



## HEALTH CARE REFORM A Primer for Organizations

On March 23, 2010, President Barack Obama signed into law two initiatives that ushered in perhaps the most comprehensive and dramatic health care legislation since the passage of Medicare 45 years ago - the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010. Although the effects of this new health care reform legislation vary among organizations based on size and type, one fact is universal: its impact on employers, health care providers, insurers and individual citizens is substantial and long term.

With provisions addressing issues ranging from lifetime limits on coverage and pre-existing condition exclusions to dependent-care coverage and the adoption credit, and effective periods spanning 2010 to 2018 and possibly beyond, the legislation can present significant challenges.

Organizations and their leadership can best meet these challenges and position themselves to successfully implement the legislation by being prepared and informed, and understanding the legislation's applicable features. They also can provide a valuable service to employees, and, in the process, promote a knowledge-driven organizational culture by communicating to employees the provisions with a direct impact on them.

***Health Care Reform: A Primer for Organizations*** provides an overview of key provisions of the legislation, which are presented in the following categories: All Employers; Small and Midsize Employers; Larger Employers; and Individuals. It also includes a discussion of other legislative rules and requirements.

## **2010 Health Care Reform Legislation Provisions - Effective Dates 2010 to 2012**

### **FOR ALL EMPLOYERS**

**Reimbursements from employer-provided plans, including cafeteria plans.** The definition of a qualified child expands to include any employee's child who has not yet turned 27 by the end of the tax year. Thus, qualified benefits may include reimbursements for a child who hasn't turned 27. The IRS says that cafeteria plans can allow employees to immediately make pretax salary reduction contributions for children younger than 27, even if the cafeteria plan has not formally been amended to provide for them. (Effective: March 30, 2010)

**Amendments expanding coverage.** All employer-sponsored plans will require amendments to (1) eliminate lifetime and annual limits on benefits; (2) provide first-dollar coverage for preventive care; and (3) extend eligibility for dependent coverage (if offered) to employees' children who are not yet 26 years old. (Effective: Sept. 23, 2010)

**W-2 reporting requirement.** Employers must report on W-2s the value of health benefits provided to employees. (Effective: 2011)

**Over-the-counter drugs.** Health FSAs, HSAs, HRAs and Archer MSAs no longer can be used to pay for over-the-counter drugs. (Effective: 2011)

**HSA and Archer MSA penalties.** Penalties for using tax-favored accounts for disallowed purchases increases from 10 to 20 percent for HSAs and from 15 to 20 percent for Archer MSAs. (Effective: 2011)

**New requirement for Forms 1099.** The number of Forms 1099 that businesses will be required to issue has been greatly expanded. Businesses will have to file an information return (for example, a Form 1099) for all payments aggregating \$600 or more in a calendar year to a single payee, including corporations (other than a payee that is a tax-exempt corporation). Formerly, there was an exemption for payments to corporations and some other entities, such as tax-exempt organizations. In addition, the types of payments requiring a 1099 have been expanded to include amounts paid for purchases of goods, not just payment for services. (Effective: 2012)

#### **FOR SMALL AND MIDSIZE EMPLOYERS**

**Tax credit of up to 35 percent.** Businesses with 25 or fewer full-time equivalent employees that provide employees health care coverage can claim a credit of up to 35 percent of nonelective contributions the businesses make on behalf of their employees for insurance premiums. To qualify for the credit, the employer must pay average annual wages of \$50,000 or less. In addition, the employer must pay at least 50 percent of the premium cost and a uniform percentage for all covered employees. The premium amount taken into account is capped at the amount of the average premium for the small group market in the state (or an area within the state) in which the employer offers coverage. (Effective: 2010-2013)

#### **FOR INDIVIDUALS**

**National high-risk pool.** A temporary national high-risk pool will be created to permit adults with pre-existing conditions to obtain subsidized coverage. This pool will be dissolved after 2014 when all insurers will be prohibited from excluding persons with pre-existing conditions. (Effective: 2010-2014)

**Adoption-credit increase.** The maximum adoption credit is increased \$1,000 to \$13,170 per eligible child. This increase applies to non-special-needs adoptions and special-needs adoptions. Also, the adoption credit is made refundable. The new dollar limit and phase-out of the adoption credit are adjusted for inflation in tax years beginning after Dec. 31, 2010. The scheduled sunset of Economic Growth and Tax Relief Reconciliation Act (EGTRRA) provisions relating to the adoption credit is delayed one year. With sunset, effective for tax years beginning after Dec. 31, 2011, the credit reverts to \$6,000 and is available for special-needs children only. (Effective: 2010)

