

Early Impact Reform Measures for Group Health Plans

By: Christine P. Roberts, Esq. © 2010¹
Mullen & Henzell L.L.P.
(805) 966-1501
croberts@mullenlaw.com
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Double-barreled health care reform measures recently became law in the United States. On March 23, 2010, President Obama signed the Patient Protection and Affordable Care Act ("PPA"), and on March 30, 2010 signed the Health Care and Education Reconciliation Act ("Reconciliation Act"). Collectively the two Acts comprise over a thousand pages of changes to the health care system (primarily, though not exclusively, as provided through group and individual insurance plans and self-funded group plans).

Many of us are wondering "what happens next"? There are immediate (2010) changes under the Acts on several levels including potential tax credits for small employers establishing group health plans. This short update addresses some group health coverage mandates and prohibitions that take effect for most plans on January 1, 2011.

Under the stand-alone PPA, plans in existence on the date PPA was enacted (March 23, 2010) were exempt from many reform measures, i.e., were "grandfathered" from much of reform, even with regard to new enrollees and later-added dependents. Specifically, grandfathered plans were *originally* exempt from a number of reform measures including but not limited to:

- Prohibitions on lifetime/annual dollar limits applicable to "essential health benefits" (a term not yet fully defined under the Acts)
- Expansion of dependent coverage for adult children of plan participants through the end of the calendar year in which the child turns age 26
- Prohibition on pre-existing exclusions
- Prohibition on rescinding coverage (except in the case of fraud or intentional misrepresentation)

Grandfathering still applies to a number of health reform measures. However, the Reconciliation Act removed grandfathering for all of the above provisions effective as of the first day of the first plan year falling on or after September 23, 2010, which is the 6-month anniversary of the PPA.² There are a few "tweaks" to the "un-grandfathering" process, as set forth below:

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² This would mean compliance is required on January 1, 2011 for a calendar year plan. 2011 effective dates would also apply to fiscal year plans beginning February 1 right through plan years

- The prohibition on *lifetime* limits applies to grandfathered plans at the 6-month anniversary but “restricted” *annual* limits may continue to apply to non-essential health benefits until 2014. At that point annual limits will be completely prohibited.
- The expansion of dependent coverage for adult children of plan participants through the year in which they turn age 26 applies to grandfathered plans at the 6-month anniversary only if the adult child is not eligible to enroll in another employer plan. This “other coverage” exception goes away in 2014.
- The prohibition of pre-existing condition exclusions is “un-grandfathered” as against children under 19 at the 6-month-anniversary; full repeal of pre-existing condition exclusions takes effect in 2014. The Reconciliation Act also extended the provision to *married* adult children who otherwise are eligible for extended dependent status. Expanded dependent coverage does not apply to the children of adult children.

For these purposes; effective in 2014 means effective for plan years beginning on or after January 1, 2014.

Clients have also asked about a reform measure requiring first-dollar coverage under private plans for certain preventive care, well-child care and immunizations (different rules apply under Medicare). This measure does not apply to grandfathered plans as defined under PPA and was not un-grandfathered by the Reconciliation Act. As far as I can gather this measure is “N/A” to grandfathered plans indefinitely, although I have seen reference to the provision applying in 2018 and after but have not tracked down that text in the close-to-1,000 page PPA language, yet.

Keep in mind that, due to the complexity of the reform Acts, there are a lot of “ifs, ands, and buts” including exceptions applicable to collectively bargained plans, and the like. Call your broker or other trusted adviser in the event you have any questions about implementing reform measures in your workplace.

I will provide further updates on health care reform measures as they come to bear.

Note: The above information is a brief summary of legal developments that is provided for general guidance only and does not create an attorney-client relationship. Readers are encouraged to seek individualized legal advice in regard to any particular factual situation.

beginning September 1, 2010. However a plan whose current plan year began October 1, 2009 and ends September 30, 2010 will need to comply with the above-listed reform measures effective October 1, 2010.