

Looking Ahead to 2011: Year End Employee Benefit Plan Compliance Items

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With this year fast coming to a close, there may be notices, plan amendments and/or administrative changes that should be completed as the new year approaches.

This year, the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010 ("Affordable Care Act") has been the impetus for many of the changes affecting benefit plans. While the tri-agencies of Treasury, Labor and Health & Human Services (the "Departments") have issued a flurry of regulations and model notices, many issues are still in need of further clarification. In the interim, the Departments have indicated that employers should still take steps toward good faith compliance with the law. For this reason, to the extent not otherwise undertaken, employers should review the requirements of the law and determine whether notices and/or amendments in their benefit plan are required. The Departments have issued model notices for several requirements under the Affordable Care Act and these model notices can be found on the Department of Labor's website at <http://www.dol.gov/ebsa/healthreform/>.

In addition to the Affordable Care Act requirements, the following chart provides a brief summary of other year end items affecting group health plans, cafeteria plans (including FSA, HRA and HSAs) qualified retirement plans and executive compensation.

HEALTH AND WELFARE PLANS			
Law	Highlights	Compliance Date	Action
Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010 ("Affordable Care Act") – Grandfathered Status	Determine if medical plan will be grandfathered	Plan years beginning on or after 9/23/2010	Grandfathered Plan Notice to inform participants that a plan is grandfathered. Model notice is available on the DOL website. Update Plan, SPD to reflect grandfathered status.

<p>Affordable Care Act – Dependent Coverage</p>	<p>Dependent coverage to age 26 regardless of marital status, student status, residency or financial support (applies to grandfathered and non-grandfathered plans). If grandfathered, may have an exception if child is eligible for group health coverage through own employer until 2014</p>	<p>Plan years beginning on or after 9/23/2010</p>	<p>Notice of Special Enrollment Event for adult children under age 26 whose eligibility previously ended or who were not eligible for coverage due to age. 30 day enrollment period on or before the date the plan year begins.</p> <p>Model Notice available on DOL website.</p> <p>Plan amendment, SMM or SPD changes.</p>
<p>Affordable Care Act – Pre-existing Condition Under Age 19</p>	<p>Eliminate medical plan pre-existing condition exclusions for children under age 19 (applies to grandfathered and nongrandfathered plans)</p>	<p>Plan years beginning on or after 9/23/2010</p>	<p>Plan amendment, SMM or SPD changes.</p>
<p>Affordable Care Act – Lifetime Limits</p>	<p>Eliminate lifetime dollar limits on "essential health benefits" (applies to grandfathered and nongrandfathered plans)</p>	<p>Plan years beginning on or after 9/23/2010</p>	<p>Notice of Special Enrollment Event for individuals who previously reached lifetime limits under a plan. 30 day enrollment period on or before the date the plan year begins.</p> <p>Model Notice available on DOL website.</p> <p>Plan amendment, SMM or SPD changes.</p>
<p>Affordable Care Act – Annual Limits</p>	<p>Annual limits on essential health benefits restricted (not less than \$750,000 in 2011; \$1.25 million in 2012, \$2 million in 2012) (applies to grandfathered and nongrandfathered plans).</p>	<p>Plan years beginning on or after 9/23/2010</p>	<p>Plan amendment, SMM or SPD changes</p>
<p>Affordable Care Act – No Rescissions</p>	<p>Medical Plans may not rescind coverage unless fraud or intentional misrepresentation (applies to grandfathered and nongrandfathered plans)</p>	<p>Plan years beginning on or after 9/23/2010</p>	<p>Must provide advance notice of a rescission or cancellation of coverage.</p> <p>Plan amendment, SMM</p>

			or SPD changes.
Affordable Care Act – Preventive Care	Medical plan coverage of in-network preventive care services with no cost sharing (not applicable to grandfathered plans)	Plan years beginning on or after 9/23/2010	Plan amendment, SMM or SPD changes
Affordable Care Act – Emergency Services	Medical plan coverage of emergency services with no prior authorization and at in-network rates (not applicable to grandfathered plans)	Plan years beginning on or after 9/23/2010	Plan amendment, SMM or SPD changes
Affordable Care Act – Provider Designation	Medical plans that permit designation of primary care physicians must permit designation of in-network primary care provider, including pediatric and obstetrician/gynecologist. No referral for in-network obstetrician/gynecologist required (not applicable to grandfathered plans)	Plan years beginning on or after 9/23/2010	Notice to participants advising of choice to designate primary care physicians and to obtain OB/GYN care without prior authorization. Model Notice available on DOL website. Plan amendment, SMM or SPD changes
Affordable Care Act – New Claims Procedure	Expanded internal and external claims procedure and appeal rules (not applicable to grandfathered plans)	Plan years beginning on or after 9/23/2010	Notice to participants regarding new claims and appeals procedure. Model Notices available on DOL website. Plan amendment, SMM or SPD changes.
Affordable Care Act – Fully Insured Nondiscrimination rules	Fully insured medical plans may not discriminate in favor of highly compensated employees (Internal Revenue Code 105(h) self-insured rules applicable) (not applicable to grandfathered plans)	Plan years beginning on or after 9/23/2010	Plan amendment, SMM or SPD changes and administrative changes.
Children's Health Insurance Program Reauthorization Act of 2009 ("CHIPRA")	Two new special enrollment periods for non-expected group health plans for losing eligibility for Medicaid or CHIP or for gaining eligibility for state premium subsidy. Enrollment changes allowed within 60 days of the event. Notice requirement	4/1/2009 and Notice by 1/1/2011 for calendar year plans	Notice requirement to employees about state premium assistance. Plan amendment; SMM or SPD changes; update special

