

REFORM *Update*

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The Health Care Reform Acts will affect employers and individuals across the country. A number of requirements may not affect employers directly, but do impact our country as a whole. This update focuses on the most immediate changes from **The Patient Protection and Affordable Health Care Act** and the **Health Care and Education Reconciliation Act of 2010**.

The most immediate changes become effective either later this year or next year, and they include:

- National High Risk Pool
- Temporary Retiree Reinsurance Program
- Small Business Tax Credits
- Changes to Tax-Favored Status of Over the Counter Medications
- Key Mandated Benefit Requirements for Health Plans

The summary below provides an overview of the provisions as described in the two health reform acts. Employers will need to become familiar with the changes as they may impact their business. However, it will be many months before detailed regulations are released and finalized that clarify exactly when and how to comply – because of this, any summary of the new laws may create as many questions as answers. We will be monitoring the situation and providing additional guidance as it is released.

National High Risk Pool

The Health Care Reform Acts require the Federal government to set up a temporary high risk pool within 90 days of legislation being signed and provide five billion dollars to fund claims and administration. The pool expires January 1, 2014 and assumes pool participants will be transferred to health plan options offered through the newly created Exchange (Exchanges will be covered in a future McGrawWentworth *Reform Update*).

High risk pools offer coverage to individuals not able to secure individual insurance coverage due to pre-existing conditions. Currently, 35 states already have some form of high risk pool to provide coverage to uninsurable individuals. The state pools are partially funded through contributions by insurance carriers doing business in the state. Most states hire an insurance carrier to administer benefits for the pool. In many states, the high risk pools have high premiums and pre-existing condition limitations.

The new Federal high risk pool is designed to provide an immediate coverage option for individuals who currently can't secure coverage through an insurer, state high risk pool, or employer health plan. The minimum coverage level would pay 65% of the cost of eligible expenses. To be eligible, individuals must be U.S. citizens that did not have insurance coverage on the date reform passed, did

not have insurance for 6 months preceding an application for coverage, and do have a pre-existing condition which affects ability to secure coverage.

The Reform Act includes sanctions on employers or insurance carriers that encourage individuals to leave their coverage and apply for coverage with the national high risk pool. More details on the high risk pool will be forthcoming; the government is currently scrambling to establish the pool.

Temporary Retiree Reinsurance Program

The Health Care Reform Acts require the Federal government to establish a “temporary retiree reinsurance program” within 90 days of the health care reform bills being signed and provides five billion dollars to fund claims and administration. The temporary reinsurance program will expire on January 1, 2014.

The program only applies to employers that offer retiree health plan coverage to early retirees, including eligible spouses, surviving spouses, eligible dependents and so on.

Key elements of the reinsurance program include:

- Only for employment-based group health plans (includes public employers)
- Only for early retirees - individuals age 55 and older, not eligible for Medicare, not active employees of an employer maintaining a health plan
- Employer’s retiree health plan must include programs and procedures to generate cost-savings with respect to participants with chronic and high-cost conditions
- Claims are submitted to the government and the program reimburses the employer retrospectively for 80% of claims between \$15,000 and \$90,000 in a year (amounts will be annually indexed)
- Reimbursements must be used to lower plan cost (not be treated as general revenues)
- Reimbursements should not be included in the gross income of the employer

Employers that sponsor retiree health plans could benefit from this reinsurance program. The program will include an application process that is currently under development, but not many details were included in these reform laws. The government has the ability to limit the number of applications that are approved. Keep an eye out for additional details regarding this reinsurance program.

Small Business Tax Credits

The Health Care Reform Acts offer small business tax credits to assist small employers in purchasing health coverage retroactive to the beginning of the 2010 tax year. Tax credits will only apply to businesses with fewer than 25 full-time employees; part-time employees will be converted to full-time equivalents to determine the 25 employee threshold.

To be eligible, employers must provide “qualifying health plan coverage” and pay average annual wages under \$50,000. Qualifying employers will receive a tax credit of 50% of premium for up to two years, providing the employer pays at least 50% of the cost of coverage.

Coverage not eligible for tax credit status is that provided to seasonal employees, self employed individuals, and other similar employees. Health Care Reform requires the government to issue administrative rules for these tax credits, more details will be forthcoming.

Changes to Tax-Favored Status of Over the Counter Medications

The Health Care Reform Acts eliminate over the counter medications as a tax-favored expense when paid by an HSA (Health Savings Account), an Archer MSA (Medical Savings Account), a health FSA (Flexible Spending Arrangement), an HRA (Health Reimbursement Arrangement) or an employer-sponsored health plan.

The actual statute language states an allowable expense is the amount paid for medicine or a drug only if it is a “prescribed” drug (determined without regard to whether such a drug is available without a prescription).

This change is effective for taxable years beginning after December 31, 2010. For most employers, it will affect health plans as of January 1, 2011.

Key Mandated Benefit Requirements for Health Plans

The Health Care Reform Acts include new mandated benefits that health insurers and employer group health plans must adopt effective on the first day of the first plan year following September 23, 2010.

These provisions are explicitly excluded from grandfathering protections.

- ***Lifetime benefit limits prohibited:*** No lifetime limits on dollar value of benefits permitted.
- ***Coverage rescissions prohibited:*** Coverage rescissions explicitly prohibited on all health plans, but provision does allow plans to rescind coverage if the participant commits fraud.
- ***Pre-existing condition limitation prohibited for dependent child(ren) under age 19:*** This rule will be expanded to all plan participants as of 2014.
- ***Restrictions on specific annual benefit limits:*** “Unreasonable” annual dollar benefit limits not permitted. Not too much detail included and some annual dollar limits are permitted (by 2014 annual benefit limits appear to only be permitted for non-essential type benefits).
- ***Dependent coverage must be extended to age 26:*** So far, parameters include:
 - ▶ Plans must extend coverage to dependent children until age 26
 - ▶ Child can be married or unmarried
 - ▶ Income tax exclusion for health care benefits will apply to dependents up to age 26
 - ▶ No requirement that dependent meet dependent criteria in IRC Section 152 (child may not even have to live with you)
 - ▶ “Grandfathered groups” can limit this to dependents that do not have another source of employer-sponsored health coverage until 2014

As noted earlier, this summary may raise more questions than answers as the Health Care Reform Acts do not provide enough detail for many employers to implement many of the changes. Additional administrative guidance is anticipated that should provide clarifications to allow employers to implement the requirements properly.

Coming up in the next McGraw Wentworth *Reform Update*, we will address additional provisions affecting group health plans as of the first day of the first plan year following September 23, 2010, W-2 reporting, and new non-discrimination rules.

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