

# Health Care Reform: What Employers Need to Know and Do!

Walter W. Miller

# Overview

The Patient Protection and Affordable Care Act (PPACA) was signed into law on March 23, 2010

# The Big Picture

- New minimum benefit standards for group health plans - 2011
- Individuals will be responsible for purchasing coverage - 2014
- Larger (50 FTE) employers will be responsible for providing coverage - 2014
- Individuals and small employers can purchase coverage through an Exchange - 2014

# Grandfathered Plans

- Group health plans in effect on March 23, 2010 are exempt from certain of the PPACA provisions
- An insured collectively-bargained plan is grandfathered until the pre-March 23, 2010 CBA expires
  - Self-insured collectively-bargained plans are not eligible for deferred effective date treatment

# Grandfathered Plans

Key provisions from which grandfathered plans are exempt include the following:

- First dollar coverage of preventive care
- Nondiscrimination rules for insured plans
- New claims appeals process
- Certain new reporting obligations

# Grandfathered Plans

A plan's grandfathered status will be lost upon:

- Change in policies or carriers
- Elimination of optional high-cost plan
- Elimination of coverage for any condition
- Increase in co-payments, deductible or out-of-pocket limits in excess of medical inflation
- Any increase in co-insurance percentage
- 5% decrease in employer's contribution rate
- Certain changes to annual limits

# New Minimum Benefit Standards

Generally applicable for plan years beginning on or after September 23, 2010 - January 1, 2011 for calendar year plans

# Coverage of Older Children

Plans that offer dependent coverage must make coverage available for an employee's child through the date the child turns age 26

# Coverage of Older Children

Child status no longer conditioned upon tax dependent status.

A child is eligible for coverage even if the child:

- Is not a full-time student
- Is not a financial dependent of employee
- Does not reside with employee
- Is married

# Coverage of Older Children

- For plan years beginning before January 1, 2014, grandfathered plans can deny coverage of an older child who is eligible for employer-sponsored health plan coverage (other than a parent's plan)
- A plan cannot impose a premium surcharge for the coverage of an older child
- A plan must allow a 30-day enrollment period for newly-eligible children

# 2011 Changes

- No pre-existing condition exclusions or limitations for children under age 19
  - This prohibition will apply to everyone in 2014
- Patient care rights
  - No restrictions on primary care physician selection
  - No restrictions on ob/gyn care

# 2011 Changes

- No lifetime limits on “essential benefits”
- Annual limits on essential benefits cannot be less than the following:

2011	=	\$750,000
2012	=	\$1,250,000
2013	=	\$2,000,000
2014	=	No Limit

# 2011 Changes

- No rescission of coverage
  - “Rescission” means a cancellation that has a retroactive effect
  - May still terminate coverage prospectively
  - Individual must be given advance notice of rescission

# 2011 Open Enrollment Notices

- Grandfathered plan status (if applicable)
- Notice of special enrollment of older children
- Notice to affected individuals of lifting of lifetime limits
- Right to choose any primary care provider or pediatrician (if now restricted)
- Right to ob/gyn care with prior authorization (if now restricted)

# Nondiscrimination Requirements

- Insured plans that do not retain their grandfathered status cannot discriminate in favor of highly-compensated employees (rule already applies to self-insured plans)
- Example of potential discrimination:
  - Immediate entry for salaried, higher-paid employees
  - 90-day waiting period for hourly employees
- Penalty = \$100 per day per individual

# Early Retiree Reinsurance Program

- Temporary program to reimburse costs of providing coverage for retirees 55 and older who are not eligible for Medicare
- Pays 80% of eligible claims between \$15,000 and \$90,000 for a plan year
- \$5 Billion Pool
- 2,000 applications already approved

# Small Employer Tax Credit

# Small Employer Tax Credit

- Eligible small employers can claim a federal tax credit for providing health insurance to employees
- To be eligible for the credit, an employer must:
  - Have fewer than 25 full-time equivalent employees for the year
  - Have average annual wages of less than \$50,000 per FTE

# Small Employer Tax Credit

- The tax credit is available for 2010 through 2013, and then for two consecutive years in which the employer offers a plan through an exchange
- For 2010-2013, the maximum credit is 35% of employer's premium payments (25% for tax-exempt employers)

