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# **Legislative Update on The Implementation Of Health Reform**

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# The Patient Protection and Affordable Care Act

- On March 21, the House passed HR 3590, the bill passed by the Senate on December 24, 2009, with a 219-213 vote. Signed into law on March 23.
- The House and Senate have also passed a reconciliation bill, HR 4872, with a packages of “fixes” to the Senate bill.
- President Obama has signed both bills.

*Numerous state legislators are attempting to exempt their citizen from elements of the law.*



# 90 Days After Enactment

- NOW - Breaks/privacy for nursing mothers (not a bathroom) for one year after birth;
- Federal reinsurance program for employers providing insurance for retirees aged 55 – 64;
  - Reimburse 80% of claims for costs between \$15,000 and \$90,000;
  - Must be used to lower health costs for enrollees;
  - Applies to self-funded and fully insured plans;
- Federally subsidized high-risk pool for individuals with pre-existing conditions who have been uninsured for at least 6 months.



# Plan Years Beginning On Or After September 23, 2010

- Dependent coverage must be provided for adult children up to age 26;
  - No student requirement; no dependent requirement – cannot be eligible for own employer-sponsored plan;
- No lifetime limits on dollar value of benefits;
- No pre-existing conditions limitation for children under age 19;
- Certain preventive care must be provided at no cost (grandfathered plans are exempt);



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# Plan Years Beginning On Or After September 23, 2010 (Cont'd.)

- Annual limits restricted (regulations will clarify);
- Plan prohibited from rescinding coverage;
- All emergency services covered at in-network rates.



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# Year 2010

- For years 2010 – 2013, businesses with fewer than 25 employees and average wages of less than \$50,000 are eligible for a tax credit up to 35% of the employer's contribution toward the premium;
  - Must contribute at least 50% of a benchmark premium;
  - # of employees = total payroll hours / 2080 (FTEs);
  - Wages = total wages paid / FTEs;
  - Do not include partners, owners or seasonal workers;



# Year 2010 (Cont'd.)

- Medicare beneficiaries who hit the “donut hole” will get a \$250 rebate;
  - In 2011, cost of drugs in the coverage gap go down by 50%
- Federal grants will be available to employers with <100 employees for wellness programs;
- Eligibility may not be based on salary level or discriminate in favor of higher wage employees.



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# Year 2011

- Medicare Advantage Plans payments would be frozen to equal Medicare fee-for-service costs;
- Insurance benefits must be reported on W-2s;
- No tax-free coverage for over the counter items under HSAs, FSAs, HRAs, or MSAs. Penalty for non-qualified HSA distributions goes to 20%;
- CLASS Act established voluntary long-term care insurance program;
- Small employers may adopt “simple cafeteria plans”.



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# Year 2012

- All group plans must provide a summary of benefits and coverage explanation;
  - \$1,000 per enrollee fine for willful failure;
- A fee of \$2 per # of lives covered under a plan assessed for insurers or plan sponsors to fund comparative effectiveness research.



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# Year 2013

- New tax (3.8%) on investment income for single taxpayers with AGI of \$200,000+ and joint filers with AGI of \$250,000+;
- FSA contribution limits capped at \$2,500;
- Employer tax deduction for retiree prescription drug claims will be reduced by the Part D Retiree Drug Subsidy;
- Employers will be required to provide notice to employees informing them of the existence of the Exchange.



# Year 2014

- Prohibited: pre-existing condition exclusions; annual limits on coverage; denial of coverage for dependents to age 26 (regardless of whether they have access to own employer-sponsored plan), waiting periods > 90 days;
- Fines begin for employers (with 50+ employees) not offering coverage (or affordable coverage);
  - \$2,000 per fulltime employee;
  - Affordable = <9.5% of family income;
- Auto-enroll for employers with 200+ employees;



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# Year 2014 (Cont'd.)

- Health Insurance Exchanges must be established;
- Employers must offer free choice vouchers;
- Small businesses receive enhanced tax credit if coverage purchased through the Exchange;
- Citizens and legal residents required to have minimum essential coverage OR pay penalty;
  - Greater of \$695 or 2.5% of household income;
  - Phased in – 2014 = \$95 or 1%; 2015 = \$325 or 2%;
- New reporting requirements to IRS and individuals.



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# Year 2018

- New tax on Cadillac Plans;
  - Aggregate value > \$10,200 for individual coverage and \$27,500 for family coverage;
  - Tax = 40% of value over threshold.



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# Employer Action Overview

- **Now** – employers must provide reasonable break time for nursing mothers as well as privacy (NOT a bathroom) for up to 1 year after birth. Break need not be paid.
- **June 30, 2010** - determine eligibility for Federal Retiree Reinsurance Program; submit application to HHS.



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# Employer Action Overview (Cont'd.)

- **September 23, 2010** –
  - Communicate during open enrollment and amend plan:
    - Dependent eligibility rules;
    - No lifetime limits/restrictive annual limits;
    - No pre-existing conditions limits for children under 19;
    - No rescission of coverage;
    - Preventive care with no cost sharing (if plan not grandfathered);
    - Emergency services covered as in-network (if plan not grandfathered);
    - New coverage appeal procedures (if plan not grandfathered);
    - Designate any in-network MD as PCP (if plan not grandfathered).



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# Employer Action Overview (Cont'd.)

- 2010 – Employers claim Small Business Tax Credit on 2010 annual income tax return;
- 2011 –
  - Quantify value of health coverage and include on W-2s;
  - Communicate / amend FSA, HSA, HRA plans to exclude over the counter drugs from reimbursement;
  - Employers who want to implement automatic enrollment/payroll deduction for National Long-Term Care Program will need to watch for details;
  - Small employers can adopt “simplified cafeteria plans”.



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# Employer Action Overview (Cont'd.)

- 2012 -
  - Self-funded plans must provide Uniform Explanation of Coverage in a timely manner;
  - All employers must submit annual reports to HHS on whether or not benefits provided meet established criteria;
  - Employers must provide material modification notice 60 days prior to change.



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# Employer Action Overview (Cont'd.)

- 2013 –
  - Communicate FSA max reimbursement cap set at \$2,500;
  - Expense resulting from elimination of employer deductible subsidy under Medicare Part D must be recognized in 1<sup>st</sup> quarter of 2010 even though change in law not effective until 2013;
  - Notify employees of availability of Exchange plans;
  - Self-funded plans pay \$2 fee to fund research program.



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# Employer Action Overview (Cont'd.)

- 2014 –
  - Amend plan if existing waiting period > 90 days;
  - Amend plan to reflect elimination of annual limits;
  - Calculate affordability of plan for Voucher program;
  - 200+ employees – revise enrollment procedures for auto-enrollment.



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# Employer Action Overview (Cont'd.)

- **2014** (Cont'd.)
  - 50+ employees – calculate affordability and adjust contribution levels as necessary; draft policy concerning retaliation against individuals receiving premium tax credit;
  - Communicate guaranteed issue/guaranteed renewability provisions.
- **2018** – review plans to determine applicability of Cadillac tax.



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# Take It One Step At A Time. . .

- Provisions of the law *will* change;
  - Will be impacted by Congress' ability to fund
- Look to your carrier and broker for current information;
- Whatever your beliefs, take action by contacting your Congressional representatives.

