

## **Health Care Reform: Top 10 Things Employers Need to Know**

In late March, the Patient Protection and Affordable Care Act and the Health Care & Education Affordability Reconciliation Act of 2010 were signed into law (together "the Act"), effectively ushering in a new era in health care. This sweeping legislation will radically alter the way health care is delivered and the way health insurance will be bought, sold and provided in the United States. The Act also imposes many new requirements on employer-sponsored group health plans. Failure to comply with those requirements may result in substantial monetary penalties. Health care providers are also employers, of course, and they will be drastically impacted by the following provisions like all other employers. This article is by no means intended to be a comprehensive look at the Act, rather it is a quick look at those provisions of the Act most likely to have a substantial impact on employers.

### **1. Automatic Enrollment & Employer-Provided Coverage Mandate (Pay-or-Play).**

Employers with more than 200 employees will be required to automatically enroll those employees in their group health plan. The effective date for Automatic Enrollment will be issued with regulations to be promulgated by the Secretary. Employees can then choose to opt out of the employer-provided coverage and either obtain other coverage or pay an individual penalty. In addition, employers with 50 or more full-time employees must provide "minimum essential coverage" to those employees working 30 or more hours per week. Beginning on January 1, 2014, any covered employer that fails to provide required coverage will be assessed substantial tax penalties of up to \$2,000 per full-time employee.

### **2. "Play"? Minimum Essential Coverage.**

The Act does not define "minimum essential coverage." Further guidance regarding these requirements will come through regulations issued under the Act and through the individual state Insurance Exchanges mandated by the Act. Come 2014, however, all individuals not otherwise exempt must maintain minimum essential coverage. Furthermore, employers must provide at least 60% of the ambiguous minimum essential coverage to full-time employees. Additionally, the total employee cost for such coverage cannot exceed 9.5% of any employee's household income, subject to the Free Rider Penalty discussed below.

### **3. "Pay"? Free Rider Penalties & Free Choice Vouchers.**

Beginning in 2014, if any employee's cost of coverage exceeds 9.5% of household income, and an employee purchases coverage through the Health Insurance Exchanges – either state or federal – established by the Act, then the employer will be subject to "Free Rider Penalties" for failing to provide affordable coverage. The employer will pay the lesser of \$3,000 per employee obtaining coverage through the exchange or \$2,000 per full-time employee. Similarly, if any employee's income is below 400% of the federal poverty level and the cost of coverage exceeds 8% of household income, the employer must offer a "free choice voucher" to that employee. The Exchange will credit the amount of the voucher to the monthly premium of the Exchange plan and the employer will pay the Exchange the credited amount. If the amount of the voucher exceeds the premium, excess will be paid to the employee.

With respect to items 1, 2 and 3 above, employers must provide written notice to new employees at the time of hiring or to current employees no later than March 1, 2013 of the existence of the Exchange and available tax credits, cost sharing reductions and other tax implications for an employee's purchase of a qualified plan through the Exchange. The Act

prescribes the specific content of the required written notice to be provided by employers.

#### **4. Deduction of Employee Compensation by Health Insurers.**

Beginning in 2013, but immediately applicable to compensation deferred in 2010 and paid on or after 2013, the Act prohibits health insurance companies from deducting compensation paid to their employees in excess of \$500,000 per year.

#### **5. Adult Children Must Be Covered.**

Effective September 23, 2010, employers offering dependent coverage must extend that coverage to adult children up to age 26, regardless of marital or student status. Employers are not required to offer coverage to an adult child's spouse or children and grandfathered plans (i.e., those group insurance plans that were in effect on March 23, 2010 and as such are not subject to some provisions applicable to new plans) may exclude adult children who are eligible for coverage under another employment-based plan. HHS will issue regulations to defined dependant for purposes of this provision.

#### **6. Small Employer Tax Credit Subsidies.**

Effective immediately and through 2013, Employers with no more than 25 full-time equivalent employees who average no more than \$50,000 in annual wages each will qualify for tax credit subsidies. The credit will offset up to 35% of the employer's health insurance costs, *if* the employer contributes at least half of the premium.

#### **7. Temporary Reinsurance Program.**

Effective from June 1, 2010 through the earlier of January 1, 2014 or when the funding runs out, employers will qualify for reimbursement of 80% of the cost of retiree health benefits in excess of \$15,000 (and up to \$90,000) provided to retirees over age 55 who are not yet eligible for Medicare. Employers are required to use the reimbursements to reduce the cost of providing medical coverage. \$5 Billion in financial assistance has been appropriated to this program. Reimbursements will be processed in the order received, so plan sponsors should be prepared once applications become available at the end of June. [For additional information on the Early Retiree Reinsurance Program, please click here.](#)

#### **8. Cadillac Tax.**

Beginning in 2018, employers will pay a 40% excise tax on health insurance benefits exceeding \$10,200 for individual coverage and \$27,500 for family coverage. The tax will include all employer and employee amounts paid for medical benefits, including pre-tax employee premiums; however, dental or vision payments will not be taxed. Employers of individuals in high-risk professions or employers with a disproportionate number of elderly employees will have higher allowable thresholds of coverage.

#### **9. Reporting Requirements.**

Effective for employees' tax years beginning after December 31, 2010, employers will be responsible for reporting the total cost of medical benefits provided on employee W-2s, using COBRA rates to calculate the value of benefits. Moreover, W-2s reflecting the new health insurance information must be available to employees on or before February 1, 2012. Employers will also be required to certify to the Department of Health and Human Services ("HHS") that they offered health care coverage to all full-time employees. Similarly, employers must submit to HHS information regarding claims payment policies, cost-sharing and rating policies, enrollment, participant rights and out-of-network coverage.

#### **10. FSA, HSA and Health Reimbursement Changes.**

For tax years beginning on or after January 1, 2011, employees will be prohibited from purchasing over-the-counter, nonprescription drugs on a pre-tax basis. In addition, the Act will increase the tax on non-medical withdrawals from HSAs from the current 10%, to up to 20%.

In the coming weeks, Miller & Martin will be offering live and webcast presentations designed to answer employer questions concerning the practical

implementation of the Act. Invitations to these programs will be sent to you once the dates, times and locations of these events are finalized.

Health Care Reform will be an on-going process, and compliance requirements will develop over time. For questions or comments, please contact [Sarah Maxwell](mailto:smaxwell@millermartin.com) at [smaxwell@millermartin.com](mailto:smaxwell@millermartin.com), [Teresa Culver](mailto:tculver@millermartin.com) at [tculver@millermartin.com](mailto:tculver@millermartin.com) or [Lance Bridgesmith](mailto:lpbridgesmith@millermartin.com) at [lpbridgesmith@millermartin.com](mailto:lpbridgesmith@millermartin.com).

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