

Morgan Lewis

seminar

Health Care Reform: Employer Group Health Plan Considerations

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Background

- The Patient Protection and Affordable Care Act of 2010 (PPACA)
 - Signed March 23, 2010
- Amended by the Health Care and Education Reconciliation Act of 2010 (Reconciliation)
 - Signed March 30, 2010
- Jointly referred to as the “Healthcare Reform Law”
- Confusing to put together
- Requires significant regulatory guidance

Background (cont.)

- Focused, like its predecessor in MA, on expanding coverage
 - Not on reducing cost
- Keys:
 - Requires coverage/some subsidies
 - Insurance reform
 - Employer mandate

Background (cont.)

- Today's focus is on near-term requirements and changes for employer group health coverage
- Will focus later on 2014 and beyond
 - Still a ways off
 - Many election cycles (with resulting twists and turns) between now and 2014

Immediate Impact

- Retiree Drug Subsidy Taxation
 - Loss of deduction for subsidy; immediate accounting hit
 - May drop plans/move to Employer Group Waiver Plan
- Early Retiree Medical Reinsurance Program
 - \$5 billion reinsurance fund for retirees aged 55 through 64
 - 80% of annual claims between \$15,000 and \$90,000

Immediate Impact (cont.)

- Small Employer Tax Credit
 - Generally 25 or fewer employees with average full-time wages under \$50,000
 - Must subsidize, on a uniform basis, at least 50% of the cost of the coverage
 - Credit paid in full for employers with 10 or fewer full-time equivalent employees (and average wages of \$25,000) and phases out as employer size and average wage increases

First Plan Year Beginning After September 23, 2010

- Adult Child Coverage Until Age 26
 - Tax-free
 - Until the 2014 plan year, plans can require that the child not be eligible to enroll in another employer group health plan
 - “Adult Child” is an individual who is a son, daughter, stepson, stepdaughter, or legally adopted or eligible foster child of the employee
 - End of full-time student verification processes, dependent restrictions, Michelle’s Law? **Morgan Lewis**

First Plan Year Beginning After September 23, 2010 (cont.)

- Preexisting Condition Exclusions
 - Prohibits the application of preexisting condition exclusions for plan years beginning on or after January 1, 2014
 - Begins six months after enactment for children who are under age 19
 - Does not clearly require allowing such children into coverage/but expected in regulations

First Plan Year Beginning After September 23, 2010 (cont.)

- Lifetime Maximums
 - Prevents health plans from applying a lifetime maximum on benefits that are essential health benefits
- Annual Maximum
 - May initially apply some limits to essential benefits as long as those limits will not violate other federal or state laws
 - May not impose any annual limits on essential health benefits, effective for plan years beginning after December 31, 2013

First Plan Year Beginning After September 23, 2010 (cont.)

- Prohibition on Rescissions
 - Prevents health plans from rescinding health coverage once an individual is covered under the plan
 - Exception for fraud or intentional misrepresentation of a material fact
 - Unclear how this impacts mistaken enrollments or a plan amendment that prospectively eliminates coverage for a group of individuals

First Plan Year Beginning After September 23, 2010 (cont.)

- 60-Day Prior Notice of Material Modification
 - Creates timing and notification issues for changes associated with the annual enrollment process
 - Prevents employers from immediately changing plan terms during a plan year
 - Paired with a new \$1,000-per-participant penalty for each willful failure to meet the new 60-day advance notice requirement

First Plan Year Beginning After September 23, 2010 (cont.)

- Nondiscrimination Testing
 - Applies existing Internal Revenue Code section 105(h) nondiscrimination rules to insured health plans
 - Much more difficult to offer new insured health plans to a small group of executives
 - Penalty will be a \$100 per day excise tax
 - See “Grandfather Rules” below

First Plan Year Beginning After September 23, 2010 (cont.)

- Preventive Services
 - Plans must cover certain preventive services such as immunizations and infant preventive care and screenings without cost to the employee
 - See “Grandfather Rules” below for the application of this rule to grandfathered plans

First Plan Year Beginning After September 23, 2010 (cont.)

