

March 30, 2010

Historic Health Care Reform

The Patient Protection & Affordable Care Act was signed by the President on March 23, 2010. This legislation – coupled with the reconciliation bill that was finalized on March 25 and signed by the President today – has dramatic implications for all employers (we refer to both pieces of legislation as the “Health Care Act”). If you have watched any television coverage or read any newspapers in the last few weeks, passage of the Health Care Act is not breaking news; in the coming weeks, both the media and the analysts will be covering the topic in detail. What might be surprising, however, is how quickly some of the provisions of the Health Care Act will affect employer sponsored health plans.

Although we can expect to see numerous changes as a result of the Health Care Act over the next eight years, a significant number of the changes are scheduled to be implemented January 1, 2011 (for calendar year plans), or as early as this September. Some of the earliest provisions scheduled to be implemented include:

- Tax credits of up to 35% (increasing to 50% by 2014) will be available to certain small businesses that provide health care coverage to employees. Note that this provision is effective in 2010, regardless of when the plan’s year begins.
- Health plans must cover dependent children until their 26th birthday unless a dependent child has coverage available through his or her own employment. This rule applies regardless of student status and regardless of whether the dependent child qualifies as the employee’s tax dependent. In 2014, the exception for coverage availability from a dependent’s employment will also disappear.
- Pre-existing condition exclusions are eliminated for children under age 19 (pre-existing conditions exclusions will be entirely eliminated in 2014).
- Plans cannot apply lifetime dollar limits to “essential health benefits.” In addition, insurers or stop-loss providers cannot retroactively rescind coverage for any reason other than outright fraud.
- Plans will be required to offer certain preventive care benefits with no employee cost sharing.
- Group health insurance plans must satisfy certain nondiscrimination requirements that previously only applied to self-insured plans.
- Over-the-counter (OTC) medications will no longer be eligible for reimbursement from an account-based plan, such as a health flexible spending account, health savings account or health reimbursement account, unless the OTC medication is obtained with a prescription

Employers will barely have time to catch their breath after implementing these early changes, before additional provisions of the Health Care Act will be effective. Some of the more interesting and significant later provisions include:

- Employers will be required to disclose the value of each employee’s health coverage on the employee’s annual Form W-2, beginning with the Form W-2 covering the 2011 year.
- Beginning in 2013, employee contributions to health flexible spending accounts are limited to \$2,500/year (indexed to the CPI).

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- Employers who currently use the 28% federal subsidy to offset the cost of a retiree prescription drug plan will no longer have an income tax exclusion for those payments starting in 2013.
- Beginning in 2014, employers with 50 or more employees will be assessed a fee if they do not offer employee coverage.

To complicate matters, the Health Care Act contains broad provisions exempting existing health plans from the application of many of these new laws. How this “grandfather” rule will be administered is certainly an issue for employers to watch in the coming months.

If you have any questions about the Health Care Act or any other employee benefit matters, please contact a member of our [Benefits Law Group](#).



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