

## Health Care Reform: Open Enrollment Communications

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The Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010 (collectively the "Act"), includes a series of significant changes that are relevant to employer-provided group health plans. Some of these changes take effect for plan years beginning on and after September 23, 2010. As a result, plan sponsors will need to update enrollment materials and participant communications for the upcoming plan year. Several of the Act's more notable provisions affecting employer-sponsored health plans are highlighted below.

**Notice Regarding Grandfathered Status:** Plan sponsors that have decided to maintain [grandfathered status](#) must provide participants with a statement that the plan intends to preserve the basic health coverage that was in effect on March 23, 2010, and that some of the consumer protections of the Act may not apply. The Department of Health and Human Services (HHS) has issued a model notice to satisfy this requirement. In addition, to maintain status as a grandfathered plan, the plan sponsor must retain records of the plan terms in existence on March 23, 2010, including plan documents, insurance policies, summary plan descriptions (SPDs), and other cost-sharing documentation.

**Adult Children – Special Enrollment:** Effective for plan years beginning on or after September 23, 2010, group health plans with dependent child coverage must offer [coverage for the enrollee's adult children](#) who are younger than age 26. If the plan is grandfathered, only adult children who are not otherwise eligible for their own employer-sponsored group health coverage must be enrolled for the upcoming plan year. Plan sponsors must provide participants with a special enrollment notice and at least 30 days to elect coverage. The special enrollment notice may be distributed at open enrollment, but the notice and the enrollment deadline must be prominently displayed. HHS has issued a model notice to help plan sponsors comply with this requirement.

**Lifetime Limit – Special Enrollment:** Effective for plan years on and after September 23, 2010, group health plans will no longer be permitted to impose lifetime limits on "essential health benefits." Individuals who are not currently enrolled in a plan because they have reached their lifetime limit (and are otherwise still eligible for coverage) must be given written notice that the lifetime limits no longer apply. The plan must allow such individuals at least 30 days to enroll. HHS has issued a model notice to help plan sponsors comply with this requirement.

**Patient Protection:** Sponsors of non-grandfathered plans must provide notice describing the participant's right to select any available participating primary care provider, or pediatrician for children, and the right to obtain obstetrical or gynecological care without preauthorization or referral. HHS has issued a model notice to help plan sponsors comply with this requirement.



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**OTC Drug Reimbursements:** Effective January 1, 2011, plan participants can no longer receive reimbursement under a tax-advantaged account, such as an FSA, HSA, or HRA, for over-the-counter medicines or drugs without a prescription. While notice of this change is not required by law, plan sponsors should alert employees of this change during open enrollment.

While the Act may be costly and time consuming for employers to implement, noncompliance may be even costlier. The Act provides the government with new enforcement powers and includes both criminal and civil penalties. Plan sponsors should be working with their advisors to confirm how the Act will affect their plans. In many cases, plan sponsors will need to amend plan documents, SPDs, and employee communications to comply with the law.



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