- Appeals and Reviews
 - Must adopt ERISA-like claims and appeals processes
 - Guarantees the receipt of benefits during the appeals process
 - Requires an external review process
 - See “Grandfather Rules” below for the application of this rule to grandfathered plans

First Plan Year Beginning After September 23, 2010 (cont.)

- Primary Care Physicians
 - Plans must permit designation of any participating primary care provider
 - Special rules for:
 - *Emergency services*
 - *Pediatric care*
 - *Ob/Gyn care*
 - See “Grandfather Rules” below for the application of this rule to grandfathered plans

First Plan Year Beginning After September 23, 2010 (cont.)

- Grandfather Rules
 - Limited provisions/narrowed by Reconciliation
 - Individuals who were enrolled in a plan as of March 23, 2010
 - *Family members and new employees*
 - Sunsets, for collectively bargained plans, on the date the last related collective bargaining agreement terminates
 - Significant open questions

2011

- Form W-2 Reporting
 - Report the aggregate cost of employer-provided group health coverage
 - Excludes coverage through an Archer MSA, an HSA, or employee salary reductions to a FSA
 - Determined under COBRA-like rules

2011

- Over-the-Counter Drug Prohibition
 - Ends the tax-advantaged treatment of most over-the-counter drugs
 - Applies to HSAs, Archer MSAs, FSAs or HRAs
 - Still acceptable for prescribed drugs (even over-the-counter) or insulin

2011

- HSA and Archer MSA Penalty Increase
 - Additional tax for nonmedical HSA and Archer MSA distributions boosted to 20%
 - Revenue source to pay for Healthcare Reform
- Small Employer “Simple” Cafeteria Plans
 - Employers with 100 or fewer employees
 - Escapes nondiscrimination testing requirements as long as the employer satisfies minimum eligibility, participation and contribution requirements

2011

- “CLASS Act” (Community Living Assistance Services and Supports Act)
 - National employee-funded long-term care benefit
 - Voluntary, but default enrollment encouraged
 - Widely criticized funding approach and benefit levels

2012

- Research Trust Fund Fee
 - All plans, starting with plan or policy years ending after September 30, 2012, will have to pay a \$2 per participant or enrollee fee (\$1 for fiscal year 2013) to finance the Patient-Centered Outcomes Research Trust Fund
 - Fee ends in 2019 and contains exceptions for certain exempt governmental programs

2012

- Uniform Explanation of Coverage
 - Secretary of HHS to develop standards summarizing plan benefits
 - *No more than four pages*
 - *12-point type*
 - Must be distributed to plan participants, written in a “culturally and linguistically appropriate manner” and distributed to new participants
 - New \$1,000 per participant penalty for each willful failure to distribute the summary

2013

- Flexible Spending Account Limit
 - Caps the maximum health flexible spending account salary deferral at \$2,500
 - Indexed for years beginning in 2014
 - Excludes true employer matching or other employer contributions to an FSA
- Employer Notice Regarding Exchange
 - Inform employees about:
 - *Exchanges starting in 2014*
 - *If employer subsidizes 60% of the cost of coverage*
 - *How purchasing coverage through an Exchange may end employer subsidy*

Unclear Effective Date

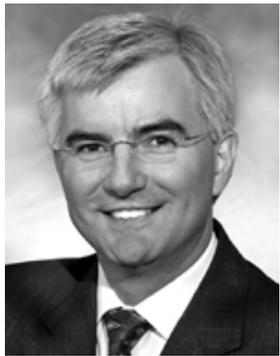
- Automatic Enrollment
 - Employers required to automatically enroll new employees in their health plans (subject to a waiting period)
 - Apparently adopt an Evergreen approach to OE default for current plan participants
 - Perhaps it will begin in 2013 or 2012?

2014

- Many more items to come starting in 2014
- Watch for our next LawFlash and related Webinar!

Questions?

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