



# ***Healthcare & Retirement***

*Legislative Updates*

*May 4, 2010*

## Key Health Reform Issues

- *Overview*
- *Health insurance market reforms*
- *Effect on grandfathered plans*
- *Employer and individual mandates*
- *Nondiscrimination requirements for fully insured group health plans*
- *Provisions affecting FSAs, HSAs and HRAs*
- *“Cadillac plan” tax*
- *Industry fees and other “revenue raisers”*

## Overview

- *Health Care Reform legislation (“PPACA”) enacted March 23, 2010; Reconciliation bill enacted March 30, 2010*
- *Beginning 2014, individuals will*
  - √ *Be required to have health care coverage*
  - √ *Be eligible for federal assistance to purchase health coverage, if meet certain criteria*
  - √ *Be able to purchase coverage through a state-run insurance Exchange.*
- *Employer responsibility*
  - √ *Beginning in 2010, small employers (no more than 25 full-time equivalent employees) will be eligible for tax credits for providing health coverage*
  - √ *Beginning in 2014, large employers (50 or more full-time equivalent employees) may be penalized if an employee receives federal assistance to purchase health coverage in an Exchange*

## Overview

- *In the meantime, employer-sponsored coverage, as well as coverage provided by health care insurance companies must conform to a number of benefits and other mandates*
  - √ *New plans must comply with all of the new requirements*
  - √ *“Grandfathered” plans must comply with a number of the new requirements*
- *New nondiscrimination requirements (based on Code Sec. 105(h))*
- *FSA/HSA/HRAs changes beginning as early as 2011*
- *New Taxes and Fees*

## Insurance Market Reform - Grandfathered Plans

- *Grandfathers individual & group coverage in effect on date of enactment.*
  - √ *Allows enrollment of new employees or family members after date of enactment.*
  - √ *No prohibition on making plan changes.*
  
- *Grandfathers collectively bargained plans under CBA ratified before date of enactment until date on which last CBA relating to coverage terminates.*
  
- *Many exceptions (as noted in slides).*

## Insurance Market Reform - 90 Days of Enactment

### ➤ *State High Risk Pool*

- √ *Secretary to establish high risk pool for individuals with pre-existing conditions who do not have creditable coverage.*
- √ *Will run through 1/1/14 (when Exchange is up and running)*

### ➤ *Early Retiree Reinsurance*

- √ *Secretary to establish temporary retiree reinsurance program to reimburse claims of retirees age 55 and older who are not Medicare-eligible. Program would pay 80% of eligible claims.*
- √ *Plan only may use reimbursement to reduce costs (premiums, copayments, out-of-pockets costs, etc.).*

➤ *Annual & Lifetime Limits (insured & self-funded)*

√ *No annual or lifetime limits on “essential” benefits (ok for nonessential benefits).*

√ *Lifetime – applies to new & grandfathered group & individual coverage.*

√ *Annual – applies to new & grandfathered group coverage.*

√ *May have annual limits on certain “restricted” benefits set by Secretary, prior to 1/1/14.*

➤ *No Rescissions (insured & self-funded)*

- *Dependent Coverage to age 26 (insured & self-funded)*
  - √ *Must cover adult child to age 26 (regardless of student status, whether married).*
  - √ *Not required to cover child of adult child dependent.*
  - √ *Prior to 1/1/14, group not required to cover if dependent is eligible to enroll in employer-sponsored coverage.*
  - √ *Secretary to issue regulations to define “dependent.”*
- *No PCE for enrollees under age 19 (insured & self-funded)*
  - √ *Applies to all enrollees as of 1/1/14.*

- *Preventive Health (insured & self-funded)*
  - √ *Must cover preventive health without cost sharing*
- *Nondiscrimination Based on Income (insured)*
  - √ *May not discriminate in favor of highly paid individuals under IRC 105(h) (for insured coverage – already applies to self-funded)*
- *Choice of Providers (insured & self-funded)*
  - √ *Must allow child to designate pediatrician as primary care provider.*
  - √ *May not require authorization or referral for participating OB-GYN.*

➤ *Emergency (insured & self-funded)*

√ *Must cover emergency services without prior authorization and treat as in-network.*

➤ *Appeals & External Review (insured & self-funded)*

√ *Must have internal review process.*

√ *Must have external review that either meets NAIC Uniform External Review Model Act or standards set by Secretary. Secretary may deem external review process in operation on date of enactment as compliant.*

√ *Must provide continued coverage pending outcome of appeals.*

➤ *Summary Documents (insured & self-funded)*

√ *Within 24 months of enactment, must provide summary of benefits using format set by Secretary (including uniform definitions). Secretary to develop standards within 12 months.*

√ *Limited to 4 pages and must state whether provides minimum essential coverage and whether meets 60% actuarial value.*

