

Health Care Reform: The Good, The Bad and The Ugly

Unless you frequent tanning salons, it is likely that the Health Care Reform legislation, PPACA (the Patient Protection and Affordable Care Act), has had no impact on you or your health insurance coverage. The tanning salon ten percent sales tax is already in place, but the first real steps towards PPACA's implementation are effective for plan years starting on or after September 23, 2010, including new health plans adopted on or after that date. For calendar year plans, the initial PPACA requirements will apply January 1, 2011, and will require plan changes and participant notices prior to that date.

Love it or hate it, PPACA will impose expanded access, mandated benefits, compliance responsibilities – and corresponding cost increases. PPACA is intended to help millions more Americans obtain health insurance coverage, but its requirements will affect almost all of us, beginning now. Consider the following overview of only the most significant changes:

The Good

PPACA currently implements health care benefit requirements that are intended to reform insurance company practices and to provide young adults health care coverage unrelated to their employment status:

- Subject plans must cover otherwise eligible children under age 19 regardless of any pre-existing conditions.
- PPACA prohibits cancellation of individual policies because of faulty or incomplete information disclosed on application forms (there's an exception for fraud).
- Lifetime coverage maximums are abolished.
- Coverage of adult children up to age 26 is required, regardless of their student, dependency or marital status.
- Insurers must rebate a portion of premiums to policy holders if more than 15 percent of premium revenue (20 percent for small group and individual plans) is expended on costs other than payment of medical claims, a requirement that is effective no later than January 1, 2011.
- Except for "grandfathered" plans (see below), group health coverage will also have to provide first dollar care for designated diagnostic procedures (immunizations, blood pressure checks, mammograms and colon cancer screenings), emergency medical services must be available without pre-

authorization or out-of-network surcharges, and such plans must allow participants to choose a primary care provider in plans which require one.

- Additional Medicare benefits include lower Part D prescription drug costs, free annual physical exams and certain free preventative services.

Miscellaneous other goodies include a health care tax credit for employers with fewer than 25 employees and an exemption from the penalties for failure to provide employee health coverage for employers with 49 or fewer employees.

The Bad

Coverage mandates and other expansions of coverage will cost additional premium dollars, estimated at between an extra 1 to 9 percent of premium expense this year. That's on top of premium increases reflecting the general upward trend of medical costs. "Revenue neutral" healthcare reform may be revenue neutral to the Federal Government, but it will not be revenue neutral to plans, employers or states which are responsible for additional Medicare and Medicaid costs. Medicare premiums for Part B and Part D coverage also will increase in 2011 for higher income recipients.

Non-grandfathered, self-insured plans will have to engage independent claims review organizations (either directly or through their third party administrators) in order to satisfy PPACA's new external claims review requirements (this requirement is subject to a recently announced enforcement grace period until July 1, 2011). Non-grandfathered fully insured plans will have to comply with nondiscrimination rules that previously applied only to self-insured plans (failure to comply in an insured plan exposes the employer to an excise tax of \$100 per day *per participant*, not just the taxation of benefits to highly compensated employees).

PPACA also has stirred up small businesses with a requirement that IRS Form 1099 be filed with the IRS and mailed to each supplier from which they purchase more than \$600 in a year and a requirement that the value of health benefits be reported on their employees' 2011 Form W-2 (this does not mean, as widely reported on the internet, that such benefits are currently taxable).

The Ugly

PPACA reforms technically allow employers to keep their group health plans as they existed on March 23, 2010 if they meet certain requirements for "grandfathered" plans (see <http://www.benefitslawgroupofchicago.com/HTML/2010/health-care-reform-2010.htm>). However, by government estimates, about 80 percent of existing small business plans will be unable to maintain their grandfathered plan status. For fully insured plans, it is likely that insurance companies will impose plan changes (such as premium increases, changes in deductibles and co-pays, and coverage reductions) without regard to grandfathered status. Small businesses, which typically have fully insured plans, will not be able to avoid these changes because *just switching insurance companies will cause a loss of grandfathered status* (there is an exception for collectively bargained plans).

Recommendations: For fully insured plans, the options are limited, and insurers will probably determine whether or not the plan retains grandfathered status. For those with self-insured plans in existence as of March 23, 2010, consider taking steps to retain grandfathered status. PPACA will still impose some significant requirements but others, including the need to engage independent claims review organizations, can be avoided or at least postponed by retaining grandfathered status. Bear in mind that there is a cost of maintaining grandfathered status, principally the lost flexibility to make cost-saving plan design changes (reducing employer contributions or benefits, or increasing co-pays, deductibles or employee premium contributions) except within limits prescribed by the PPACA rules. Of course, PPACA compliant plan documents (do not overlook cafeteria plans and HRAs) and participant notices need to be prepared and distributed in light of PPACA deadlines (January 1, 2011 for calendar year plans). Employers and HR staff need to address these matters with plan service providers and professional advisors on a priority basis.

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