



MEMORANDUM

April 2, 2010

To: Hon. Tom Coburn
Attention: Roland R. Foster

From: Edward C. Liu
Legislative Attorney
x7-9166

Subject: Coverage under a qualified health plan for drugs prescribed to treat erectile dysfunction in the case of a convicted rapist, child molester, or other sex offender.

In response to your request, this memorandum discusses whether any provisions in the Patient Protection and Affordable Care Act (PPACA),¹ as amended by the Health Care and Education Reconciliation Act of 2010,² would prohibit a health insurance plan that participates in an American Health Benefit Exchange created pursuant to the PPACA from covering drugs prescribed to treat erectile dysfunction (ED) if the plan beneficiary is a convicted rapist, child molester, or other sex offender.

Among other things, the PPACA authorizes the creation of American Health Benefit Exchanges to facilitate the purchase of qualified health plans.³ The PPACA provides certain requirements that health plans must meet in order to participate in new health insurance exchanges and also defines which individuals are eligible to obtain health insurance in such exchanges. As discussed below, the application of these requirements and restrictions to the specific factual scenario you described would not appear to prohibit a qualified health plan in a health insurance exchange from providing coverage for drugs prescribed to treat ED for a non-incarcerated beneficiary who was previously convicted of rape, child molestation, or another sex offense.

In order to be a qualified health plan, health plans must offer an essential health benefits package.⁴ The essential health benefits package, which is to be determined by the Secretary of HHS,⁵ must minimally include coverage of certain general categories of items and services, such as prescription drugs.⁶ The Secretary must also ensure that the scope of her definition of essential health benefits is equal to the scope of benefits provided under a typical health plan offered by an employer to its employees.⁷ However, the

¹ P.L. 111-148.

² P.L. 111-152.

³ P.L. 111-148, § 1311(b)(1)(A).

⁴ *Id.* at § 1301(a)(1)(B).

⁵ *Id.* at § 1302(a)(1).

⁶ *Id.* at § 1302(b)(1)(F).

⁷ *Id.* at § 1302(b)(2)(A).

defined essential benefits would only represent a minimum requirement, and qualified health plans would not be prohibited from offering benefits in excess of the essential health benefits package.⁸ There are no provisions in the PPACA which would require qualified health plans to limit the type of benefits that can be offered based on the plan beneficiary's prior criminal convictions. Additionally, there do not appear to be any provisions that would specifically restrict qualified health plans' coverage of drugs prescribed to treat ED.

Qualified individuals, as defined under the PPACA, may enroll in any qualified health plan offered in an American Health Benefit Exchange established in their state of residence.⁹ The statutory definition of qualified individuals does not exclude individuals with prior criminal convictions, except to the extent that they are incarcerated at the time they seek to enroll.¹⁰ Therefore, a convicted rapist, child molester, or other sex offender who is not incarcerated would not appear to be excluded from enrolling in a qualified health plan offered through an American Health Benefit Exchange in their state solely because of that conviction. As discussed above, a qualified health plan operating in that state would not appear to be prohibited by the PPACA from offering that individual coverage for drugs prescribed to treat ED.

⁸ *Id.* at § 1302(b)(5).

⁹ *Id.* at § 1312(a)(1).

¹⁰ *Id.* at § 1312(f)(1)(B). This restriction does not apply to incarceration pending the disposition of charges.
