Health Care Reform Checklist

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As the year draws to a close, employers should review what actions they've taken with respect to health care reform for 2010 and begin planning for changes in 2011. This checklist will hopefully make the daunting task a little easier.

Before the end of the year, group health plan sponsors should take the following steps:

- Make a final determination regarding grandfathering status with respect to each group health plan option that the sponsor offers. If any plan option will remain grandfathered, the Department of Labor (DOL) model disclosure form should be included in any communications or other materials that describe the benefits offered under that option. The model disclosure is available at: www.dol.gov/ebsa/grandfatherregmodelnotice.doc.
- Determine whether the retiree population should be spun off of a group health plan that covers active employees into a stand-alone retiree only plan that is not subject to health care reform. If so, adopt the new retiree-only document before the beginning of the plan year.
- If the plan sponsor doesn't want to extend the health care reform requirements to dental and vision benefits, the sponsor should determine if changes to election procedures are necessary so that those plans can be treated as excepted benefits exempt from health care reform requirements.
- Provide a special 30-day open enrollment window and required notices regarding this right to:
    - any adult child up to age 26 who has previously aged out of the Plan; or
        - Model notice available at www.dol.gov/ebsa/dependentsmodelnotice.doc
    - any participant whose coverage was previously terminated due to reaching the Plan's lifetime maximum.
        - Model notice available at www.dol.gov/ebsalifetimelimitsmodelnotice.doc
- Both grandfathered and non-grandfathered group health plans should review plan documents and summary plan descriptions to ensure that:
    - lifetime limits on "Essential Health Benefits" have been eliminated;
    - any annual limits on "Essential Health Benefits" meet current requirements;
    - rescissions are not permitted except in the cases of fraud or intentional misrepresentation;
    - coverage is extended to adult children until they turn 26, with a limited exception for grandfathered plan for children who have other employer-provided group health coverage available from a source other than their parents.
    - any preexisting condition exclusion for children (either employees or dependents) under age 19 have been removed from the plan.
- Non-grandfathered group health plans should also:
    - review their claims and appeals procedures and contact their third party administrator or insurer to determine whether those entities have already contracted with at least three Independent

Reviewing Organizations on behalf of the plan. Plans should also finalize the terms of payment for those services now, before the new requirements go into effect as of the first day of the first plan year on or after September 23, 2010. Plans should also confirm that the Claims Administrator will be using the updated model notices regarding adverse benefit determinations provided by the DOL. Those notices are available at:

- www.dol.gov/ebsa/IABDModelNotice1.doc
- www.dol.gov/ebsa/IABDModelNotice2.doc
- www.dol.gov/ebsa/IABDModelNotice3.doc

  - review plan documents and summary plan descriptions to ensure that:
    - required preventive care coverage is paid without any co-payments, coinsurance or deductibles if provided in network.
    - patient protection notices regarding an individual's choice of health care professionals and access to obstetrical and gynecological care and emergency services have been incorporated into the plan's summary plan description. These notices are available at: www.dol.gov/ebsa/patientprotectionmodelnotice.doc.

- Communicate the new change prohibiting reimbursement of over-the-counter drugs, medications and biologicals (other than insulin) from healthcare flexible spending accounts and health reimbursement arrangements to all participants, and make any necessary modifications to formal plan documents. Plan sponsors have until June 30, 2011 to make this required amendment, but many employers have chosen to adopt it before the end of 2010.
- Amend the cafeteria plan by the end of 2010 if the Employer allowed pre-tax premium payments for an employee's adult child up to age 26 in 2010.
- Determine whether employers want to allow health care flexible spending accounts to mirror the health plan and allow reimbursement for expenses for children up to age 26. If so, the cafeteria plan needs to be amended by the end of 2010.
- Review the nondiscrimination rules applicable to non-grandfathered fully-insured group health plans and determine whether tweaks are necessary to existing eligibility requirements or Employer-premium subsidies. The Employer should also consult with counsel to review new and existing employment and severance agreements to determine if non-discrimination issues are present.

There are a few aspects of health care reform that group health plan sponsors should be gearing up for over the next few months.

- Human Resources staff members should be given a health care reform training course to be able to answer participant's basic questions regarding the impact that the new law has on their benefits.
- Begin working with payroll administrators and vendors to lay down necessary framework in order to be able to comply with the Form W-2 reporting of the value of health benefits. Although this is optional in 2011, all systems need to be in place and operational as of January 1, 2012.
- Modify any Health Savings Account communication pieces to reflect the updated 20% early withdrawal penalty.

- Review all vendor agreements to see if any modifications are necessary to clearly lay out duties with respect to health care reform compliance.
- Consider implementation of a simple cafeteria plan if the employer has less than 100 employees.
- Review expected guidance regarding the new four page benefit summary intended to supplement the summary plan description.
- Modify payroll procedures and data feeds to allow employees to participate in a new long-term care program called Community Living Assistance Services and Support (CLASS). CLASS is a national, voluntary insurance program that is 100% employee-paid through salary reductions.

Warner Norcross & Judd developed this checklist and provide clarification on selected health care reform provisions. If you have any questions regarding other health care reform issues, you may contact April Goff (616.752.2154, agoff@wnj.com) or John McKendry (231.727.2637, jmckendry@wnj.com) or any other member of the Warner Norcross & Judd Health Care Reform Task Force.