√ *In addition to ERISA SPD requirements.*

√ *Must provide 60-day prospective notice of plan changes.*

√ *Secretary to issue regulations with standardized definitions (including UCR and emergency).*

## *Insurance Market Reform As of 1/1/14 (Even for Grandfathered Plans)*

- *No Pre-Existing Condition Exclusions (insured & self-funded)*
  - √ *Applies earlier for enrollees under age 19.*
- *Limit on Waiting Periods (insured & self-funded)*
  - √ *Waiting period cannot exceed 90 days.*
- *HIPAA Wellness Reward increased from 20% to 30% (and Secretary has discretion to increase to 50%)*

## *Insurance Market Reform As of 1/1/14 (But Not for Grandfathered Plans)*

- *May not discriminate based on health status (insured & self-funded).*
- *Cost-sharing limits tied to HSA amounts (\$5,000 individual / \$10,000 family) (insured & self-funded).*
- *For small group market, deductible limit is \$2,000 individual / \$4,000 family (insured).*
- *Expanded coverage of clinical trials (may not impose additional conditions) (insured & self-funded).*
- *Must cover “essential benefits” (insured / individual & small group markets only).*

## Employer Mandate

- *Applies to employers who employed an average of at least 50 full-time employees on business days during the preceding calendar year (full-time employee = average of 30 hours per week).*
- *Must pay a penalty if coverage IS NOT offered to full-time employees AND any full-time employee receives premium assistance for Exchange coverage.*
  - √ *\$2,000 annual penalty for each full-time employee (minus the first 30 employees)*
- *Must pay a penalty if coverage IS offered to full-time employees BUT any full-time employee still receives premium assistance.*
  - √ *The lesser of \$3,000 annual penalty for each employee receiving premium assistance OR \$2,000 annual penalty for each full-time employee (minus the first 30 employees)*
- *Effective beginning in 2014.*

## Employer Mandate - Other Provisions

### ➤ Automatic Enrollment

√ *Employers with more than 200 employees that offer coverage must automatically enroll full-time employees in coverage with the opportunity to opt-out.*

### ➤ Notification To Employees Regarding Exchange (by 3/1/13)

### ➤ Cafeteria Plan

√ *Exchange coverage is considered “qualified” under a cafeteria plan only for qualified employers that are permitted to offer a choice of Exchange plans to their employees.*

### ➤ W-2 Reporting

√ *Employers must report, for information purposes, the aggregate cost of employer-sponsored coverage on an employee's W-2 (effective for 2011 W-2, provided by 1/31/12).*

## Employer Mandate –Vouchers

- *Free Choice Voucher: Used by "Qualified Employees" to purchase qualified health plan coverage through the Exchange.*
  - √ *Qualified employees: those whose required contribution for minimum essential coverage through the employer's plan exceeds 8% but is less than 9.8% of the employee's taxable income for the year, whose household income does not exceed 400% FPL and who do not participate in a health plan offered by the employer.*
  - √ *Amount: The most generous amount the employer would have contributed for self-only (or family, if applicable) coverage under the employer's plan.*
- *Employers may deduct the amount paid in vouchers as an amount paid for personal services.*
- *Employees that receive free choice vouchers do not trigger the employer mandate penalty.*

## Individual Mandate –Penalty

- *Individuals are required to maintain "minimum essential coverage" for each month beginning in 2014. Failure to maintain coverage for the entire year will result in a penalty. The monthly penalty is 1/12<sup>th</sup> of the greater of:*
  - √ *For 2014, \$95 per uninsured adult in the household or 1% of household income over the filing threshold,*
  - √ *For 2015, \$325 per uninsured adult in the household or 2% of household income over the filing threshold, and*
  - √ *For 2016 and beyond, \$695 per uninsured adult in the household or 2.5% of household income over the filing threshold.*
- *The penalty will be one-half of the amounts listed above for individuals under 18.*
- *Limits on penalties: (i) flat dollar total capped at 300 percent of the per adult penalty, and (ii) total household penalty capped at the national average annual premium for bronze level health coverage offered through the Exchange.*

## Nondiscrimination Requirements

- *PPACA extends Code sec. 105(h) nondiscrimination requirements to insured group health plans, effective for plan years beginning 6 months from enactment (2011 for calendar year plans)*
- *Does not apply to grandfathered plans*
- *105(h) requirements include complex eligibility tests and benefits tests*
- *Under 105(h), violations result in taxation of some or all benefits to HCLs*
- *PPACA amendment is to PHSA, with conforming amendments to Code and ERISA*
- *Appears tax consequence of violations is HIPAA group health plan \$100/day excise tax, not taxation of benefits*

## Changes Affecting FSAs, HRAs, HSAs

- *Employee salary reduction contributions under cafeteria plan to health FSA limited to \$2,500*
  - √ *Effective in 2013*
  - √ *Limit indexed to CPI-U*
- *Restrictions on the reimbursement of over-the-counter (OTC) drugs from FSAs, HRAs, HSAs, or other employer-provided health coverage*
  - √ *Exception for prescribed OTC drugs*
  - √ *Effective in 2011*
- *Increase in additional tax on distributions from HSAs not used for qualifying medical expenses from 10% to 20%*
  - √ *Effective in 2011*

