity care, that the hospital length of stay decision is made by the attending provider in connection with the mother or with the mother's consent.

## ENFORCEMENT

There are no specific penalties for failing to comply with the NMHPA. However, plan participants or the DOL could use ERISA's enforcement scheme to compel compliance with the NMHPA's requirements. For example, a plan participant could bring a lawsuit for benefits due under the NMHPA, and could seek interest and attorneys' fees. In addition, the Internal Revenue Service (IRS) may impose an excise tax of **\$100 per day** on a group health plan that does not comply with the NMHPA, subject to certain limitations and exceptions depending on the nature of the noncompliance.

## MODEL DISCLOSURE FOR ERISA PLANS

Group health plans and health insurance issuers generally may not, under federal law, restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child to less than 48 hours following a vaginal delivery, or less than 96 hours following a cesarean section. However, federal law generally does not prohibit the mother's or newborn's attending provider, after consulting with the mother, from discharging the mother or her newborn earlier than 48 hours (or 96 hours as applicable). In any case, plans and issuers may not, under federal law, require that a provider obtain authorization from the plan or the insurance issuer for prescribing a length of stay not in excess of 48 hours (or 96 hours).