

Health Care Reform What it Means to You and Your Business in 2010 and 2011

There has been an onslaught of information from various sources since the passage of the Patient Protection & Affordable Healthcare Act (PPACA) last month. Much of the information has been difficult to decipher and some of it can be classified as “misinformation” as some major pieces of the law will not take effect until 2014 and will most likely be modified to one degree or another. Many of the provisions will need to at least be clarified by future regulations still to be determined by the federal government.

The first rules and regulations for those provisions that are **immediately effective in 2010**, (retroactive to January 1, 2010), should be available from the United States Department of Labor, Employee Benefits Security Administration, and the U.S. Department of Health & Human Services, by the end of April, 2010.

There is a second set of regulations that “begin the plan year that begins six months after the date of enactment”. Since the enactment date of the bill was March 23, 2010, this second set of regulations will be for those **changes effective 9/23/2010**, and are due out in late June or early July. Examples of effective dates for the “9/23” provisions are as follows:

October 1, 2010 for plan years that begin October 1
January 1, 2011 for calendar year plans
April 1, 2011 for plan years that begin April 1

The new law applies fewer requirements to employer-sponsored health plans that were in existence on March 23, 2010. These are known as “grandfathered” plans and will not be subject to some of the provisions of the law that will come down the road for employers not already sponsoring a plan.

Employers will be required to give notices to their employees in 2010 advising them of certain changes brought about by the Health Reform legislation. These notices will include availability of 2011 coverage for pre-existing conditions for children under age 19; availability of 2011 coverage for adult children under age 26; and the long-term care (CLASS Act) program effective January 1, 2011. Once the initial regulations are issued we will be able to provide more guidance to you on the timing and content of these notices.

Our staff has spent considerable time over the last few weeks filtering through massive amounts of data, some good and some quite vague, in order to give our clients and other business associates what we feel is a good “snapshot” of where Health Care Reform stands right now. This communication is not meant to cover every aspect or nuance of the new law. It is simply a compilation of public material that we hope will answer some of the questions that we have heard from our clients and friends.

In the coming months, as the insurance carriers adapt to the changing marketplace and new regulations, Stahl & Associates Insurance will provide further communication regarding these changes. Our intention is to communicate with you in an efficient manner as the rules and regulations of this complicated piece of legislation become available.

Immediate Changes – 2010

Small Business Tax Credits - Effective 1/1/2010 Through 2013

Employers with fewer than 25 employees and average annual wages of less than \$50,000 will be eligible for a tax credit of up to 35% of the employer's contribution toward health insurance if the employer pays at least 50% of the total premium cost or 50% of a yet to be determined benchmark premium. This will be a sliding scale which should be issued as part of the initial wave of regulations.

Employers with ten or fewer employees and average annual wages of less than \$25,000 would be eligible for the full tax credit without the sliding scale.

These provisions will change in 2014 when Health Insurance Exchanges become operational but could be delayed or modified at a later date.

Dependent Coverage

Group health plans that provide dependent coverage must continue to offer coverage until age 26 ***unless the child qualifies for health coverage under their own employer's plan.*** The child does not have to be a dependent for tax purposes to qualify for this coverage, nor living in the home of the employee to be covered under the plan. They can be married and they can have a job. This provision applies to stepchildren and foster children however; coverage does not apply to the child of a child. There will be more clarification on this coming from HHS. Coverage will not be considered taxable income to the employee or child, regardless of whether or not the child is a tax dependent. ***You should consider notifying your employees now that children under age 26 previously ineligible will become eligible under the new law.***

Medicare

Starting in 2010, the "donut hole" is eliminated over a period of 10 years. For 2010, Medicare Part D participants will receive a \$250 rebate ***after, and only if,*** they enter the "donut hole". In 2011, enrollees will get a 50 percent discount on brand-name drugs and biologics that are in the coverage gap. In 2020 there will no longer be a "donut hole" of any type.

Special Retiree Health Coverage Provisions

For employers who provide health insurance to retirees who are ages 55-64, there will be a reimbursement by the government for certain claims. Employers must apply for this reinsurance which has been limited to \$5 billion over the life of the program.

Immediate Access to Insurance for Uninsured Individuals with a Pre-Existing Condition

Provides eligible individuals access to coverage that does not impose any coverage exclusions for pre-existing health conditions. This provision ends when Exchanges are operational. Effective 90 days after enactment which is June 23, 2010.