**Adoption-assistance programs.** For adoption-assistance programs, the maximum exclusion is increased \$1,000 to \$13,170 per eligible child. The new dollar limit and income limitations of the employer-provided adoption-assistance exclusion are adjusted for inflation in tax years beginning after Dec. 31, 2010. The Economic Growth and Tax Relief Reconciliation Act (EGTRRA) sunset of provisions relating to adoption-assistance programs is delayed one year. Under the sunset, after Dec. 31, 2011, the income exclusion will disappear. (Effective: 2010)

**Indoor tanning excise tax.** A 10 percent excise tax is imposed on amounts paid for indoor tanning services. Like a sales tax, the tax is collected when a person pays for tanning services. (Effective: July 1, 2010)

**Lifetime limits and cancellation for serious illness.** Insurers cannot impose lifetime limits on insurance coverage or cancel policies due to serious illness. (Effective: Sept. 23, 2010)

**Pre-existing conditions.** Pre-existing condition exclusions for children are prohibited. (Effective: Sept. 23, 2010)

**Dependent-care Coverage Group.** Health plans and insurers that provide dependent-care coverage must continue to make such coverage available for an adult child until reaching age 26 (effective for plan years beginning after Sept. 23, 2010). Reimbursements for medical care under an employer-provided accident or health plan are excluded from gross income for any employee's child who has not yet turned 27 by the end of the tax year (effective March 30, 2010). The IRS will apply the same rule to coverage under an employer-provided accident or health plan. (Effective: Sept. 23, 2010) NOTE: Employers may see increases in the number of dependents for whom employees seek coverage.

## **2010 Health Care Reform Legislation Provisions - Effective Dates 2013 and Onward**

### **FOR ALL EMPLOYERS**

**Health FSA contribution limit.** There is a \$2,500 limitation on health FSA contributions. (Effective: 2013)

**Coverage waiting period.** There is no employee waiting period longer than 90 days to obtain coverage. (Effective: 2014)

**Voucher requirement.** Employers offering coverage must also offer a voucher to any employee with an income less than four times the federal poverty level whose share of the premium is greater than 8 percent but less than 9.8 percent of their income, and who chooses to enroll in a state exchange rather than participate in the employer's group health insurance plan. The voucher amount must be equal to what the employer would have paid in premiums for that employee, and can be applied by the employee toward his/her premiums in the exchange plan. (Effective: 2014)

### **FOR SMALL AND MIDSIZE EMPLOYERS**

**Increased tax-credit percentage.** The new tax-credit percentage of up to 35 percent for 2010-2013 previously discussed will increase to a maximum of 50 percent for employers with 25 or fewer full-time equivalent employees who purchase insurance coverage for their employees through a state exchange. Employers with 10 or fewer employees and average wages of less than \$25,000 will receive the full 50 percent credit for up to two consecutive years. (Effective: 2014)

**Exchanges and other programs.** All states must establish an exchange to facilitate the purchase of qualified health plans and establish a Small Business Health Options Program (SHOP) that will assist employers with up to 100 employees in obtaining group coverage. A Consumer Operated and Oriented Plan (CO-OP) program will be developed to facilitate the creation of not-for-profit, member-run health insurance companies. (Effective: 2014)

### **FOR LARGER EMPLOYERS**

**Automatic employee enrollment.** Employers with more than 200 employees must automatically enroll employees in the health insurance plans they offer. They also must notify employees of the automatic enrollment and give them the ability to opt out of coverage. (Effective: Date not yet established)

**Penalties for no coverage or inadequate coverage.** Applicable large employers with an average of at least 50 employees that do not offer coverage for all full-time

employees, or offer inadequate coverage, are required to pay a penalty if any full-time employee is certified to the employer as having purchased health insurance through a state exchange to which a tax credit or cost-sharing reduction is allowed or paid to the employee. The number of employees is based on average employee count from the previous calendar year. (Effective: 2014)

**State exchanges.** Employers with more than 100 employees will be able to join state exchanges, at the state's discretion. (Effective: 2017)

## **FOR INDIVIDUALS**

**Medicare tax changes.** Medicare taxes increase by 0.9 percent to 2.35 percent on wages of more than \$250,000 for joint returns, \$125,000 for married filing separate or \$200,000 for other individuals. Also, a 3.8 percent Medicare tax will be imposed on the lesser of investment income (interest, dividends, royalties, rents, etc.) or modified AGI more than \$250,000 for joint returns or \$200,000 for other individuals. (Effective: 2013)

**Unreimbursed medical expenses.** The itemized deduction threshold for unreimbursed medical expenses will increase to 10 percent of AGI. However, through 2016 it remains 7.5 percent if an individual (or the individual's spouse) has turned age 65 before the close of the tax year. (Effective: 2013)