# Form W-2 Reporting

- Employers will be required to report the aggregate value of employer-sponsored health coverage on employees' Form W-2s
- “Value” based on COBRA rate
- Excludes separately insured dental and vision, and FSA
- Applicable for 2011 (January 2012 W-2)

# Other Reporting Obligations

- Uniform Explanation of Coverage Requirements (Mini-SPD) (by March 23, 2012)
- Annual Quality of Care Reports (non-grandfathered plans) (by March 23, 2012)
- HHS filing, and employee notice, regarding claim and enrollment data (non-grandfathered plans only); guidance to be issued
- Notice to employees regarding Exchanges (by March 1, 2013)
- Filing of “Essential Benefits” reports with IRS (2015)

# Auto Enrollment for Large Employers

- Applies to employers with more than 200 full-time employees
- Automatic enrollment is required for full-time employees only
- Plan can allow employees to opt out
- Will become effective when regulations are issued (2013?)

# FSA Plan Changes

No reimbursement for OTC medicine or drugs without a prescription

- Reimbursement only allowed for medicine or drugs with a prescription (or insulin)
- Applies to expenses incurred after Dec. 31, 2010 (even if not a calendar year plan)

Health FSA Limits - \$2,500 per year

- Effective for 2013

# 2014 – Plan Changes

- No pre-existing condition exclusions or limitations
  - Applies to everyone and all plans
- No waiting periods over 90 days

# 2014 – Individual Responsibility

## Individuals must enroll in coverage or pay a penalty

- Per individual penalty amount = greater of flat dollar amount (1/2 for children) or a percentage of income
  - 2014 = \$95 or 1% (\$50,000 = \$500)
  - 2015 = \$325 or 2% (\$50,000 = \$1,000)
  - 2016 = \$695 or 2.5% (\$50,000 = \$1,250)
  - Amounts indexed for CPI after 2016
- Family penalty capped at 300% of the adult flat dollar penalty
- No penalty if cost of coverage exceeds 8% of household income for the year

# Employees Eligible for Subsidized Coverage

- Individuals with household income between 100% and 400% of the federal poverty level
  - For second year prior to year at issue
  - 400% = between \$43,320 and \$88,200
- Maximum subsidy is 9.5% of household income

# 2014 – Employer Responsibility

- Large employers subject to “Play or Pay” rule
- Applies to employers with 50 or more full-time equivalent (“FTE”) employees in prior calendar year
- Penalties apply if employer either:
  - Does not provide coverage and any FTE gets subsidized coverage through an Exchange; OR
  - Does provide coverage and any FTE still gets subsidized coverage through an Exchange

# Excluded Employees

Employers are not penalized for failing to provide coverage to:

- Part-time employees (average of less than 30 hours per week)
- Seasonal employees
  - No more than 120 days a year
  - Retail holiday season workers

# 2014 – Employer Penalties

- Employers that do not offer coverage:
  - \$2000 per full-time employee
  - Excludes first 30 employees
- Employers that offer coverage:
  - \$3000 for each employee that receives subsidized coverage through an Exchange
  - Capped at \$2000 per full-time employee (excluding first 30 employees)
  - Employer must receive advance notice from Exchange that an employee (unknown) is eligible for subsidized coverage

# 2014 – Health Insurance Vouchers

- Employers must offer a voucher to qualified employees to buy coverage from Exchange
- Voucher is for amount employer would have contributed to plan on behalf of the employee
- Employee is paid excess over Exchange premium
- Qualified employee
  - Household income not more than 400% of federal poverty level
  - Required plan contribution between 8% and 9.8% of income
  - No penalty for employee who receives voucher

# New Taxes to Pay for HCR

- July 1, 2010: Indoor tanning tax
- 2012: “Comparative Effectiveness Research” fee on plans
- 2013:
  - Increased Medicare taxes (0.9%) for high income individuals/families (\$200,000 / \$250,000)
  - 3.8% net investment income tax for high income individuals/families

# 2018 – Cadillac Plan Tax

- 40% excise tax on high-cost health plans
- Based on value of employer-provided health coverage over certain limits
  - \$10,200 for single coverage
  - \$27,500 for family coverage
- To be paid by coverage providers
  - Fully-insured plans = health insurer
  - Self-insured plans / FSAs = plan administrator
- More guidance expected