Effective September 23, 2010

Elimination of Lifetime Limits

Lifetime caps on essential benefits provided under group health plans are eliminated. Specific covered benefits that are non-essential health benefits may have annual or lifetime limits imposed. Essential benefits are those for ambulatory care, emergency services, hospitalization, maternity and newborn care, mental health and substance use disorder services (including behavioral health treatment), prescription drugs, rehabilitative service and devices, laboratory services, preventative and wellness services, chronic disease management and pediatric services. The definition of essential services will not be left up to the insurer or self-insured groups. It will be prescribed by Health and Human Services (HHS) based on the scope of benefits provided by a typical employer plan. ***You should consider notifying your employees that people whose coverage was capped under previous lifetime limits will become eligible for coverage under the new law.***

In 2014, **annual limits** will be eliminated however; they may be eliminated earlier than 2014 if Health & Human Services (HHS) decides to move up this implementation date.

Preexisting Condition Exclusion

Group health plans may not impose preexisting condition exclusions for children under the age of 19. This provision is scheduled to apply to all other plan participants in 2014. ***You should consider notifying your employees of this change as it may apply to their children.***

Prohibition of Rescission

Coverage extended to an individual enrolled in a health plan can only be rescinded because of fraud or intentional misrepresentation of material fact.

Changes Effective 2011

Health Care Spending Account – FSA's

Starting 2011, the definition of a "qualified medical expense" changes. Non-prescribed items such as over-the-counter medications will no longer be a qualified medical expense. In order for an over-the-counter medication to be covered after December 31, 2010, it ***must be prescribed by a doctor***. The current limit for FSA accounts is determined by the employer. Starting in 2013, these plans cannot exceed \$2,500.

Health Savings Accounts

The nonqualified distribution from a HSA increases the excise tax from 10% to 20% for distributions after December 31, 2010.

W-2 Reporting

Starting in 2011, employers will be required to report on the employee's W-2 form the value of employer-sponsored coverage, including medical, dental and vision, (but not FSA) using the COBRA rules.

Wellness Initiatives

Establishes grants for three to five years to small employers that establish wellness programs in 2011.

Changes Effective 2011– continued

Cafeteria Plan Changes

Creates a Simple Cafeteria Plan for employers of under 100 employees. This is to provide a vehicle in which small businesses can provide tax free benefits without the administrative burden of sponsoring a cafeteria plan. The provision also exempts employers who make contributions for employees under a simple cafeteria plan from pension plan nondiscrimination requirements applicable to highly compensated and key employees.

Long Term Care (CLASS Act)

Effective January 1, 2011, employees can elect to participate in a long term care plan that will pay a flat monthly amount toward long term care after 5 years of participation in the plan. This will be done through payroll withholding.

Things to Watch For Down the Road – 2014 to 2018

As stated earlier in this communication, many of the provisions of the current law will not take effect until 2014 and later. These provisions will most likely be modified and, at the very least, clarified as rules are issued by HHS, IRS, etc. Because there are so many rules yet to be written, we feel that trying to get into the details of these provisions at this juncture is premature. Our intention is to keep you informed as these pieces progress through all of the various entities that will be involved.

Plan years beginning after January 1, 2014 - no annual limits and no limit for pre-existing conditions for ages 20 and up.

Employer Mandate – “Play or Pay” – will impose penalties on employers of 50 or more who do not provide qualified health plans to employees.

Waiting Periods – The maximum waiting period to join an employer sponsored plan will be 90 days.

Free Choice Voucher – employee's making less than 400% of the Federal Poverty Level will be eligible for vouchers to purchase insurance in an exchange if their cost of coverage through an employer's plan exceeds 8% of the employee's income. (Other rules also apply.)

Automatic Enrollment – Employers with more than 200 employees who have a qualified health plan in place will be required to automatically enroll new employees in the plan. The employee may then opt out of the group health plan. ***This is scheduled for 2014 but may be implemented by HHS prior to that time.***

Individual Mandates – those individuals not insured under a group health plan and are without “minimum essential coverage” will pay a tax penalty starting in 2014 that will take full effect in 2016.

Excise tax on “Cadillac Plans” not effective until at least 2018. Currently there is no indexing on this provision which could result in a large number of middle income taxpayers falling into this category. ***Look for changes down the road!***