

HEALTHCARE REFORM: HERE'S WHAT YOU NEED TO KNOW FOR 2011

Insights

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There's a lot of information about the new health care reform acts on the Internet and in the news – much of it vague, some of it incorrect, and most of it overwhelming. The acts are very complex, of course, which is reflected in the reports. While several of the changes will be effective in 2011, most of the changes in the law won't take effect until 2014. The provisions with delayed effective dates will be clarified in future regulations and some of the provisions may be changed or repealed before they become effective. We'll report on those aspects of the law in future legal alerts. For now, here's what you need to know.

The new law applies fewer requirements to employer-sponsored health plans that were in existence on March 23, 2010 ("grandfathered plans") than it does to new health plans. Most of you reading this probably have grandfathered plans, so this Alert focuses on the changes that will soon have an impact on your health plan. Most of the changes described below apply to the plan year that begins on or after September 23, 2010 – six months after the date of enactment of the new law. If you maintain a calendar year plan, the changes become effective January 1, 2011. If your health plan year begins in October, November or December, the new rules apply to your plan year beginning in 2010.

No Lifetime Limit

Most plans have a maximum lifetime limit on the amount that will be paid during the life of a covered individual. This limit will have to be removed for "essential benefits." Essential benefits are those for ambulatory care, emergency services, hospitalization, maternity and newborn care, mental health and substance use disorder services (including behavioral health treatment), prescription drugs, rehabilitative service and devices, laboratory services, preventive and wellness services, chronic disease management and pediatric services.

The definition of essential services will not be left up to the insurer or self-insured group health plan, but will be prescribed by Health and Human Services (HHS) based on the scope of benefits provided by a typical employer plan.

Restricted Annual Limits

Restricted annual limits will be set on essential benefits by HHS for health plan year beginning before January 1, 2014. For plan years beginning on and after January 1, 2014, annual limits are generally prohibited.

Extension Of Coverage To Adult Children Under Age 26

Health plan coverage must be extended to the child of an employee until the child reaches age 26 if the plan provides coverage for dependents. Most plans do, so enrollment for your next plan year will have to advise employees that they can enroll their adult children who are under age 26 even if those children do not meet the IRS definition of a dependent and even if the children have other jobs, are married or do not reside with the employee. The only exception is a child who is eligible to enroll in coverage under another employer's health plan.

This provision does not include the child of a child. Clarification of this change should be coming because the statute provides that regulations will define the dependents to whom this extension of coverage is applicable.

Pre-existing Condition Limitations Do Not Apply To Children Under Age 19

A health plan will no longer be able to apply an exclusion for a pre-existing condition to a child age 18 or younger. For health plan years beginning on or after January 1, 2014, pre-existing limitations will not apply to any individual. Between enactment and 2014, the government will create a high risk national health insurance pool to cover most individuals who are uninsured for at least six months and have a pre-existing condition.

Limitations on Rescinding Coverage

Coverage extended to an individual enrolled in a health plan can be rescinded only because of fraud or intentional misrepresentation of a material fact. If you are going to rescind an enrollee's coverage for one of these reasons, you must give the individual advance notice as provided under the Public Health Service Act.

New Summary of Benefits and Coverage

HHS is mandated to set uniform standards by March 22, 2011 for employers so they can prepare a summary of benefits and coverage and provide it to applicants and enrollees no later than March 22, 2012. The summary is to describe essential information about the health plan in a uniform format that does not exceed four pages using uniform terminology. In addition, if an employer makes a material modification to the terms or coverage of a health plan that is not reflected in the

most recent summary, enrollees must be given 60 days' advance notice of the change.

Automatic Enrollment

If you have at least 200 full-time employees, you will have to begin automatically enrolling new full-time employees in your health plan in the lowest cost option. Employees must receive notice of the automatic enrollment and will have to be able to opt out of coverage. It appears that this requirement will take effect in accordance with Department of Labor regulations.

Flexible Spending Arrangements (FSAs)

The rules that apply to FSAs under a cafeteria plan have changed for 2011. Over-the-counter drugs can be reimbursed or paid directly under an FSA only if the individual has a doctor's prescription for the medication. Beginning in 2013, payroll deductions to an FSA are limited to \$2500 per calendar year.

Note that, while this Alert is directed to outlining the new requirements for grandfathered plans, it isn't clear whether or under what circumstances a grandfathered plan could lose its grandfathered status, and become subject to additional requirements. This issue should be addressed in regulations.

We are at the beginning of a new phase of regulatory compliance and government oversight of employer-sponsored health plans. Fisher Phillips is committed to assisting you in meeting your legal obligations in the most efficient and cost-effective manner. Please contact any member of our Benefits Practice Group if you have questions about this Alert or the new law.

This Legal Alert provides information about certain aspects of a complex new federal law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.