

EMPLOYEE BENEFITS ALERT

HEALTH CARE REFORM REQUIRES IMMEDIATE ATTENTION

The Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 (collectively the “Health Care Reform Act” or the “Act”) made significant changes to health insurance and to employer-sponsored group health plans. Although many provisions will not take effect until 2014 or later, many of provisions take effect this year and in 2011. For many employers, plan year 2011 annual enrollment will begin in the Fall of 2010, and as such it is important to understand and prepare for the changes that may have an immediate impact on their group health plans.

The Health Care Reform Act’s impact on employer-sponsored plans depends on whether the employer’s plan is considered a “grandfathered” plan under the Act. An employer’s group health plan is “grandfathered” if it had any participants on March 23, 2010, regardless of whether new employees or dependents enroll after that date. There is currently no guidance as to how a grandfathered plan may lose its status or if there will be any limitations on grandfathered status.

The outline below summarizes changes that are generally effective in 2010 and 2011. As guidance is issued, we will provide additional information on these changes and summarize changes which become effective in later years. Notwithstanding the effective dates described below, health plan coverage maintained pursuant to a collective bargaining agreement that was ratified before the date of the enactment of Health Care Reform Act will not be subject to these changes until the date on which the collective bargaining agreement terminates.

<u>Health Care Reform Act Provisions with 2010 Effective Dates</u>	Applicable to Grandfathered Plans
<u>Reinsurance for Early Retiree Coverage.</u> The U.S. Department of Health and Human Services is establishing a temporary reinsurance program effective June 1, 2010, to provide reimbursement to eligible plans for a portion of the cost of providing health benefits to early retirees (age 55 and not eligible for Medicare) and their dependents. An employer’s participation in this program is voluntary, and a plan must meet certain requirements.	√
<u>Income Tax Exclusion for Employer Provided Coverage of Adult Children until Age 27.</u> Plans may immediately provide adult children tax-free medical coverage until age 27 regardless of whether the child meets the Internal Revenue Code’s definition of dependent. See below for a description of when a plan is required to extend coverage to certain adult children.	√
<u>Loss of Deduction for Medicare Part D Subsidy.</u> An employer’s tax deductions will be reduced to the extent the employer retiree health plan’s drug expenses are reimbursed under the Medicare Part D retiree drug subsidy program. While the deduction ends January 1, 2013, there is an immediate accounting impact of the loss of this federal tax deduction which must be recognized on current financial statements.	√
<u>Employer May Not Encourage Disenrollment from Employer-Based Plans.</u> Employers may not offer money or other financial incentives to encourage employees to disenroll from employer-provided coverage and enroll in state high risk pool. High risk pools are to be established by June 23, 2010.	√

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<u>Health Care Reform Act Provisions Effective for Plan Years Beginning on or after September 23, 2010 (January 1, 2011 for Calendar Year Plans)</u>	Applicable to Grandfathered Plans
<u>Lifetime and Annual Limits.</u> Plans may not establish lifetime or annual dollar limits on the medical benefits of a plan participant. However, certain “restricted annual limits” (to be defined in regulations) will continue to be permitted on “essential health benefits” through January 1, 2014, and such annual limits are permitted on certain benefits that are not “essential health benefits” without time limit. “Essential health benefits” will be defined in regulations, but include ambulatory, emergency, mental health and substance abuse, rehabilitative, laboratory, preventive, wellness, pediatric services, hospitalization, maternity and newborn care, prescription drugs and disease management.	√
<u>Coverage Rescission.</u> A group health plan may not revoke an enrollee’s coverage except for cases of fraud or misrepresentation which is prohibited by the plan, for nonpayment of premiums or upon plan termination.	√
<u>Dependent Coverage.</u> A group health plan which provides dependent coverage must permit an employee to cover an adult child through the age of 26 regardless of marital or student status. Until January 1, 2014, a grandfathered plan only has to cover such children if they are not eligible for other employer-sponsored coverage.	√
<u>Pre-existing Condition Exclusions Not Permitted on Enrollees under Age 19.</u> Effective January 1, 2014 this provision will apply regardless of age.	√
<u>Advance Notice of Material Modifications.</u> The plan must provide at least 60 days advance notice of a material modification to the plan. (The effective date is not entirely clear and may change with additional guidance.)	√
<u>Reporting.</u> Group health plans must report annually to both the U.S. Department of Health and Human Services and participants regarding whether the plan benefits satisfy certain requirements. Additional guidance will be required under this provision. Employers are required to report the value of coverage under the group health plan on each employee’s IRS Form W-2 (other than through an Archer MSA, an HSA or employee salary reductions to a health FSA).	√
<u>No Reimbursement of Over the Counter Medications.</u> The cost of non-prescription drugs may not be reimbursed under an Archer MSA, an HSA, a health FSA or an HRA.	√
<u>Preventive Care Coverage.</u> Group health plans must provide first dollar coverage (without any cost sharing) for certain evidence-based preventive care, routine gynecological visits, well child visits and immunizations.	
<u>Non-Discrimination.</u> Fully-insured group health plans will be subject to the tax rules which prohibit discrimination in favor of certain restricted employees (i.e., highly paid employees and officers).	

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<p><u>Appeals Procedures.</u> Plan appeal procedure must: provide notices of the availability of process and any applicable health insurance ombudsman created by state to assist claimant with appeal; allow claimants to review entire file and provide testimony; allow claimants to continue coverage during appeals process; and establish external review process that complies with Uniform External Review Model Act (for self-insured plans).</p>	
<p><u>Access to Certain Care.</u></p> <ul style="list-style-type: none"> • Group health plans that provide for in-network coverage must permit each participant to designate any participating primary care provider who is available to accept that individual (including a pediatrician for children or an OB/GYN for women). • Group health plans that cover emergency services cannot require pre-authorization and must provide out-of-network emergency services with the same cost-sharing as in-network. • Group health plans that cover obstetrical and gynecological care must provide direct access to such care without requiring a referral or authorization. 	
<p><u>Other Selected Health Care Reform Act Provisions of Interest</u></p>	<p>Applicable to Grandfathered Plans</p>
<p><u>Limits on Health FSA Contributions Effective for Tax Years on and after January 1, 2013.</u> The maximum amount of salary reduction contributions that a participant may make to a health FSA is \$2,500.</p>	<p>√</p>
<p><u>Automatic Enrollment.</u> Effective upon the issuance of regulations by the U.S. Department of Labor, employers with more than 200 full-time employees will be required to enroll (subject to permitted waiting periods) new full-time employees automatically into health insurance plans, subject to notice and the ability to opt out.</p>	<p>√</p>

*The Employee Benefits Alert is intended to keep readers current on matters affecting employee benefits and is not intended to be legal advice. If you have any questions about this alert or any other issues relating to employee benefits, please contact **Kathryn English** at 412.566.1226, **Michael Herzog** at 412.566.6130, **Sandra Mihok** at 412.566.1903, **Brandon Richards** at 412.566.1263, or **Paul Yenerall** at 412.566.1944.*