

PUBLICATION

Thirteen Things Employers Need To Know About Health Reform

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Health reform brought many changes to employer-sponsored group health plans. This new regime is exceedingly complex, with various provisions becoming effective on different dates. Employers should develop a comprehensive strategy to ensure they meet the obligations imposed by this reform as they become due while continuing to ensure their group health plans meet their organization's goals without unnecessary and undue cost. Failing to comply with these rules can result in penalties of \$100 per day for each violation. Below are 13 issues that employers should consider regarding compliance under the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act (together the "Act").

1. **To Grandfather or Not to Grandfather.** Health reform allows plans that were in effect on March 23, 2010 to have grandfathered status. With grandfathered status, plans may delay implementation of certain required provisions. To retain grandfathered status, the new rules permit only very limited changes. Small increases in participant costs or decreases in benefits will generally cause a plan to lose grandfather status. At first glance, employers may think they should do everything possible to keep a plan grandfathered and delay implementation of certain provisions of the Act; however, employers should weigh the costs of remaining a grandfathered plan against the cost of implementing the provisions required for non-grandfathered plans.
2. **Provide Coverage to Adult Children Up to Age 26.** Effective for plan years beginning on or after September 23, 2010, group health plans that provide dependent coverage must allow participants' children to be covered under the plan until they reach age 26. Plans can no longer require the child to be a full-time student, reside with the participant or be unmarried. These traditional requirements are prohibited. Grandfathered plans may, however, exclude coverage for adult children who have coverage available through the child's employer. This exclusion is not available to non-grandfathered plans. To comply with this new provision, most plan documents will need to be amended before the plan's effective date.
3. **Eliminate Pre-existing Conditions for Children Under Age 19.** Effective for plan years beginning on or after September 23, 2010, plans may not impose pre-existing conditions on children under age 19. Plans should be amended by their effective dates to reflect this change.
4. **Remove Lifetime Limits and Restrictions on Annual Limits.** Effective for plan years beginning on or after September 23, 2010, all plans (whether fully insured or self-funded) are prohibited from imposing lifetime limits on "essential health benefits" and are restricted in the dollar amount of annual limits they may impose on "essential health benefits." (Annual limits are banned beginning January 1, 2014.) For purposes of lifetime and annual limits, essential health benefits include ambulatory patient services, emergency services, hospitalization, maternity and newborn care, mental health and substance use disorder services, including behavioral health treatment, prescription drugs, rehabilitative services and devices, laboratory services, preventive and wellness services and chronic disease management, and pediatric services, including oral. Regulations will further define essential health benefits. Plans may have to be amended to reflect these changes.
5. **Equal Treatment of In-Network Versus Out-of-Network Emergency Services.** Effective for plan years beginning on or after September 23, 2010, nongrandfathered plans must treat out-of-network emergency services, like emergency room visits, the same as they do in-network emergency services. The Act also prohibits plans from requiring pre-authorization for emergency services.

6. **Provide Preventive Care Benefits Without Costs to Participants.** Effective plan years beginning on or after September 23, 2010, non-grandfathered plans may not impose cost-sharing requirements on preventive care services and benefits. This new provision provides that plans cannot impose co-pays, deductibles, or coinsurance on such services as annual physicals, immunizations, and mammograms.
7. **Rescissions Allowed Only in Limited Circumstances.** Effective for plan years beginning on or after September 23, 2010, non-grandfathered plans may not rescind existing coverage or terminate existing plans except with notice to enrollees and then, only in the case of fraud or misrepresentation.
8. **New Appeals Processes Required.** Effective for plan years beginning on or after September 23, 2010, non-grandfathered plans must have written internal and external appeals procedures. The internal appeals must, at a minimum: (i) have in effect an internal claims appeal process; (ii) provide notice in a culturally and linguistically appropriate manner; and (iii) allow an enrollee to review his or her file. The external process must: (i) comply with applicable state external review procedures; or (ii) implement an effective external review process that meets minimum standards established by the Secretary.
9. **Reimbursement of Over-the-Counter Medications Without a Prescription.** Beginning January 1, 2011, a health care flexible spending plan, health savings account, or health reimbursement arrangement may no longer reimburse over-the-counter medication without a prescription. An amendment to the plan may be required to reflect this requirement. Communications regarding this change should be provided to employees as soon as possible so they may utilize their flexible spending dollars appropriately.
10. **Health FSA Contributions Are Capped.** Effective January 1, 2013 (regardless of plan year), employees may only defer up to \$2,500 into a health flexible spending account plan. Plan documents must be amended to reflect this provision.
11. **Tax Credits for Small Employers.** For tax years 2010 through 2013, small employers (those employing fewer than 25 full-time equivalents with average annual wages of less than \$50,000) who purchase health insurance for their employees may receive a sliding scale tax credit. A full-time equivalent employee may include a full-time employee or a combination of part-time employees who would equal a full-time employee (e.g., two part-time employees working 20 hours a week would be combined to form one full-time equivalent). Seasonal workers are excluded from this calculation. Business owners and their family members are also excluded from determining the number of employees, as well as average wages. Small employers with 10 or fewer workers with an average wage of \$25,000 or less may receive the full value of the credit. To qualify for a tax credit, an employer must contribute at least 50 percent of the total premium cost of a benchmark premium.
12. **Subsidy for Retiree Coverage.** Effective immediately and available until January 1, 2014, group health plans may be reimbursed for certain expenses they incur for early retiree medical coverage. Under this provision, early retirees are those retirees between age 55 and the age at which they become eligible for Medicare. To be eligible for reimbursement, the cost of the claim must be between \$15,000 and \$90,000. If eligible, 80 percent of the costs will be reimbursed. The reimbursement must be used to lower plan costs or reduce participant expenses.
13. **Provide Breast-Feeding Breaks to Nursing Mothers.** Effective March 23, 2010, employers must give employees who are nursing mothers reasonable break times to express milk for their children as needed during the one-year period after birth. A private space, other than a bathroom, must be made available.

Health reform will have a major impact on employers over the coming years. While most of the provisions impacting employers do not occur until 2012-2014, employers need to start working now to develop their strategy for handling these changes.

Employers should develop short-term and long-term action plans for handling the upcoming changes and stay informed of ongoing developments in the regulatory process. Through careful planning and implementation, employers will be able to meet the effective dates and requirements and avoid costly penalties under the new law.