

CHANGES TO FMLA

On January 28, 2008, President Bush signed into law H.R. 4986, the National Defense Authorization Act for FY 2008 (NDAA), Pub. L. 110-181. Among other things, section 585 of the NDAA amends the Family and Medical Leave Act of 1993 (FMLA) to permit a "spouse, son, daughter, parent, or next of kin" to take up to 26 workweeks of leave to care for a "member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness."

The provisions in the NDAA providing this leave are effective as of the date of the President's signing. The Department of Labor is working quickly to prepare more comprehensive guidance regarding rights and responsibilities under this new legislation. In the interim, WHD will require employers to act in good faith in providing leave under the new legislation. Because the NDAA amends the FMLA, FMLA-type procedures should be used as may be appropriate (for example, procedures regarding substitution of paid leave and notice).

Beware of "Hidden" Pre-Existing Condition Exclusions in Your Plan

Example: A group health plan covers treatment for injuries in connection with an accident only if the accident occurred while the individual was covered under the plan.

Tip: This plan provision operates as a pre-existing condition exclusion and should be removed or modified to comply with HIPAA's limitations on pre-existing condition exclusions.

This plan provision operates as a pre-existing condition exclusion because only people who were injured while covered under the plan receive benefits for treatment. People who were injured while they had no coverage (or while they had other coverage) do not receive benefits for treatment. Accordingly, this plan provision limits benefits relating to a condition because the condition was present before an individual's enrollment date, and it is considered a pre-existing condition exclusion.

To comply with HIPAA, the plan could:

- Delete its requirement that the accident must occur while the individual is covered under the plan;
or
- Limit its pre-existing condition exclusion.

Among other things, the only conditions that may be subject to a pre-existing condition exclusion are those for which medical advice, care, diagnosis, or treatment was recommended or received within the 6 months ending on an individual's "enrollment date" in the plan. (Under HIPAA, an individual's "enrollment date" is the first day of coverage or, if there is a waiting period, the first day of the waiting period.) In addition, the maximum pre-existing condition exclusion period is 12 months (or 18 months for late enrollees) after the individual's "enrollment date." The exclusion period must be offset by an individual's prior creditable coverage. Also, newborns and adopted children generally may not be subject to a pre-existing condition exclusion at all.

For more information on these topics, contact:
Marlene H. Mehringer Bowen, LUTCF, RHU
(812) 449-9782
marlene@mehringerasociates.com

