

EMPLOYER NOTES RE HEALTH CARE LAW
Prepared by PA Association of Health Underwriters May 2011

SUMMARY The Patient Protection and Affordable Health Care Act is a complex product encompassing too many moving parts to list in a brief presentation. There are a significant number of items affecting employers of all sizes and some specifically affecting smaller and larger employers.

ALL EMPLOYERS

- Nursing mothers accommodations by businesses effective 3/23/2010. Requires “reasonable” time in a private area free from intrusion and must not be company washroom.
- Grandfathering 3/23/10; Rules published in Federal Register June 17, 2010
REVISED NOVEMBER 2010 TO ALLOW EMPLOYERS TO CHANGE INSURANCE COMPANIES
- Notification to employees re grandfathering after 9/23/10
- Dependent up to age 26 effective at first plan renewal after 9/23/10 unless open enrollment earlier or until next collective bargaining agreement; IRS issued tax guidance through age 27
- Lifetime benefit caps ended on all plans 9/23/10; phase-out of annual limits for grandfathered plans to 2014 HHS PROVIDES MINI-MED WAIVERS (see below)
- No insurance policy rescissions 9/23/10
- No health plan discrimination for highly compensated individuals unless grandfathered (105h) IRS PUT THIS ON HOLD PER NOTICE 2011-1
- HHS has backed off somewhat re limited medical benefit plans 9/2010 (also known as mini-Meds) after pressure came from employers particularly in the food industry. Businesses may seek a one-year waiver from the law’s provisions that basically make mini-Med plans illegal.
- Health Savings Account/HRAs/Flexible Spending Accounts prohibition on over the counter drugs unless prescription; Penalties increased to 20% Effective 1/1/2011 (IRS Notice 2010-23) FSA limit contribution for medical expenses to \$2,500 effective 1/1/13; HRA deductions limited in 2014
- CLASS Act employer benefit (payroll deduction long-term care program) 1/1/11 although rules will not be available until 2012
- Aggregate value of health plans on W-2s (calendar 2011 to employees is now voluntary for 2011 with DELAY FOR FIRMS UNDER 250 EEs UNTIL 2014 per Notice 2011-28)
- 1099 forms for ALL business contract relationships (calendar 2011; to vendors 2012) REPEALED PER HR 4 SIGNED INTO LAW APRIL 15, 2011
- Summary of Benefits using HHS format (4-page, 12-point type, “culturally linguistically appropriate manner”) given by employers 3/2012; HHS RELEASED DRAFT March 2011.
- \$2.00 per enrollee tax to fund Patient Centered Outcome Research after 9/30/12
- No pre-existing conditions (medical underwriting prohibited); criteria for rates may include smoking, age, family composition, geographic regions; Eff. 1/1/14
- Employer Mandates for employers with 50 EE plus and \$2,000 per employee fine for not offering a health plan and \$3,000 per employee after first 30 employees

- receiving a premium tax credit and paying more than 9.5% of household income as their premium share; Effective 1/1/14
- Free Choice Vouchers 1/1/14 for each employee who must contribute 8 and 9.8% of household income used to purchase coverage from Exchanges
- Minimum Essential Benefits for all plans 1/1/14 DEPT. OF LABOR ISSUED ITS VIEW MARCH 2011 WITH HHS PROMISING A COMMENT PERIOD LATER THIS YEAR
- Medicaid expansion to 133% Federal Poverty Level 1/1/2014; State Premium Assistance Programs
- 40% Excise Tax for so-called Cadillac Plans (aggregate values exceeding \$10,200 for individual and \$27,500 for families; includes Health Savings Accounts, employer contribution and reimbursements for HRAs and FSAs. NOTE: Does not include dental, vision, disability, long-term care, after tax indemnity and specific disease coverage; Effective 1/1/18
- No waiting period longer than 90 days

SMALL EMPLOYER

- 35% Small Business Health Insurance Premium Tax Credit effective beginning tax year 2010 (25% for non-profits) Explanation IRS Notice 2010-44
- Wellness Grant Program for under 100 EE was supposed to start 10/1/10 but details not released; HIPAA wellness program incentives expanded to 30% of premiums effective 1/1/14
- Benefit changes effective 9/23/10 on health plans (unless grandfathered)
- Cafeteria Plan Safe Harbor for small employers to simplify cafeteria (100 or fewer employees) 1/2011
- Annual reports to HHS on whether or plan health plan complies with specified components; to be posted on Internet; non-compliance penalties; effective 3/2012
- Small group size redefined as 1-100 employees effective 1/2014 but states may elect to reduce size of small to 50 for plan years prior to 2016
- Employer mandate exempts under 50 EE firms from offering health insurance but firms with over 50 employees pay fines (1/2014)
- State Exchanges operational 1/1/14 along with multi-state Exchanges and CO-OP (non-profit) plans; State may chose to let large groups of over 100 EE purchase coverage in the Exchanges 1/1/17. States must show progress by 1/1/2013 or HHS will take it over. Framework of Exchanges are decided by the state legislature.

LARGE EMPLOYER

- Elimination of employer deductibility of Medicare Part D subsidy of Donut Hole (effective 2013 but FAS 109 accounting rule showing charge against 2010 and 2011 earnings)
- 250 plus EE employer tax credit if firm invests in acute & chronic disease research for 2009 and 2010
- Medical Loss Ratio of 85% for groups 100 EE plus; Effective 9/23/10
- Early Retiree Reinsurance Program reimburses employers retrospectively for 80% of claims between \$15-90,000 after a \$15,000 threshold; started 2010, ends 2014; NO NEW APPLICATIONS TAKEN MAY 2011
- Two studies of Insurance Reforms on Large Groups and ERISA Plans 3/23/11

- Auto-enrollment of new employees in group plans with 200-plus employees 1/1/14
- Self-funded plans would be required to report coverage status data on all plan participants to the IRS annually as part of the Individual Mandate; Effective 2014

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