LEGAL UPDATES

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Impact of Health Care Reform on Employers and Employer-Sponsored Health Plans

Service

Employee Benefits & Executive Compensation

Professionals

ALAN H. KANDEL
ST. LOUIS:
314.345.6463
ALAN.KANDEL@
HUSCHBLACKWELL.COM

CRAIG A. KOVARIK
KANSAS CITY:
816.983.8249
CRAIG.KOVARIK@
HUSCHBLACKWELL.COM

MARK D. WELKER
KANSAS CITY:
816.983.8148
MARK.WELKER@
HUSCHBLACKWELL.COM

On March 23, 2010, President Obama signed into law the Patient Protection and Affordable Care Act (PPACA) creating comprehensive health care reform. On March 30, 2010, President Obama signed into law the Health Care and Education Reconciliation Act of 2010 (Reconciliation Act). Together, the PPACA and the Reconciliation Act (Reforms) will have a significant impact on employer-sponsored health plans, both fully insured and self-insured plans.

However, the bulk of the Reforms will not be effective until 2014. Many changes will take effect before 2014, including some that could impact enrollment during 2010.

Grandfathered Plans

The legislation provides broad relief from many Reforms for "grandfathered" group health plans. To be grandfathered, a plan must have been in effect on March 23, 2010. Health insurance coverage provided pursuant to a collective bargaining agreement ratified prior to March 23, 2010, is grandfathered until the date the last collective bargaining agreement relating to coverage terminates. It appears that all other grandfathered plans will remain grandfathered indefinitely until terminated. The grandfather rule is not limited to individuals enrolled in a plan on March 23, 2010, but rather is extended to all new employees and their families who may become covered under the grandfathered plan and new family members of employees covered by the grandfathered plan on March 23, 2010. At this point, it is not clear what actions must be avoided to retain grandfathered status, and employers are cautioned not to make any major changes to their plan designs pending issuance of future regulations or other guidance.

Provisions Applicable to ALL Plans Through 2012 (including Grandfathered Plans)
Effective for plan years beginning on and after September 23, 2010 (January 1, 2011, for calendar year plans):

No lifetime dollar caps or annual dollar caps on essential benefits will be permitted (all dollar caps will be prohibited beginning in 2014 and regulations may permit some annual limits prior to then).

Coverage must be offered to adult children up to age 26 (regardless of the child's marital, student or tax-dependent status); however, a plan need not offer this coverage prior to 2014 if the adult child is eligible for other employer-sponsored health plan coverage.

No pre-existing conditions limitations may be imposed on dependents who are younger than age 19 (this rule will apply to all employees and dependents beginning in 2014).

Health plan coverage may not be rescinded except due to fraud or misrepresentation.

Effective beginning in 2012:

Plans must provide new summaries of benefits in addition to the ERISA summary plan description requirements. Health and Human Services (HHS) will set standards by March 23, 2011.

Plans must provide 60-day prospective notice of plan changes.

Plans must comply with regulations standardizing certain definitions applicable to coverage.

Provisions Applicable to Non-Grandfathered Plans Through 2012
In addition to the changes described above, a plan that is not "grandfathered" is subject to additional requirements for plan years beginning on and after September 23, 2010 (January 1, 2011, for calendar year plans).

Plans must provide coverage with no cost-sharing for certain preventive care and certain immunizations.

Plans must provide to HHS, the applicable state insurance commissioner and the public information regarding claims payment policies and data, financial disclosures, enrollment (and disenrollment) data, data on rating policies, information on cost-sharing and payments with respect to out-of-network coverage, information on certain participants' rights, and other information as required by HHS.

The nondiscrimination rules that were previously applicable only to self-insured health plans are extended to non-grandfathered fully insured health plans. This requirement will include both eligibility and benefits tests. A $100-per-day excise tax penalty will likely replace the current tax consequences for non-compliance.

Plans must report annually to HHS and to enrollees regarding benefits under the plan that improve health and wellness and health promotion activities. HHS is required to develop reporting standards on or before March 23, 2012.

Plans must allow a child to designate a pediatrician as a primary care provider and may not require authorization or referral for participating OB-GYNs.

Plans must cover emergency services without prior authorization and treat as in-network coverage.

Plans must have an internal review process and an external review that meets the National Association of Insurance Commissioners (NAIC) Uniform External Review Model Act or other standards set by HHS, and must provide continued coverage pending the outcome of appeals.

Additional Provisions Applicable Prior to 2014

Federal reinsurance will be available for a portion of claims incurred by early retirees between ages 55 and 65 (and their dependents) who are not eligible for Medicare. If an individual's claims exceed $15,000, the employer/plan can apply for reimbursement of 80 percent of the costs between $15,000 and $90,000. A limited pool of federal dollars will be available for this program, so employers/plans that provide coverage to early retirees will want to apply as soon as possible. HHS is directed to issue instructions for applying within 90 days. This program is available only until 2014.

Beginning in 2011, employers will be required to report the value of each employee's health coverage on Form W-2. This amount will not be included in income, but will be separately reported.

Beginning in 2013, employers will be required to notify plan participants regarding the state insurance exchanges.

Beginning in 2013, the tax deduction for the employer subsidy for maintaining prescription drug plans for Medicare Part D-eligible early retirements is repealed. This will result in the loss of the employer deduction to the extent of the employer subsidy and may result in accounting implications.

Health Flexible Spending Accounts, Health Reimbursement Accounts and Health Savings Accounts:

Effective in 2011, over-the-counter drugs may not be reimbursed from FSAs, HRAs and HSAs without a prescription.

Effective in 2011, the additional tax on HSA distributions that are not used for qualifying health expenses will increase from 10 to 20 percent of the distribution.

The employer obligation to report the value of employer-sponsored health benefits effective in 2011 includes FSA, HRA and HSA benefits.

Effective in 2013, employee contributions to FSAs will be limited to $2,500 annually.

Many additional provisions are effective in 2014 that are applicable to employers of 50 or more employees. In addition, many provisions of the PPACA and Reconciliation Act that apply to individuals and insurers are effective in 2014. Separate information will be provided about these obligations at a later date.

What this means to you: Employers with grandfathered plans should now begin considering design changes that will be effective January 1, 2011, for calendar year plans. Employers also should consider the employer mandates with effective dates prior to 2014. Employers considering adopting new health plans have many additional legal obligations to consider. Due to the comprehensive nature of the Reforms, it is important to consider that additional guidance will continue to be issued and may modify initial interpretations of the legislation.

Contact Info

If you have any questions about this or any other employee benefits and executive compensation matter, please contact your Husch Blackwell Sanders attorney.

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