



## Health Care Reform Provisions Impacting Employers

On March 23rd, the President signed the “Patient Protection and Affordable Care Act” (HR 3590). Subsequently the “Health Care and Education Affordability Reconciliation Act” (HR 4872) was also signed; together they make up the federal health care reform law. While hundreds of provisions are being analyzed, this is a preliminary summary of the key provisions that will impact employers. Many regulations are still pending.

### Employer Incentives

- In 2010-2013 the law provides tax credits to small employers offering health insurance (with no more than 25 full time employees and average annual wages less than \$50,000.)
  - A qualifying employer must cover at least 50 percent of the cost of health care coverage for its workers based on the single rate.
  - The credit is worth up to 35 percent of a small business' premium costs in 2010.
  - The credit phases out gradually for firms with average wages between \$25,000 and \$50,000 and for firms with the equivalent of between 10 and 25 full-time workers.
  - Small businesses can receive the credit not only for traditional health insurance coverage but also for add-on dental, vision, and other limited-scope coverage.
  - Employers can choose among 3 different methods of determining hours to minimize their bookkeeping duties while receiving the maximum tax credit for which they are eligible. Employers can look at actual hours of service, or can use simple rules of convenience to estimate hours based on total days or weeks of service.

#### IRS Notice and Details

<http://tinyurl.com/2ewbsju> - House Energy and Commerce calculator  
[www.NFIB.com/CreditCalculator](http://www.NFIB.com/CreditCalculator) - National Federation of Independent Business calculator

- In 2010 employers who provide retiree health coverage to employees before Medicare age are encouraged to retain that benefit by a new Federal "reinsurance" program.
  - HHS is to establish the program by 6/21/2010.
  - Eligible include: age 55 or older, not eligible for Medicare and dependents are included. [Reinsurance Program for Early Retirees](#)

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- Wellness Programs

- In 2011 the law provides a federal grant program for small employers providing new wellness programs to their employees.

Eligible wellness programs must include health awareness initiatives, efforts to engage employees, initiatives to change unhealthy behaviors and lifestyle choices, and supportive environment efforts.

An application process or specific rules on how employers can apply for these grants has yet to be determined.

- In 2014 the law increases the incentive cap of 20% of premium to 30% of premium to reward for healthy lifestyle.

## Benefit Changes

The law allows for limited “grandfathering” to occur with group and individual plans if the health plan was in force March 23, 2010. However, it is not yet clear what changes to a plan may prevent the plan from keeping grandfathered status, or is it clear what the advantages are to maintaining that status. [For more information](#)

The following changes will be made to all new and renewing group policies after September 23, 2010.

- Adult children up to age 26 are eligible to receive coverage from their parent’s plan, regardless of student or marital status. The children would not need to be considered tax dependents.
  - Non-grandfathered plans would allow adult dependents to come onto parents’ plan even if the dependent has coverage available through own employer as early as October 1, 2010. *For grandfathered plans effective 2014 adult dependents are eligible for parents’ coverage regardless of other available employer provided coverage.*
  - Employers are required to give written notice of a 30-day special enrollment opportunity for adult dependents that previously lost coverage. *(Most carriers are allowing 2010 dependents losing full-time student status to stay on their parents’ plan, see carrier notices below.)*
  - Adult dependents cannot be charged higher premiums and must be offered the same benefits as similar individuals who did not lose coverage due to the end of their dependent status.
  - State laws with more generous rules of dependent coverage will work in conjunction with the federal law. (Ohio passed a new law extending coverage of dependents to age 28. This [law](#) is effective upon renewal July 1, 2010.)

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[Dept of HHS- dependent coverage](#)   [Dept of HHS- FAQ](#)   [Anthem FAQ](#)  
[UHC letter](#)   [Humana](#)   [Aetna](#)

- The definition of a "dependent" includes adult children up to age 27 for medical care reimbursements under Sec. 105(b) of the Internal Revenue Code. [Notice 2010-38](#)
  - If the employer FSA plan documents are amended in 2010, employees can increase their FSA contributions to cover medical expenses of adult children even if not on parents' medical plan.
  - FSA/HRA dollars may be used for medical expenses incurred on or after March 30, 2010 by adult children, if not tax dependents HSA dollars may not be used.
- Lifetime maximum benefit limits will be prohibited.
- All plans will have to cover pre-existing conditions for children under age 19.
- Emergency services must be covered as in-network regardless of provider.

#### **Additional Changes:**

- For new and renewing plans starting September 23, 2010 the law prohibits discrimination in favor of highly compensated individuals. Plans cannot base an employee's eligibility or continued eligibility on hourly or annual salary. (Does not apply to "grandfathered" plans unless self-insured.)
- The Secretary of HHS will determine annual maximum benefit limits.
- Plans must provide some preventive care without cost to the insured, and must cover certain child preventive services. (Does not apply to "grandfathered" plans.)
- Beginning in 2011, rebates to "enrollees" from carriers are required if medical loss ratios (percentage of premium spent on clinical services and "activities that improve health") are lower than 85% in the large group market (80% in small groups).
- In 2011 the law will exclude the costs for over-the-counter drugs from being reimbursed under HSAs, medical FSAs, and HRAs unless prescribed by a doctor.
- Also in 2011 there will be an increased tax on distributions from HSAs that are not used for qualified medical expenses from 10% to 20%.
- In 2011 small employers will be allowed to adopt new "simple cafeteria plans" in exchange for satisfying minimum participation and contribution requirements. [Simple Cafeteria Plans for Small Groups](#)
- In 2013 employee contributions to FSAs will be limited to \$2500 annually with a cap indexed for inflation.

