

HEALTH CARE REFORM UPDATE

Health care reform legislation, the Patient Protection and Affordable Care Act (or “PPACA”), continues to evolve as the challenge to its constitutionality winds through the courts.

In a significant legislative development, the President recently signed a bill that repeals the PPACA requirement for businesses to report all purchases of goods and services from a single vendor of more than \$600 in a calendar year on IRS Form 1099-MISC. This legislation eliminates a previously postponed requirement that had been the target of advocacy groups as unduly burdensome for small business owners. The reporting requirement continues, as under pre-PPACA law, but applies only to payment of rent for real estate, salaries and other forms of compensation for services rendered.

More recently, budget legislation which has been signed into law repeals the PPACA “free choice” voucher program. This program would have allowed lower income employees to receive vouchers for the employer-paid portion of group health coverage under an employer-sponsored plan. The vouchers could be used to purchase an individual policy through the state-run insurance exchanges that are scheduled to begin operating in 2014. The repeal reflects concerns about an employer’s ability to identify employees who would be eligible for the program, which was based on an employee’s household income level.

Other recent PPACA regulatory developments include:

- Certain PPACA provisions relating to the internal claims denial and appeal procedure have been postponed in Technical Release 2011-01. PPACA initially required compliance as of the first plan year starting on or after September 23, 2010. The recent postponement extends required compliance until the first plan year on or after July 1, 2011 as to the issuance of a denial code and its meaning in an adverse benefit determination, providing a description of the internal and external claims review processes, and including a “discussion” of the decision in any final internal benefits denial. Other provisions are extended to plan years beginning on or after January 1, 2012, and include a requirement to provide notices in a “culturally and linguistically appropriate manner,” mandatory response to “urgent” claims in 24 hours, strict employer adherence to all internal claims and appeal processes as a condition for requiring claimants to “exhaust” the claim and appeal processes before filing suit, and automatic disclosure of diagnosis and treatment codes that are currently available only on patient request. None of the PPACA claims denial and appeal requirements apply to grandfathered plans, and PPACA’s external review requirements are not subject to the administrative postponement.
- The Department of Health and Human Services has proposed regulations applicable for policy years beginning on or after January 1, 2012 that would exempt student

health plans from PPACA's guaranteed availability and guaranteed renewability requirements as well as PPACA's prohibition of annual benefit limits. The proposed regulations treat insured student health plans as individual plans, not as covered "group health plans," because there is no employment relationship.

- The Department of Labor has published Frequently Asked Questions and a Fact Sheet offering guidance on the Nursing Mothers Law which is part of PPACA. This provision has been effective since March 23, 2010, and requires employers to provide nursing mothers private space and reasonable break time to express breast milk for up to a one year period following childbirth. The Department of Labor guidance at www.dol.gov/whd/nursingmothers/ specifies that the private space cannot be a bathroom but also need not be a dedicated space for nursing mothers. Breaks are expected to be required two or three times per day on the average and can be expected to last at least 15 or 20 minutes. The Department of Labor guidance suggests that both nursing mothers and employers should ask about appropriate arrangements and the nursing mother's interest to express breast milk at work. Employers with fewer than 50 employees may be exempt from the law if compliance would be unduly burdensome.

Recommendations: The PPACA tinkering reflected in recent legislative and regulatory developments clearly does *not* indicate any material change in the PPACA approach to health care delivery. Subject to any holding by the Supreme Court that PPACA is unconstitutional, the continuing legislative and regulatory adjustments merely pave the way for full scale implementation. Employers, HR staff and their service providers should take prudent steps towards implementation based on the latest guidance and the best available professional advice.

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