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## Navigating Through Health Care Reform: Important Information For Employers

On March 30, 2010, President Obama signed into law the Health Care and Education Reconciliation Act of 2010 ("Health Care Act"), which amended the Patient Protection and Affordable Care Act ("Patient Protection Act") that was signed into law only a few days prior on March 23, 2010. The Health Care Act contained provisions proposed by President Obama and requested by various members of Congress after the Patient Protection Act had already been passed by Senate in December 2009. This new law, which was designed to provide coverage to millions of Americans who are uninsured or underinsured, makes broad changes to the nation's health care system, and will have both an immediate and long-term impact on employers and their benefit plans. Below is a brief overview of important aspects of the law which will affect employers in the next year as well as certain other provisions with later effective dates.

### • Grandfathered Health Plans

- Group and individual health plans that were in effect on March 23, 2010, and plans maintained pursuant to a collective bargaining agreement ratified before March 23, 2010, are indefinitely "grandfathered." This means that many requirements of the new health care laws do not apply to these plans but notable exceptions are mentioned below. A plan will remain grandfathered even if family members or new employees are allowed to join. Until further guidance is available, care should be taken if amending plans because changes made to the plan's design may jeopardize its "grandfathered" status.

### • Plan Year Beginning On or After September 23, 2010

- Pre-existing condition exclusions are prohibited for enrollees under the age of 19. This provision applies to all plans, including "grandfathered" plans.
- Plans that offer dependent coverage for children must continue to offer this coverage until the child reaches the age of 26 (regardless of the child's marital status). For plan years beginning before 2014, the plan does not have to make coverage available for a child who is eligible to enroll in a separate employer-sponsored health plan. The plan is not required to make coverage available to the child of a child receiving dependent coverage. This provision applies to all plans, including "grandfathered" plans.
- Lifetime and annual maximums are prohibited, meaning that health plans may not establish lifetime limits on the value of benefits and may only apply "restricted" annual

limitations on the value of essential health benefits. Essential health benefits include, but are not limited to, emergency services, hospitalization, ambulatory patient services, mental health and substance use disorder services, maternity and newborn care, prescription drugs, laboratory services, chronic disease management, and pediatric services. It is expected that regulations will further define "essential health benefits" and the meaning of "restricted" annual limits. This provision applies to all plans, including "grandfathered" plans.

- An enrollee's health care coverage may not be rescinded unless the enrollee commits fraud or makes an intentional misrepresentation of material fact as prohibited by the terms of the plan. In these cases, coverage may not be rescinded without prior notice and in compliance with other requirements. This prohibition applies to all plans, including "grandfathered" plans.
- Health plans are required to provide coverage for preventative services without cost to the enrollees. Preventative services include immunizations, screenings for infants and children, and mammograms. This provision does not apply to "grandfathered" plans.
- Insured health plans must comply with the nondiscrimination provisions of Internal Revenue Code Section 105(h), which previously applied only to self-insured plans. Under these provisions, plans may not discriminate on the basis of salary or health status. This provision does not apply to "grandfathered" plans.
- Plans that provide emergency service benefits must do so without requiring pre-authorization and without imposing different cost-sharing amounts for out-of-network emergency services providers. This provisions does not apply to "grandfathered" plans.
- Over the counter drugs will no longer receive beneficial tax treatment under flexible spending accounts, health reimbursement arrangements, health savings accounts, and Archer medical savings accounts. Only prescribed drugs and insulin will receive beneficial tax treatment. This provision does not apply to "grandfathered" plans.
- Health plans are required to implement internal and external appeals procedures. This provisions does not apply to "grandfathered" plans.

• **Tax Years Beginning After 2010**

- Employers are required to report the aggregate cost of employer-sponsored health coverage on each employee's IRS Form W-2 for the 2011 tax year. This amount will not include salary reduction contributions such as contributions to flexible spending accounts, health savings accounts, or Archer medical savings accounts.
- Annual salary reduction contributions to flexible spending accounts will be limited to \$2,500. This amount may be adjusted for inflation after 2012.

- Small employers with no more than 25 full-time employees that have annual full-time equivalent wages that average no more than \$50,000, will receive a tax credit for contributions to purchase health insurance for employees. The employer may be eligible to receive a credit of up to 35% of the contributions it pays towards the cost of covering its employees; provided that the employer pays at least 50% of premiums for the first three years. This credit increases to 50% after the first three years. There is also a 25% credit for small non-profit organizations.

• **Provisions With Later Effective Dates**

- The deduction for expenses allocable to a Medicare Part D subsidy is eliminated. Employers which provide drug coverage to retirees now receive a Retiree Drug Subsidy under Medicare Part D, which was not included in the employer's gross income but could be deducted by the employer, creating a "donut hole." Beginning in tax years after 2012 and continuing through 2020, this hole will be eliminated.
- Beginning in 2013, large employers with an average of at least 50 full-time employees will be required to offer qualifying health coverage to their employees or pay a monthly penalty in the amount of 1/12th of \$2,000 (\$166.67) per full-time employee, except for the first 30 employees.
- Beginning in 2013, pre-existing condition exclusions will be prohibited altogether.
- No later than January 1, 2014, each state must establish an American Health Benefit Exchange to be operated by a government agency or nonprofit entity that will provide a marketplace through which individuals and small businesses can purchase affordable health insurance plans. These exchanges may be opened to larger employers after 2017.
- For tax years beginning after 2017, insurance companies and self-insured plans will be required to pay a 40% excise tax for certain high-cost employer-sponsored health plans.

This is by no means intended to be an exhaustive list of information that employers need to be aware of regarding the Health Care Act. There are other intricate tax implications involved as well. Therefore, it is important that employers work with their insurance companies and administrators to ensure that the appropriate steps are taken to comply with these changes, and also consult their tax advisors to comply with the reporting requirements.