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Employee Benefits ALERT
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New Healthcare Reform Law to impact existing healthcare plans

As has been widely reported, the Patient Protection and Affordable Care Act along with modifications made by the Healthcare Education Affordability Reconciliation Act (collectively, the "Healthcare Reform Law") are now part of the federal law applicable to healthcare plans.

The Healthcare Reform Law imposes requirements on new plans that do not apply to plans in existence on March 23, 2010 ("Grandfathered Plans"). In addition, a number of the changes imposed by the Healthcare Reform Act will take effect in 2013 and later years. This summary is therefore focused on the changes which will affect Grandfathered Plans in the next two years. We will continue to analyze and monitor this legislation and will supplement this information as the law is clarified.

Changes which become effective in the next 12 months

Effective for plan years beginning after September 23, 2010 (for calendar year plans this means January 1, 2011), the following changes are applicable:

- **Restrictions on medical expenses which may be reimbursed through cafeteria plans**
  The cost of over-the-counter medicine (other than insulin or a doctor prescribed medicine) may not be reimbursed through a health flexible spending account ("FSA") or a health reimbursement account.

- **Pre-existing condition exclusions with respect to children**
  A group health plan may not impose a pre-existing condition exclusion on children under age 19.

- **Lifetime maximums**
  Group health plans may not establish lifetime limits on the dollar value of the essential benefits for any participant or beneficiary.

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- **Annual benefit limitations**
  There will be restrictions on a plan's ability to impose an annual benefit limitation for certain benefits.

- **Cancellation of coverage**
  A plan may not rescind or cancel coverage except for fraud or a misrepresentation of a material fact.

- **Dependant coverage through age 26**
  Group health plans that provide dependent coverage must allow dependent coverage to continue up to age 26 regardless of marital or student status. A plan may choose to provide coverage to age 26 prior to 2011, and the cost of such coverage will be excluded from the employee's and the dependent's income.

Tax credits for small employers offering health coverage
Effective immediately, a qualified small employer will be entitled to a tax credit for employer contributions which it provides to purchase health insurance for employees. A qualified small business employer is generally one with no more than 25 full-time equivalent employees and whose employees have an average annual full-time equivalent wage rate of no more than $50,000. The amount of the credit is dependent on the number of full-time equivalent employees and the wages paid.

Temporary reimbursement program for employers providing healthcare coverage for retirees
By June 21, 2010, the Department of Health and Human Services is required to establish a temporary program to reimburse employers who provide healthcare coverage for retirees who are over age 55 and are not Medicare eligible. Under the program, reimbursement will be made for 80% of the amount of any claim which is greater than $15,000 and less than $90,000. The maximum funding for this program is $5 billion.

Significant changes which become effective after 2011

- **Restrictions on flexible spending accounts**
  Effective for tax years beginning on or after January 1, 2013, the amount of contributions to health flexible spending accounts will be limited to $2,500 per year indexed for inflation after 2013.

- **Pre-existing condition exclusions.**
  Effective for plan years beginning after 2013, plans may not impose pre-existing condition exclusions on any person.

For additional information, please contact any member of McAfee & Taft's Employee Benefits Practice Group.

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