	to employees about state premium assistance.		enrollment notices; administrative changes.
Mental Health Parity and Addiction Equity Act of 2008	If a plan offers mental and/or substance abuse benefits, the plan cannot impose greater limitations or financial restrictions on those benefits than it imposes on other medical/surgical benefits.	Plan years beginning after 10/3/2009; 1/1/2010 for calendar year plans, on or after 7/1/10 for non-calendar year plans	Plan amendment; SMM or SPD changes; and administrative changes
Michelle's Law	Covered college students remain in the plan during a medically necessary leave of absence for 1 year or when they would otherwise lose coverage, if earlier. Any certification of student status must include a description of those provisions.	Plan years beginning after 10/9/2009	Plan amendment; SMM or SPD changes; administrative changes, notices
Genetic Information Nondiscrimination Act of 2008 ("GINA")	Prohibits using genetic information for plan premiums, underwriting and generally cannot request or require disclosure of genetic information. Genetic information is broadly defined, including family history to relatives of the 4 th degree. Will restrict the use/viability of many wellness programs that utilize health risk assessments.	Plan years on or after 12/7/09	Plan amendment; SMM or SPD changes; review wellness programs and health risk assessments and employee materials; administrative changes; review HIPAA privacy policy and disclosures
HITECH HIPAA changes under ARRA	Increase penalties for HIPAA violations. New notice requirements associated with breaches of unsecured PHI. Expansion of certain privacy/security requirements to business associates.	For breaches discovered after 9/23/2009, penalties assessed after February 2010 (or, if later, after final regulations are released)	Review HIPAA privacy/security policies and disclosures and make necessary changes; review business associate agreements; contact business associates to coordinate necessary changes; administrative changes
Final exercise tax reporting/payment regulation	Requires self-reporting and payment of any excise tax for violation of COBRA, HIPAA portability/nondiscrimination, GINA, mental health/substance abuse parity, Newborns' and Mothers' Health Protection Act, Michelle's Law and comparable	8928 forms due after 12/31/2010; file by time employer tax return due (without considering extensions)	Administrative changes

	HSA and Archer medical savings account contributions rule. File on Form 8928.		
Medicare	Provide Medicare Part D Notice of creditable (or non-creditable) coverage. New model notices were issued for use after 1/1/2009.	Annual notice distributed before 11/15/2010	Distribute notice even if due date was missed
CAFETERIA PLANS (Including FSAs, HRAs, HSAs)			
Affordable Care Act – Children Under Age 27	Pre-tax salary reductions for accident or health benefits (including FSAs) for children who have not attained age 27 as of the end of the taxable year (December 31)	Permitted on or after 3/30/2010 if retroactive amendment by 12/31/2010	Plan amendment, SMM or update to SPD
Affordable Care Act – Over-the-Counter Drugs	Medicine or drugs other than insulin must be prescribed to qualify for reimbursement. No over-the-counter drugs without a prescription after 12/31/2010	1/1/2011	Plan amendment, SMM or update to SPD. Notify participants before 1/1/2011.
QUALIFIED RETIREMENT PLANS			
Heroes Earnings and Assistance Relief Tax Act of 2008 (HEART Act)	Mandatory and voluntary provisions impact plans that cover employees on active military duty including differential wage payments, survivor and disability retirement benefits and continued benefit accruals to certain plan distributions (technical corrections in 2010)	12/31/2010	Plan amendment, SMM or update of SPD.
Worker, Retiree, and Employee Recovery Act of 2008 (WRERA)	Non-spouse beneficiary direct rollovers mandatory and suspension of 2009 required minimum distributions (RMDs) (technical corrections in 2010)	12/31/2010	Plan amendment, SMM or update to SPD.
Internal Revenue Code Section 436	Funding-based benefit restrictions on defined benefit plans if funded status is less than 80%	Originally due 12/31/2010 but extended until 12/31/2011.	Plan amendment, SMM or update to SPD.
Cash Balance Plans and Hybrid Plans	Final regulations released October, 2010 and apply to plan years on or after 1/1/2011	Rules apply 1/1/2011; Amendments due by 12/31/2011	Plan amendment, SMM or update to SPD; Administrative changes

EGTRRA Determination Letter – Cycle E (Individually Designed Plans)	Employers with EIN ending in 0 or 5 submit on-cycle application for EGTRRA determination letter	1/31/2011	Submit restated plan to IRS for favorable determination letter; Notice to Interested Parties due no later than 10 days and no earlier than 24 days before the date of the determination application. (Between 1/7/11 – 1/21/11 for a 1/31/11 submission date)
EXECUTIVE COMPENSATION			
Internal Revenue Code Section 409A	Notice 2010-6 gives employers a limited-time opportunity to correct provisions in plans or agreements subject to Code Section 409A. Corrections allow employers and employees to avoid penalties and unfavorable tax consequences	12/31/2010	Re-examine plans and arrangements subject to 409A and amend as necessary
Affordable Care Act – Nondiscrimination Requirements	Code Section 105(h) nondiscrimination rules apply to fully insured plans and healthcare continuation coverage may be taxable to a highly compensated employee (HCE) in a non-grandfathered fully insured plan as part of severance.	Plan years beginning or after 9/23/2010	Review continuation coverage provisions in severance agreements.

If you have questions about any of these legal changes affecting group health plans, qualified retirement plans, or executive compensation, contact one of the attorneys in the Dinsmore & Shohl Compensation and Benefits Practice Group listed on the upper right.