

Key Health Care Reform Issues for Employers

April 7, 2010

The federal health care reform law will have a substantial impact on employers. Here are the main issues that employers will want to be aware of:

1. Keeping the same coverage

Employers will be able to avoid some of the law's requirements by keeping their coverage the same after the law's effective date (March 23, 2010). Unfortunately, it is very unclear at this time what kinds of minor changes will alter coverage, or keep it the same; this will be clarified in later regulation.

Changes that must be made to all plans include:

- waiting periods for coverage must be less than 90 days;
- no lifetime benefit maximum limits;
- dependent coverage for adult children up to age 26; and
- no annual limits on certain types of benefits (unless permitted by later-issued regulation).

2. New benefit and other plan changes

If an employer does not keep its coverage the same, employers will need to make additional changes such as:

- extending 100 percent coverage for preventive care;
- removing any prior authorization requirement or increased cost-sharing for emergency services (regardless of whether the services are provided in or out of network);
- no pre-existing limitation for children under age 19; and
- coverage of routine patient costs in clinical trials for life-threatening diseases.

3. FSA/HRA/HSA changes

The law also will require changes to these types of accounts. In 2011, employees will no longer be able to receive pre-tax reimbursements from their FSA, HRA or HSA for non-prescribed over-the-counter medications, and the excise tax for nonqualified HSA withdrawals will increase from 10 percent to 20 percent. In 2013, employee contributions to FSAs will be capped at \$2,500 annually, with the cap adjusted annually to the Consumer Price Index.

4. Employee notification of value of coverage and exchange information

Effective in 2011, employers will need to start reporting the value of the employer-sponsored coverage to employees on their W-2s. And in March 2013, employers will need to begin notifying employees about state exchanges and the availability of premium subsidies and free choice vouchers, all of which will be available beginning in 2014.

5. Fees and penalties imposed on employer plans

Under the law, employers will be subject to a number of fees and exposed to penalties for certain behaviors. Among them are the following:

- Effective in 2013, a fee will be assessed on employers with self-funded health plans to fund a comparative effectiveness research agency. (For employers with fully insured health plans, the health insurer will be assessed the fee.) In 2013, this fee will be \$1 times the average number of lives covered under the plan; for 2014 to 2019, the fee will be \$2 times the average number of covered lives. The fee will end on September 30, 2019.
- Effective in 2014, if an employer has 50 or more full-time employees, then the employer may be subject to penalties under the law if it provides either **no** health coverage to full-time employees, or provides coverage to full-time employees that is **not affordable**. Penalties vary from \$2,000 to \$3,000 per employee.
- Effective in 2018, a 40 percent excise tax on high-cost plans will be applied to plans costing more than \$10,200 for individual coverage, or \$27,500 for family coverage.

6. Employer administrative reporting duties

The law will require employers to annually report to the IRS a number of pieces of data, including:

- Whether the employer offers minimum essential coverage to full-time employees;
- Any waiting period for health coverage;
- The monthly premium for the lowest cost option in each enrollment category under the plan;
- The employer's share of the total allowed cost of benefits provided under the plan;
- The number of full-time employees during each month;
- The name, address and taxpayer identification number (or Social Security number) of each full-time employee, and the months each employee was covered under the employer's plan, and
- "Such other information as the [Health and Human Services (HHS)] Secretary may require." This requirement will likely be further refined in later regulations.

7. Changes to employee wellness programs

- Effective in 2010, wellness programs may not require disclosure or collection of any information relating to the presence of firearms, and may not base premiums, discounts, rebates or rewards on the basis of firearm or ammunition ownership.
- Effective in 2014, the law codifies the HIPAA nondiscrimination rules on wellness programs and increases the incentive cap of 20 percent of premium to 30 percent. The HHS Secretary has the discretion to increase the incentives cap to 50 percent.

This document is issued for informational purposes and is not intended to constitute legal advice. Please consult your attorneys in connection with any fact-specific situation under federal, state or local laws that may impose additional obligations. The information is current as of the date on the first page of the document.