



UPDATE: Employee Benefits and Compensation

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What You Need to Know Now: Immediate Implications of Health Care Reform for Employer-Sponsored Health Plans

On March 30, 2010, President Obama signed into law the Health Care and Education Reconciliation Act of 2010 (Reconciliation Act), amending key provisions of the Patient Protection and Affordable Care Act (Affordable Care Act), which was signed into law on March 23, 2010. With the adoption of the Reconciliation Act, the health care reforms debated by Congress over the past several months have become law.

Outlined below are key aspects of the health care reform package that apply to employer-sponsored group health plans, whether or not insured, that become effective over the next three years:

- **Preexisting Conditions** – Effective for plan years commencing on or after September 23, 2010, group health plans are prohibited from imposing any preexisting condition exclusions for children who are under age 19. This prohibition extends to adults for plan years beginning on or after January 1, 2014.
- **Extension of Dependent Coverage** – Effective for plan years commencing on or after September 23, 2010, group health plans providing dependent coverage must allow children (whether or not married) of covered employees to continue to be covered as dependents up to age 26. Dependent coverage provided pursuant to this provision is not taxable to the employee or the dependent.
- **Lifetime Limits** – Effective for plan years commencing on or after September 23, 2010, group health plans are prohibited from placing lifetime dollar limits on medical claims.
- **Annual Limits** – Effective for plan years commencing on or after September 23, 2010, group health plans may not place unreasonable annual dollar limits on claims. Effective for plan years commencing on or after January 1, 2014, annual limits generally are no longer permitted.

- **Prohibition on Rescissions** – Effective for plan years commencing on or after September 23, 2010, group health plans may not rescind health coverage once an individual is covered under the plan unless the individual acted fraudulently or made an intentional misrepresentation of a material fact.
- **Preventative Services** – Effective for plan years commencing on or after September 23, 2010, group health plans must cover certain preventive services and immunizations without cost to the employee.
- **Nondiscrimination in Insured Health Plans** – Effective for plan years beginning on or after September 23, 2010, insured group health plans may not discriminate against full-time employees based on their salary levels except that lower wage employees may be required to pay a lower level of premiums. This change effectively applies to insured plans the current nondiscrimination rules applicable for self-insured plans under Section 105(h) of the Internal Revenue Code.
- **Reinsurance Program for Early Retirees** – Effective June 23, 2010, a temporary reinsurance program reimburses employers for 80 percent of the cost of retiree health benefits in excess of \$15,000 (up to \$90,000) provided to retirees between the ages of 55 and 64. These reimbursements must be used to reduce the costs of the retiree health program. The reinsurance program expires at the end of 2013.
- **Over-the-Counter Medication Prohibition** – Effective January 1, 2011, expenses for over-the-counter medications (except for insulin) are no longer eligible for tax-free reimbursement from Flexible Spending Accounts, Health Savings Accounts, and Health Reimbursement Arrangements. Currently, certain over-the-counter medications and medical products are eligible for reimbursement through these accounts.
- **Flexible Spending Account (FSA)** – Effective January 1, 2013, FSA contributions are limited to \$2,500 per year (indexed for inflation in future years). Currently there is no limit on such contributions.
- **Health Savings Account (HSA) and Archer Medical Savings Account (MSA) Penalty Increase** – Effective January 1, 2011, the additional tax for a withdrawal (prior to age 65) from an HSA or an Archer MSA used for purposes other than qualified medical expenses is increased to 20 percent.
- **W-2 Reporting** – Effective January 1, 2011, employers are required to disclose the value of the benefit they provide to each employee's health insurance coverage on the employee's annual Form W-2.
- **Small Business Tax Credits** – Effective in 2010, employers with no more than 25 employees and less than \$50,000 in average wages are eligible for a tax credit for employer-provided health coverage. Through 2013, the tax credit is up to 35 percent (25 percent for certain small nonprofit organizations) of the employer's contribution if the employer contributes at least 50 percent of the premium.

While many of the health care reform provisions take effect in later years, the provisions described above, among others, become effective within a short time period. Employers and

plan administrators should review and understand these changes to ensure compliance with the Affordable Care Act as amended by the Reconciliation Act.

To receive more information on the Affordable Care Act, as amended by the Reconciliation Act, and its effects on your benefit programs or to obtain a copy of the relevant provisions, please contact one of the following attorneys:

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