



Employee Benefits Law Action Memo

March 2010

Electronic Dispatch

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A GLIMPSE AT KEY HEALTH REFORM CHANGES THAT WILL AFFECT EMPLOYERS AND EMPLOYER GROUP HEALTH PLANS IN 2010 AND 2011

The recently-enacted health reform legislation includes many different approaches to (among other things) reducing the number of Americans with little or no health care insurance or health care benefits. The legislation includes mandates on employers, individuals and providers, government subsidies, tax law changes and a host of other changes. While many of the changes are not scheduled to become effective for a number of years (and, therefore, may be modified before they become effective), some of the changes will be effective in 2010 and 2011. This *Employee Benefits Action Memo* provides a summary of key changes that will affect employers and employer-sponsored group health plans beginning in 2010 and 2011.

Because some of the changes may be effective as early as October 1, 2010, employers should begin to assess the extent to which changes in the employer's group health plans will be required. Please note that the effective dates described below are the generally statutory effective dates. Delayed effective dates and/or exceptions may apply in the case of certain "grandfathered" plans and plans maintained pursuant to a collective bargaining agreement. This summary assumes that Congress will pass and the President will sign the currently-pending Health Care and Education Reconciliation Act of 2010.

Changes Effective For Plan Years That Begin After September 23, 2010

Coverage for Adult Children to Age 26

Group health plans (and health insurers offering group or individual health insurance coverage) that provide dependent coverage for children must continue to make such coverage available for an adult child until the child reaches age 26. Coverage must be made available regardless of the child's marital status, but (until 2014) generally need not be provided to adult children who are eligible to enroll for coverage under a group health plan of the child's employer. Coverage for eligible adult children will not be considered taxable income to the employee or the child, even if the child does not qualify as a tax dependent of the employee.

Restrictions on Lifetime and Annual Limits

Group health plans (and health insurers offering group or individual health insurance coverage) may not establish lifetime limits or "unreasonable" annual limits on the aggregate dollar value of benefits for any participant or beneficiary. Aggregate annual limits will be prohibited after 2013. However, per participant and per beneficiary lifetime and annual limits may still be applied with respect to specific covered benefits.

Restrictions on Preexisting Conditions

Group health plans (and health insurers offering group or individual health insurance coverage) may not impose any preexisting condition exclusion with respect to such plan or coverage for eligible children under age 19. No preexisting condition exclusions may be applied after 2013.

Prohibition on Retroactive Coverage Cancellation

Group health plans (and health insurers offering group or individual health insurance coverage) may not cancel a participant's or beneficiary's coverage retroactively, unless the covered individual has engaged in fraud or makes an intentional misrepresentation of material fact prohibited by the terms of the plan or policy.

Prohibition on Discrimination

Although self-insured group health plans are already subject to non-discrimination testing requirements, generally requiring coverage and benefits to be provided in a manner that does not discriminate in favor of highly-compensated individuals, insured group health plans will be subject to similar non-discriminatory requirements. Plans can be designed, however, to provide for lower dollar or percentage contributions by employees with lower hourly or annual compensation than the contributions required of similarly-situated employees with a higher hourly or annual compensation.

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Limitation on Reimbursements for Over the Counter Items

Reimbursements from health flexible spending accounts, health savings accounts and health reimbursement arrangements for expenses incurred for a medicine or a drug will be treated as a tax-free reimbursement for medical expenses only if the medicine or drug is a prescribed drug or is insulin. Reimbursements for over-the-counter items that have not been prescribed by a physician will no longer be tax-free. Because the limitation will be effective for the 2011 plan year, employees who rely on these accounts for the reimbursement of the cost of over the counter items should carefully consider their contribution elections during open enrollment this year.

Mandatory Preventive Care Benefits

Group health plans (and health insurers offering group or individual health insurance coverage) must, at a minimum, provide coverage for and may not impose any cost sharing requirements for certain immunizations, child and adolescent health screenings, breast cancer screening, mammography, and other preventive care benefits.

Mandatory External Review Process for Appeals of Claim Denials

The claims procedures for group health plans will have to provide a mechanism for a binding external review of a claim denial and appeal denial. Coverage may have to be continued pending the outcome of the appeal.

Employer Reporting of Value of Health Coverage

Beginning with the 2011 tax year, employers will be required to report the value of an employee’s health coverage for the year on the employee’s IRS Form W-2. The first affected Forms W-2 will have to be issued to employees in January 2012.

Changes Scheduled To Be Effective In Later Years

- Mandate on individuals to obtain coverage.
- “Play or pay” rules for employers with 50 or more employees.
- Automatic enrollment rules for employers with more than 200 employees.
- Restrictions on maximum waiting periods.
- Cap on annual FSA contributions at \$2,500.
- Excise tax on “Cadillac” health coverage.

Recommended Actions Employers that offer or provide group health plan coverage to employees should begin to assess the impact of the 2010/2011 changes immediately. Although more changes will follow, future changes may be delayed, modified or withdrawn.

If you have any questions about the 2010 and 2011 changes summarized above, please contact any member of the Bond, Schoeneck & King Employee Benefits and Executive Compensation Practice Group. More details on these and future changes will be described in other Bond, Schoeneck & King Information Memos. Also, our Workplace 2010 Conferences (see dates below) will include a presentation on health reform and its impact on employers.

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BS&K’s Workplace 2010 Update

Given the recent passage of the federal legislation,
 we will be devoting a portion of our Workplace 2010 Conference to
“Health Reform: What It Means For Employers.”

Please watch your mail for our complete conference flyer which will arrive shortly. Conferences are scheduled for:

Albany ■ June 15, 2010	Corning ■ May 12, 2010	New York City ■ June 23, 2010	Saratoga Springs ■ May 27, 2010
Buffalo ■ May 25, 2010	Melville ■ June 22, 2010	Rochester ■ May 18, 2010	Syracuse ■ June 24, 2010