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- In 2014 the law requires guarantee issue and renewability in the individual and small group markets, and exchanges (every individual applying for coverage must be accepted regardless of health status).
- In 2014 the law allows rating variation for all small groups (100 and under) based only on age (limited to 3:1 ratio), geographic regions, family composition, and tobacco use (limited to 1.5:1).
- In 2014 the out-of-pocket limits will be reduced for those with incomes up to 400% Federal Poverty Level (FPL for individual- \$10,830, and for a family of four- \$22,050).
- In 2014 the law will limit deductibles for health plans in the small group market to \$2000 for individual and \$4000 for families, unless contributions are offered that offset limits.

### State Exchanges

- In 2014 states will begin to operate their "Exchange", where individuals and small businesses (up to 100 employees) can obtain private health insurance, with subsidies available depending on income.
- In 2017 states are allowed to open the exchanges to employers with more than 100 employees.
- There will be numerous rules that will govern the exchange plans including minimum benefit requirements or "essential" benefits including hospitalization, outpatient services, maternity care, prescription drugs, emergency care and preventive services among other benefits. It also places restrictions on the amount of cost sharing that patients must pay for these services.

### Employer Requirements and Penalties

- Employers shall provide breastfeeding employees with "reasonable break time" and a private, non-bathroom place to express breast milk during the workday, up until the child's first birthday.
  - All employers are affected but those with less than 50 workers do not have to comply if they show that complying with the law would cause "an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business."
- Require employers of 200 or more employees to auto-enroll all new employees into any available employer-sponsored health insurance plan. Employees may opt out. (Implementation date is unclear and may be effective now.)
- Effective 2011, the law requires all employers to include on W-2s the aggregate cost of employer-sponsored health benefits. The aggregate cost is

to be determined under rules similar to the rules used for calculating COBRA costs and excludes any salary reduction contribution to a flexible spending arrangement.

- In 2011 the law creates a voluntary long-term care (CLASS ACT) program is established. This is a government-run long-term care insurance program that provides benefits to participants who have a qualifying disability after the participant has contributed to the program for at least five years. Beginning January 1, 2011, employers are expected, but not required, to distribute information about the program to employees and to automatically enroll employees in the program, unless the employees affirmatively opt out of participation in the program.
- *In 2012 the law requires that all group health plans and group and individual health insurers provide a summary of benefits and a coverage explanation to all policyholders and applicants.*
  - The summary must be no more than 4 pages long with print no smaller than 12-point font written in a culturally linguistically appropriate manner.
  - Any **material modifications** in any of the terms of the plan or coverage must be provided in the notice to enrollees not later than **60 days** prior to the effective date.
  - Employers and health plans can be fined up to \$1000 for *each* failure.
- In 2012 the law expands the business reporting requirements to include gross proceeds aggregating \$600 or more in any taxable year paid to any business in consideration for property and other gross proceeds for both property and services. Accordingly, under the new law, it appears that all businesses will be required to send Form 1099s to vendors for inventory and supply purchases, and for purchases of machinery and equipment. [AP Article](#)
- In March 2013 employers must begin to notify employees of the existence of state exchanges and the availability of premium subsidies.

#### **In 2014 the law will:**

- Require employers with 50 or more employees that do not offer “minimum essential coverage” to pay \$2000 for each employee over the first 30 employees if one of their employees gets a tax subsidy to buy insurance under an exchange.
- Require employers with 50 or more employees that offer “minimum essential coverage” but have at least one full-time employee receiving subsidized coverage under an exchange to pay whichever is less: \$3000 for each employee receiving a premium credit, or \$2000 for each full-time employee.

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- Require employers that offer coverage to their employees to provide a “free choice” voucher to employees with incomes less than 400% of FPL if the employee’s contribution to coverage is between 8 percent and 9.8 percent of income and the employee chooses to purchase coverage in the exchange. No penalties will be imposed on employers with respect to employees who receive these vouchers.
- Limit new hire waiting periods for coverage to no more than 90 days.
- Call for employers to meet multiple reporting requirements.

Full-time employees are defined as those working a monthly average of 30 or more hours per week. Employers must also take into account part time employees based on aggregate number of hours of service, however the law does not require employers to provide coverage to part time employees.

### **Further Tax Changes and Penalties**

- In 2012 a new federal premium tax on fully-insured and self-insured group health plans to fund a “comparative effectiveness research program” (\$1 per participant through 2013; \$2 per participant through 2019).
- In 2013 the law increases the Medicare Part A payroll tax by 0.9% (from 1.45% to 2.35%) on earnings over \$200,000 for individual taxpayers and \$250,000 for married couples filing jointly and imposes a 3.8% assessment on unearned income for higher-income taxpayers.
- In 2014 the individual mandate requires U.S. citizens and legal residents to have qualifying health coverage with a phase-in tax penalty for those without coverage, (the greater of \$695 per person, up to a maximum of \$2085 per family, or 2.5% of household income).
- In 2018 the “Cadillac Tax” begins, which imposes an excise tax on insurers of employer-sponsored health plans with aggregate values that exceed \$10,200 for individual and \$27,500 for family coverage.

The information presented is a summary of the law only and does not constitute any legal or tax advice. Any omission or inclusion of incorrect data is unintentional.

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