HEALTH REFORM
Employer Impacts in 2010

HOW WILL HEALTH REFORM IMPACT EMPLOYERS IN 2010?

President Obama signed into law the Patient Protection and Affordable Care Act and the Health Care and Education Affordability Reconciliation Act of 2010 (collectively, the "Act"). The Act will transform the current model for employer-sponsored health coverage, with certain provisions having an impact on employers this year and/or the next plan year.

Insurance Reforms
Applies to plans years beginning on Sept. 23, 2010 and thereafter:

- **Lifetime limits** — All fully insured, self-insured or grandfathered plans will need to remove the dollar value of lifetime limits for any participant or beneficiary.
- **Annual limits** — All fully-insured, self-insured and grandfathered group plans will be restricted as to the limit that can be placed on the dollar value of benefits with respect to benefits that are essential health benefits. Regulations will clarify what the limitation will be for 2010 – 2013. Annual limits will be completely prohibited in 2014.
- **Ban on Rescissions of Coverage** — All fully-insured, self-insured and grandfathered plans are prohibited from rescinding coverage, except in the case of fraud or an intentional misrepresentation of a material fact.
- **Adult Dependent Coverage to age 26** — All fully-insured, self-insured and grandfathered plans must provide coverage for adult dependents until the age of 26 years old. The dependent may be married or unmarried and there is no requirement that the dependent be a student or live with the parents. The coverage requirement does not apply to spouses of adult dependents or their children (i.e., grandchildren of employee). For grandfathered plans only until 2014, the coverage requirement applies to dependents who do not have another source of employer-sponsored coverage.
- **Pre-Existing Condition Coverage for Children Under 19 Years of Age** — The pre-existing condition coverage requirement applies to all fully-insured, self-insured and grandfathered plans and applies to children under 19 years of age. However, the Act does not require guarantee-issue coverage until the year 2014. Thus, for markets where health insurance coverage is not required to be guarantee-issued by federal or state law (i.e., individual market and technically, large-group market), insurers could choose to not offer coverage to a child with a pre-existing condition. This will likely be changed by regulation to ensure children have both access to a plan and coverage for benefits once the child is in the plan.
- **Emergency Service**s — Fully-insured and self-insured plans (other than grandfathered plans) must cover Emergency Services at in-network rates regardless of the provider and without prior authorization.
- **Primary Care Physician** — Fully-insured and self-insured plans (other than grandfathered plans) must permit enrollees to designate any in-network doctor as their primary care physician.
- **New Coverage Appeal Process** — Fully-insured and self-insured plans (other than grandfathered plans) must provide an appeal process for appeals of coverage determinations that includes an internal claims appeal process, certain notice requirements, evidentiary requirements, and an external review process.
- **Preventive Services Mandates** — Fully-insured and self-insured plans (other than grandfathered plans) must provide coverage for, and may not apply cost-sharing requirements for, certain preventive services, including: preventive items or services with an "A" or "B" rating in the current recommendations of the U.S. Preventive Services Task Force; immunizations; infant, children and adolescent screenings; and certain preventive women screenings and care.

Small Business Tax Credit
For tax years 2010 through 2013, small employers will receive a tax credit of up to 35 percent of the employer's contribution toward the employee's health insurance premium if the employer contributes at least 50 percent of the total premium cost or 50 percent of a benchmark premium. If the small business is a non-profit, the tax credit equals 25 percent instead of 35 percent.

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A small employer is defined for purposes of the tax credit as an employer with fewer than 25 full time equivalent (FTE) employees with an average annual wage amount of less than $50,000. FTE employees include leased employees, but do not include seasonal workers (unless the seasonal workers work more than 120 days per year). There are other types of employees who are not included, including a sole proprietor, a partner in a partnership, a shareholder owning more than two percent of an S corporation, and any owner of more than five percent of other businesses are not considered employees for purposes of the credit. The full credit will be available to employers with 10 or fewer employees and average annual wages of less than $25,000. The credit phases-out as firm size and average wage increases.

Retiree Reinsurance Program
Ninety (90) days after enactment, HHS must establish a temporary reinsurance program to provide reimbursement to employment-based plans for a portion of the cost of providing health insurance coverage to early retirees who are age 55 and over, but not eligible for Medicare. An employer must submit an application to HHS for participation in the program. Claims between $15,000 and $90,000 will be reimbursed, with certain conditions. The program will end upon the earlier of Jan. 1, 2014 or when the funding runs out. Five billion dollars has been appropriated for the program, so it is in an employer's interest to submit applications and claims early.

Nondiscrimination for Highly-Compensated Individuals
Fully insured plans (other than grandfathered plans) may not establish eligibility rules that are based on the salary level of the employee, or that have the effect of discriminating in favor of higher wage employees. This provision will likely prohibit fully insured executive only carve out plans that exclude lower wage employees from eligibility. It is unclear at this point whether this provision applies to benefits and contribution levels as well as eligibility.

OTC Ineligibility for Reimbursement
Over-the-counter ("OTC") drugs, medicines and biologicals will be ineligible for reimbursement from flexible spending accounts unless prescribed by a doctor. The change to OTC reimbursement applies to tax years (not plan years) beginning after Dec. 31, 2010. The effective date applies to when expenses are incurred.

Wellness Grant Program
Effective October 1, 2010, employers with less than 100 employees, who work 25 hours or more per week, may be eligible for a federal grant to implement a wellness program. The employer must not have an existing wellness program in place on the date of enactment, March 23, 2010. The employer must implement a wellness program that includes health awareness initiatives, efforts to maximize employee participation, initiatives to change unhealthy behaviors and lifestyle choices, and supportive environment efforts. The grant program runs through 2015 or until the $200 million appropriation is exhausted.

Nursing Mothers
Effective immediately, employers must provide a reasonable break time for employees who are nursing mothers to express breast milk for a period of one year following the birth of the child. The employer must provide a place that is shielded from view and free from intrusion of co-workers and the public for use by the employee. A bathroom is specifically excluded as an appropriate place. Employers are not required to pay employees during the time they are expressing breast milk unless mandated under State law. Also, employers with less than 50 employees may be exempt from this requirement if this causes an "undue hardship" by causing "significant difficulty or expense". These terms have not yet been defined.