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Health Care Reform: How Will it Affect Your Future?

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Together, the Patient Protection and Affordable Care Act (PPACA) and Health Care and Education Tax Credit Reconciliation Act of 2010 represents widespread health care reform which will be implemented over a number of years to come. Moreover, given the law's 2,500 pages, there are many questions that will not be answered until the implementing federal regulations are issued. Nonetheless, employers should understand that several PPACA provisions were immediately effective, or effective six months from the date of enactment (March 23) and take note of what is in store in 2014.

W-2 Reporting Requirements

For taxable years beginning after December 31, 2010, employers must report on their employee's W-2 form the full premium value of their employee health coverage, including but not limited to, the value of prescription drug plans and employee assistance programs. This means that payroll systems need to be updated for this change by January 2011.

Reinsurance Program for Early Retirees

This program provides $5 billion for temporary financial help for employer plans to continue to provide coverage to retirees, age 55 and older, who are neither active employees nor eligible for Medicare. The program subsidizes 80% of a retiree's costs between $15,000 and $90,000. It is effective June 23, 2010, but payments are retroactive for a plan year so employers can take immediate advantage of the program.

Mandatory Break Periods for Nursing Mothers

Effective immediately, employers must provide reasonable break time for an employee to express breast milk for her nursing child for one year after the child's birth; and a place, other than bathroom, that is shielded form view and free from intrusion from coworkers and the public to express breast milk. Employers with less than 50 employees are exempt if compliance imposes an undue hardship.

Small Business Tax Credit or Wellness Grant

The new law gives a tax credit to certain small employers that provide health care coverage to their employees, effective with tax years beginning in 2010. To be qualified, employers must (1) have fewer than 25 full-time equivalent employees, (2) the average annual wages of its employees for the year must be less than $50,000 per full-time equivalent, and (3) the employer must pay the premiums under a "qualifying arrangement". In addition, the PPACA authorizes $5 billion to provide grants to small businesses for up to five years to create wellness programs for employees.

HSAs, FSAs, and HRAs

Unless prescribed by a doctor, over-the-counter drugs other than insulin will no longer qualify for reimbursement under a health reimbursement account or flexible savings account (FSA) or under a health savings account (HSA) or an Archer medical savings account (MSA). Starting December 31, 2010, the tax on distributions from HSAs and MSAs that are not used for qualified medical expenses is increased to 20%.

Grandfathered Plans

The PPACA places new requirements on group health insurance plans relating to coverage, often referred to as market reforms. Examples include: expanded non-discrimination requirements, limitations on when insurance can be rescinded, no lifetime limits on the dollar value of essential health benefits, choice of primary care physician, no pre-existing limitations for children under 19, coverage of preventive health services without any cost-sharing and new appeals processes.

Significantly, grandfathered health plans (GHP) are exempt from many of these new requirements. A GHP is a plan in which an individual was enrolled on the date of enactment (March 23, 2010). Having a GHP gives employers some breathing room with respect to the PPACA's market reform provisions, but it is not a free pass. Even GHPs must comply with the following:

- no restrictions on lifetime limits on the value of certain essential benefits,
- prohibition on recessions (only for fraud or misrepresentation),
- no pre-existing condition exclusions for enrollees who are under 19, and
- adult children covered up to age 26 regardless of marital or student status.

January 1, 2014 and beyond

January 1, 2014 is a significant date for employers and States. By that date, each State must establish an “American Health Benefit Exchange” to facilitate the purchase of qualified health plans (“Exchange”) by individuals and a Small Business Health Options Program (“SHOP Exchange”) to assist small employers in enrolling their employees in qualified health plans.

Also effective in 2014 is the "pay or play" mandate for employers. Employers with 50 or more full-time equivalent employees are required to provide their employees with “essential health coverage” or pay a non-deductible penalty if at least one employee obtains a low-income premium subsidy in Exchange. The penalty is equal to $2,000 times the number of full-time employees less the first 30 employees.

If the employer provides “minimum essential coverage” but its health insurance plan is not affordable and an employee enrolls in Exchange and receives a low-income subsidy, the employer must pay a penalty of $3,000 per employee with a subsidy.

In addition, starting in 2014, employers who offer, and at least partially pay for, minimum essential coverage will be required to provide a "free choice voucher" to any employee (1) whose premium is between 8% and 9.8% of the employee’s household income, and (2) whose income is below 400% of the poverty level, to be used to purchase coverage through the Exchange.

Employers who have 200 or more full-time employees and who offer at least one health care plan are required to automatically enroll new employees into a plan.

The foregoing is not exhaustive, it is an overview of PPACA provisions that relate to employers.