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HEALTH CARE REFORM

Eye on Washington

NEW UPDATE  
NOVEMBER 16TH

## HEALTH CARE REFORM: A YEAR IN REVIEW AND WHAT IS ON THE HORIZON

Some regard September 23, 2010 as the “birthday” of the Patient Protection and Affordable Care Act (PPACA or ACA) as it is when some of the significant provisions first took effect. Several elements of the law became effective in 2011, and many other changes are on the horizon as both the law and related regulations continue to phase in between now and 2018.

This article summarizes the provisions that have become law during this first year of Health Care Reform. Popular wisdom is that the future of this law will be decided in the Supreme Court. However, many of the provisions are already in effect, and whether or not the law survives in its entirety many of the provisions are likely to remain in place.

Some provisions already in effect include the following:

- Extending coverage for children to age 26
- Prohibiting annual and lifetime maximum benefits
- Providing certain free preventive care services
- Removing pre-existing condition exclusions for children under age 19
- Issuing a variety of required notices
- Disallowing questions about firearms in Wellness Programs
- Adoption credits
- Elimination of the Medicare Part D “Donut Hole”
- Prohibiting health care coverage rescission (except in the case of fraud)

Some of these provisions affect employers directly and others indirectly – most often through health carriers.

### CURRENT HOT TOPICS

#### *New Employee Communication Requirements*

By March 23, 2012, all health plans (whether grandfathered or not) will need to provide employees with a Uniform Explanation of Coverage. This easy-to-understand summary of health benefits is called a Summary of Benefits and Coverage (SBC). The summary will offer all covered employees a consistently formatted health benefit summary that meets certain federal standards. Employees must receive this document at both initial enrollment and every year thereafter at annual enrollment time.

On August 17, 2011, the U.S. Treasury Department, Department of Labor (DOL) and Department of Health and Human Services (HHS) (“the departments”) jointly released proposed requirements. Both documents solicit general and specific comments on the guidance, including implementation issues and comments on whether the statutory due date of March 23, 2012 should be modified.



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In general, the summary must be no more than 4 pages long (two-sided), must use 12-point font for reading ease and must present certain facts about the health plan using language that is understandable by the average enrollee at the time of annual enrollment.

Keep in mind that a Uniform Explanation of Coverage is not the same thing as a Summary Plan Description (SPD) or a Summary of Material Modification (SMM). Employers will need to ensure that employees receive all of these important benefit documents when they are required.

### *State Tax Update for Over-Age Child Coverage*

The PPACA established that employees won't have to pay federal income taxes on the value of health care coverage provided to children up to the end of the calendar year in which the child reaches age 26. When the law was passed, many states automatically followed the federal guidelines to ensure that employees are not taxed by the state on the value of this extended coverage\*. States that do not impose state income tax aren't affected.

*\*Alabama, Colorado, Connecticut, Delaware, Illinois, Kansas, Louisiana, Maryland, Michigan, Missouri, Montana, Nebraska, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Utah and the District of Columbia.*

In 2011, several other states modified their laws to be consistent with the Internal Revenue Code on this issue. Examples of these states include:

STATES	
• Arizona	• California
• Georgia	• Hawaii
• Indiana	• Iowa
• Kentucky	• Maine
• Massachusetts	• Minnesota
• Oregon	• South Carolina
• Vermont	• Virginia
• Wisconsin	

### **Update**

**On November 4, Wisconsin became the most recent state to enact conforming legislation. Governor Walker signed SB 203, which brings state income tax treatment of employer-provided health insurance benefits for adult children into conformity with federal law. The law is retroactive to January 1, 2011.**

To add even more complexity, some states require coverage for children older than age 26. For example, in New York, coverage is required to be offered up to age 30, in New Jersey up to age 31, and in Ohio up to age 28. Other states with over-age-26 coverage rules include Florida, Illinois, Nebraska, Pennsylvania and Wisconsin. In these states, coverage provided to over-age dependents may be taxable at the state level and will be taxable by the federal government. Some states, however, have not yet taken a formal position on the taxation of these benefits at the state level. These include Arkansas, Idaho, Massachusetts, Mississippi, New Jersey and West Virginia.



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The state tax picture is still complex and evolving. More changes can be expected as legislatures address health care reform in their states. We also encourage you to consult with your attorney or tax adviser for the latest information.

### *New W-2 Requirements Still to Come*

While the PPACA still requires that most employers report the value of employee health benefits on the Form W-2, the time frames for initiating this process have been delayed. No health benefits information is required to be reported for tax year 2011, as had been originally mandated. The reporting of such information is currently optional. Large employers who filed more than 250 Forms W-2 in the previous tax year must report this information on the Form W-2 for the 2012 tax year (due in January 2013), and employers with less than 250 employees are not mandated to report this information, pending further guidance from the IRS.

ADP payroll systems have been updated so that the required health information can be reported on the Form W-2 beginning with tax year 2012, in compliance with the law. It's important to remember that this addition to the W-2 is for informational purposes only – employees aren't taxed on the amounts reported.

### **JUDICIAL CHALLENGES**

On August 12, 2011, the U.S. Court of Appeals for the Eleventh Circuit struck down a key provision of the federal health reform law, but did not rule the entire statute unconstitutional. The court held that Congress exceeded its powers under the U.S. Constitution's Commerce clause when it enacted the individual mandate. However, the

Court declared the mandate severable from the remainder of the PPACA, meaning that the remaining provisions of the PPACA could remain effective. The Court determined that in invalidating the entire PPACA, the U.S. District Court for the Northern District of Florida placed too much weight on the fact that the PPACA does not contain a severability clause. The Court determined that the proper test to consider was whether Congress could have enacted the statute in the absence of the individual mandate provision. The Court determined that the PPACA could have been enacted without the individual mandate.

### **Update**

**On November 14, the Supreme Court granted review of the Eleventh Circuit decision. The Supreme Court has indicated that it will review four key issues: (1) whether the individual mandate which requires individuals to purchase health insurance beginning in 2014 is constitutional; (2) whether the individual mandate provision is severable from the law without invalidating the entire law; (3) whether the legal arguments brought against the individual mandate are premature under the Anti-Injunction Act due to the fact that the mandate is not effective until 2014; and (4) whether the Medicaid expansion provisions are lawful. Oral arguments are expected to occur in February or March of 2012 and a ruling is now expected by the end of June, 2012.**



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### ON THE HORIZON

In 2013 the Medicare tax rate will increase from 1.45 percent to 2.35 percent on high wage earners (defined as an annual income of \$200,000 for individuals and \$250,000 for joint filers and \$125,000 for married individuals filing separately). The increase applies only to the employee portion of the FICA tax, though the employer is responsible for withholding and reporting. There are penalties to the employer for failure to withhold the tax. Employers should be mindful that the law requires withholding the required amount for all workers with wages exceeding \$200,000/year regardless of information contained on the W-4. Reconciliation of over-or-under withholding is accomplished with filing of the employee's tax return.

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