

## Upcoming Health Care Reform Changes For Large, Mid-Sized And Small Businesses

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On March 23, 2010, President Obama signed the two bills that are commonly referred to as “health care reform.” Many of the changes contemplated by the health care reform laws became effective September 23, 2010. Some of these changes apply to all employers and their group health plans. Other changes and benefits will apply solely to small businesses. How will health care reform affect your company’s coverage for your employees? We summarize some of the important changes below.

### Upcoming Group Health Plan Mandates

Effective for plan years beginning on or after September 23, 2010 (January 1, 2011 if your company’s plan runs on the calendar year), all group health plans, including plans that are “grandfathered” (as described below) must implement the following changes, subject to certain exceptions:

- Eliminate lifetime and annual coverage limits on “essential health benefits,” including benefits such as emergency services, hospitalization, mental health services, substance use disorder services, prescription drugs, and rehabilitative services.
- Extend coverage to dependent children until age 26.
- Eliminate pre-existing condition exclusions for children age 18 or younger.
- Eliminate the ability of the employer to rescind coverage, unless the coverage is rescinded for fraud or intentional misrepresentation of material fact.

“Grandfathered plans” – meaning those plans in which an individual was enrolled on the effective date of the health care reform legislation – will be able to retain certain restrictions on coverage until January 1, 2014. Plans that had annual or lifetime limits prior to enactment of health care reform will be permitted to continue to impose an annual limit until January 1, 2014. Additionally, grandfathered plans may continue to exclude adult children who have coverage through another employer sponsored group health plan until January 1, 2014.

Employers who want to take advantage of grandfathered status will need to be cautious if making any changes to their plans. A plan that is not eligible for grandfathered status will become subject to the following additional requirements effective for plan years beginning on and after September 23, 2010:

- The requirement that a self-insured plan not discriminate in favor of highly paid employees will also apply to insured plans.
- A system for external review of denied claims must be put into place.
- Certain preventive health services must be covered with no cost-sharing requirements, including immunizations and mammograms.
- Plans must permit individuals the right to designate a primary care provider.
- Emergency services must be covered at in-network cost-sharing levels without prior authorization.
- Plans cannot require pre-authorization or referral for OB-GYN services.

### Reasonable Breaks and Space for Nursing Mothers

All employers are required to provide an unpaid “reasonable break time” for a mother to express breast milk for her nursing child. The requirement applies for one year after the child’s birth. In addition, the employer must provide a place where the mother can express breast milk, which is somewhere other than a bathroom and is shielded from view and free from intrusion from coworkers and the public. Employers with fewer than 50 employees may be exempt from the break and space requirement if they can demonstrate that complying will create an undue hardship. These requirements appear to be effective immediately.

### Reporting Requirements

Effective January 1, 2011, employers must report the cost of an employee’s health coverage on Form W-2.

### Reimbursement for Over-the-Counter Drugs

Effective January 1, 2011, costs for purchasing most over-the-counter drugs may not be reimbursed from flexible spending accounts or purchased tax-free through other federal programs unless the drugs have been prescribed. Plans will need to be amended to reflect these new requirements.

**Small Business Tax Credits**

Businesses with less than 25 employees and average wages of less than \$50,000 may now claim a tax credit for their health care costs. These credits are phased out if there are more than 10 employees and/or the average wages exceed \$25,000. The employer must pay at least 50% of the premium cost and must pay a uniform percentage for all covered employees.

**Simple Cafeteria Plan for Small Employers**

For plan years beginning on or after January 1, 2011, an employer that generally has an average of 100 or less employees during either of the two preceding years will be able to adopt a simple cafeteria plan, which will be deemed to satisfy nondiscrimination requirements that would otherwise apply. An employer sponsoring a simple cafeteria plan must generally permit all employees with at least 1,000 hours of service in the prior year to participate and elect any benefit available under the plan. The employer must make an annual minimum contribution on behalf of each participant.

**Future Health Care Reform Changes**

Employers can expect more health care reform legislation to become effective in the coming years, including additional reporting requirements, additional Medicare withholding, and new limits on health care flexible spending account contributions.

We will continue to update you as these changes become effective. If you have questions or concerns about how the recent healthcare reform legislation affects your business, please contact Mike Tomasek or Gladys Zolna at 312-360-6000.