

Employee Benefit Plan Review

August 2011

FEATURE

The Administrative Challenges of Health Care Reform

BY CAROL RITO

H Health care reform has caused many employers to ask themselves, “*Am I ready, willing, and able to implement and administer the new requirements?*”

Implementing the health care reform regulations is challenging employers more than expected and has many employers scrambling for legal, accounting, and administrative support.

Even though the Patient Protection and Affordable Care Act (PPACA) and the Health Care and Education Reconciliation Act of 2010 (HCERA) provide the statutory requirements, the legal and accounting challenges are exacerbated by constant regulatory updates. Almost every week since the release of the statutes in March of 2010 there have been amendments, notices, guidelines, FAQs, and extensions released. Each new release of information requires careful review, interpretation, and implementation. For most employers, with limited human resources or benefit administration staffs, keeping abreast of the ongoing changes seems like an impossible feat.

In addition to implementing these new requirements, employers are also facing new challenges including health

insurance and benefit plan design changes, benefit and payroll system changes, and employee notice requirements. These mounting challenges have more employers than ever before considering outside consulting services and administrative outsourcing solutions to lighten the load caused by this reform.

However, some employers choose to handle these changes in-house. If you are an employer who is trying to do it yourself, the summary below provides a review of the primary health care reform provisions you should have implemented if your plan year started after September 23, 2010.

- **Preexisting Condition Limitations – Age 19** ([PHSA §2704](#); [PPACA §§1255, 10103](#))
This statute prohibits preexisting condition limitations for children under age 19. This expands to all enrollees beginning in 2014.
- **Annual and Lifetime Limits** ([PHSA §2711](#))
This statute prohibits plans from establishing lifetime limits on the dollar value of medical benefits for plan years beginning after September 23, 2010 and restricting annual limits

during a phased in approach through 2013.

- **Adult Child Coverage** ([PHSA §2714](#); [HCERA §2301](#))
Group health plans (insured and self-insured) are required to offer dependent coverage up to age 26, and prohibits insurers from requiring the individual to pay more for coverage than those similarly situated individuals. In addition, the IRS has updated the tax treatment for these dependents, permitting them to be covered on a pre-tax basis. ([IRS Notice 2010-38](#))
- **Rescission of Coverage Prohibition** ([PHSA §2712](#))
The rescission statute prohibits plans from rescinding (retroactively terminating) health coverage except for in the case of fraud or intentional misrepresentation of a material fact.
- **100% Coverage for Preventive Care** ([PHSA §2713](#))
Group health plans and insurers (except grandfathered plans) are required to provide certain preventive services without imposing any cost-sharing. As a result, no deductibles, co-pays, co-insurance, or other cost-

sharing may be imposed on these services.

Patient Protections ([PHSA §2719A](#))

The patient protection mandates require that group health plans (except grandfathered plans) allow participants to designate any available participating primary care provider. If emergency room services are covered, the plan may not require prior authorization. And a group health plan may not require preauthorization or referral by the plan or any person, including a primary care physician, for obstetrical or gynecological care.

- **OTC Prescription Requirement** ([Code §§106\(f\), 223\(d\)\(2\), 220\(d\)\(2\)](#))
Reimbursements of over-the counter medications are now prohibited without a physician's prescription. This applies to HSAs, HRAs, and Health FSAs.

Once you've implemented all of the above, you will need to begin planning for these requirements:

- **W-2 Reporting** ([Code §6051\(a\)](#)), ([IRS Notice 2010-38](#))
On March 29, 2011 the IRS issued the interim guidance providing further relief on the deadline for this requirement. Employers (other than small employers) now have until January 2013 to report for 2012 W-2s. The guidelines clarified what coverage must be included, how to determine the aggregate cost of benefits, how to report the coverage period, and where to report. The details involved in the determination of the aggregate cost are complicated, so careful attention should be given to determining the aggregate cost, especially for Health FSAs.
- **Summary of Benefits and Coverage** ([PHSA §2715](#))
By March 23, 2011 the Department of Health and Human Services was to have published the final standards for the Four-Page Summary of Benefits.

As of the submission of this article, they have still not been published. However, employers should use the current guidelines to begin preparing for what could be a very cumbersome implementation. This requires employers to publish and distribute a four-page summary that accurately describes the benefits and coverage under the benefit plan. Generally, the summary must be distributed to all enrollees at the time of enrollment, must be no longer than four 8½ x 11 inch pages, cannot be printed in less than 12-point font, and must be printed in a "culturally and linguistically appropriate manner." This requirement needs to be taken seriously, as a penalty of up to \$1,000 per notice failure can be assessed.

But it doesn't stop there. The two provisions listed below have been extended, and pending further guidance, they will have significant impacts on administration, communication, and plan design.

- **Claim Appeals Process** ([PHSA §2719](#))
There is transition relief for this requirement until January 2012. The requirement will be to establish an expanded internal and external appeals review process and provide notice of the process to enrollees in a "culturally and linguistically" appropriate manner.
- **Non-Discrimination Testing for Insured Plans** ([PHSA §2716](#))
This requirement is delayed until further guidance is released. The release is not expected for awhile. It will require that the non-discrimination concepts in Code Section 105(h) relating to self-insured plans be expanded and applied to insured plans.

The most important piece of advice to employers during this tumultuous time is it is imperative to constantly monitor the legislative updates and maintain constant communication with

your employees. Many of the new regulations will impact your plan design and require mandatory employee notices. If you haven't already done so, consider using an outside source for compliance and administrative expertise to ensure you are properly implementing the requirements.

Footnotes:

¹The statutes include some exceptions for certain plans declared to be "grandfathered health plans." The requirements for grandfather status are not explained in this article; however, when applicable the exceptions are noted.

This article represents a non-binding interpretation of constantly changing regulations. It is general in its nature and is not a substitute for legal advice.

Carol Rito is the Compliance Officer at Michigan-based Group Associates, Inc. is a nationwide leader in proprietary benefit management solutions, offering companies resources to meet their benefit administration and brokerage needs. Founded in 1986, Group Associates, Inc. offers a variety of flexible and cost-effective programs to improve a company's bottom line and allocate resources efficiently. For more information, please visit www.groupassociates.com.

Effective Date	Provision and Citation	Applicable To
2010	Adoption Credit (Code §36C)	All employers offering adoption assistance
2010	Small Business Tax Credit (Code §45R)	Employers with less than 25 FTE's employees
3/23/10	Break Time for Nursing Mothers (PPACA §4207)	Most employers
3/23/10	Protection from Discrimination (PPACA §1557)	All employers
3/23/10	Protection from Retaliation (FLSA §18C)	All employers
6/1/10	Retiree Reinsurance Program (PPACA §§1102)	All employers offering retiree coverage
First plan year after 9/23/10	Automatic Enrollment (FLSA §18A) Delayed until Guidelines are Published	Employers with 200 or more employees
First plan year after 9/23/10	Quality of Care Reporting (PHSA §2717) Delayed until Guidelines are Published	All employers except grandfathered plans
First plan year after 9/23/10	Transparency in Coverage Reporting (PHSA §2715A) Delayed until Guidelines are Published	All employers
2011	Non-Medical Distributions from Savings Accounts Penalty (Code §§223(d)(4)(A), 220(f)(4)(A))	All employees participating in these accounts
2011	Wellness Grant Program (PPACA §10408)	Employers with less than 100 employees
2011	SIMPLE Cafeteria Plan (Code §125(j))	Employers with less than 100 employees