## *“Cadillac Plan” Tax*

➤ *40% excise tax on health insurers, employers and/or persons administering self-insured plans on amounts in excess of high cost health plan limits*

√ *High cost = \$10,200/single; \$27,500/family (increased by a “health cost adjustment percentage”)*

- *Tax imposed on amounts in excess of limit*
- *Limits indexed based on CPI-U (not medical inflation)*
- *Higher limits for “qualified retirees” and “high risk” professions*
- *Limits may be increased by age and gender characteristics*

√ *Effective in 2018*

√ *Applies to insured and self-insured health plans*

## *“Cadillac Plan” Tax*

➤ *40% excise tax on high cost plans (continued)*

√ *Includes employee-paid portion*

√ *Tax imposed on insurer, employer, or person administering plan benefits*

— *Unclear who is administering self-insured plan benefits*

√ *Employer required to calculate excess benefit amounts and allocable share of each provider and notify provider and IRS*

√ *FSAs, HSAs, HRAs are included (dental, vision, LTC, accident/disability, and fixed indemnity plans paid with after tax-dollars are excluded)*

## Health Care Company Fees

- *New fees on health care companies*
  - √ *Pharmaceutical manufacturing companies*
  - √ *Medical device manufacturers*
  - √ *Health insurance companies (certain nonprofits exempted)*
- *Fee is allocated based on market share*
  - √ *Fee expected to be passed on to consumers as higher health care costs*

## Key Retirement Issues

- *Enhanced 401(k) fee disclosure*
- *“Roth” Provisions*
- *Qualified plan nondiscrimination issues*
- *Efforts to increase lifetime income payments from 401(k) plans*
- *President Obama’s retirement proposals*

## Enhanced 401(k) Fee Disclosure

- *DOL regulations to be issued soon*
  - √ *Service provider fee disclosure regulations at OMB*
  - √ *Participant fee disclosure regulations later this year*
- *Education and Labor Committee approved Chairman Miller's legislation last June*
  - √ *Requires administrators of 401(k) plans to receive written disclosure statement from service providers, with breakout of fees into 4 categories*
  - √ *Requires advance participant notice of investment options and fees, quarterly benefit statement information*
  - √ *Amends ERISA section 404(c) to require at least one index fund*
  - √ *Included "Conflict Investment Advice Prohibition Act"*

- *Alternative legislation introduced by Rep. Neal*
  - √ *Possible that Ways and Means Committee may consider as part of pension funding relief legislation*
  - √ *Indications that Committee may want to wait for DOL regulations*
- *Very little interest in 401(k) fee disclosure legislation in Senate*

## *“Roth” Provisions*

- *Senate-passed tax extenders/pension funding bill includes two “Roth” provisions*
  
- *Roth 401(k) and Roth 403(b) conversions*
  - √ *Only otherwise distributable amounts*
  - √ *Amounts includable in income from 2010 conversions may be included ratably in 2011 and 2012*
  
- *Governmental Roth 457(b) plans*

## Qualified Plan Nondiscrimination Rules

- *Far-reaching changes introduced by Rep. Doggett (H.R. 4126)*
- *Being considered as part of House pension funding relief legislation*
- *Legislation may focus on treatment of part-time employees*

## *Efforts to Increase 401(k) Plan Lifetime Income Payments*

- *Obama administration RFI*
- *Sen. Bingaman “Lifetime Income Disclosure Act”*
- *Other possible proposals*
  - √ *Tax incentives*
  - √ *QJSA requirements*

## *President Obama's Proposal on Automatic Payroll Deduction IRAs*

- *Require employers with 10 or more employees to offer payroll deduction IRA (if not otherwise offering employees a retirement plan)*
- *Automatic enrollment at 3 percent default contribution rate*
- *Employers could transfer contributions to single private-sector provider, allow participant choice of provider, or transfer to default vehicle specified by statute*
- *Tax credit of up to \$250 for first 2 years*

## *President Obama's Proposal on Expansion of Saver's Credit*

- *Make credit refundable, direct match to account*
- *Eliminate AGI "cliffs" and raise overall AGI limits to \$65,000 for families*
- *50 percent credit on first \$1,000 of contributions*

## *Implications of President's Retirement Proposals*

- *Legislation imposing low-cost, default investments or investment or fee limitations could be expanded to all 401(k)-type plans*
- *JCT has scored proposals as costing approximately \$60 billion / 10 years*
- *Given projected budget deficits, likely that cut-backs in existing "tax preferences" would be used as revenue offsets*
- *Could be considered as part of tax reform legislation*

*Questions?*



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