**Premium assistance credit.** A refundable tax credit helps cover the premium cost for health insurance purchased through a state health benefit exchange. The Treasury Department will pay the premium assistance credit amount directly to the enrollee's insurance plan. Individuals will pay the dollar difference between the premium tax credit amount and the total premium charged to the plan in which they are enrolled. Alternatively, individuals may pay the full premium out of pocket and claim the credit on their tax returns. To be eligible, household incomes must be between 100 percent and 400 percent of the federal poverty level based on family size and health insurance is not available through an employer or a spouse's employer. The credit amount is based on the excess premium over a threshold amount. The threshold rises from 2 percent of income for those at 100 percent of the federal poverty level to 9.5 percent of income for those at 400 percent of the federal poverty level based on family size. The threshold amounts are adjusted for inflation after 2014. (Effective: Years ending after Dec. 31, 2013)

**Penalties for no insurance.** All individuals must carry insurance or pay penalties - the greater of \$95 or 1 percent of income over the filing threshold in 2014, \$325 or 2 percent in 2015 and \$695 or 2.5 percent in 2016 and beyond. A penalty also is due for each dependent who does not have coverage (fee is half of the adult amount for those younger than 18). The penalty will not be imposed on those for whom the cost of the least-expensive insurance exceeds 8 percent of their income. It also will not be imposed on incarcerated individuals, members of American Indian tribes, individuals not legally present in the United States and those who can claim a religious-conscience exemption. No criminal penalties will be assessed against those who do not pay the penalty, and the IRS cannot use liens or seizures to enforce the penalty. (Effective: 2014) NOTE: Employers might consider offering this information as a service to employees. Resources are available from the AICPA at [360financialliteracy.org](http://360financialliteracy.org).

## Special Considerations

### GRANDFATHERED PLANS:

**Current health coverage.** There are special rules for grandfathered health plans (any group health plan or individual coverage that was effective March 23, 2010, the date of the new legislation's enactment). Employers can maintain current health coverage for individuals already enrolled in plans and for subsequently enrolled family members and new hires. This coverage will not negate the grandfathered status as long as the plan allowed for dependent/family coverage March 23, 2010.

**Collective bargaining.** Collectively bargained agreements are grandfathered until the date on which the last of the collective bargaining agreements relating to the grandfathered coverage terminates.

**Key provisions.** Grandfathered plans generally are able to avoid many of the new legislation's requirements, but still are subject to the following key provisions: pre-existing conditions, dependent coverage, elimination of coverage rescissions, coverage limits and, in 2014, excessive waiting periods.

**Temporary reinsurance for retirees older than 55.** Health and Human Services (HHS) established a temporary reinsurance program for employers to provide health coverage to retirees older than age 55 but are not yet Medicare-eligible. This government-funded reinsurance program reimburses employers for 80 percent of claims with amounts between \$15,000 and \$90,000. The funding for this program is \$5 billion for the entire period. (Effective: Until Dec. 31, 2013)

## The Road Ahead

Amid the looming uncertainty surrounding health care reform, one reality has emerged - health care reform must be viewed as a process rather than an event. The laws should not be regarded as the final word. Additional health care reform initiatives will be proposed and perhaps implemented. Initiatives that already have passed may be adjusted or withdrawn as a result of ongoing legal challenges.

Similar to other times of significant upheaval and change, businesses of all sizes, as well as individuals, will seek professional guidance from their advisers and consultants, including CPAs. The experts advising them should remain fully informed of the impact of current health care reform legislation, as well as future proposals and initiatives.

For more information on health care reform, visit [www.360financialliteracy.org](http://www.360financialliteracy.org). or just give us a call.



## Glossary

**Applicable large employer:** An employer that employs an average of at least 50 full-time employees during the preceding calendar year that

(1) does not provide coverage for all its full-time employees, (2) provides minimum essential coverage that is unaffordable or (3) provides minimum essential coverage that consists of a plan where the plan's share of the total allowed cost of benefits is less than 60 percent.

**CO-OP:** Consumer Operated and Oriented Plan.

**Eligible small employer:** An employer with (1) no more than 25 full-time equivalent employees for the taxable year, (2) average wages paid of less than \$50,000 during the taxable year and (3) responsibility for at least 50 percent of the health care insurance premium cost.

**Qualified coverage:** Minimum essential coverage that includes government-sponsored coverage, employer-sponsored coverage, grandfathered health plans and plans offered in the individual market. A qualified health plan (1) provides the essential health-benefits package, (2) limits annual cost-sharing to the high-deductible health-plan limit, (3) limits the annual deductible for small group market plans to \$2,000 for individuals and \$4,000 for adults and (4) does not require cost-sharing for preventive services or immunizations. Qualified coverage also includes the availability of catastrophic coverage for individuals younger than the age of 30. Employers with more than 50 employees are required to offer qualified coverage or face penalties.

**SHOP:** Small Business Health Options Program.

**Small employer:** Employers with up to 25 employees who are eligible for certain tax credits for offering health insurance to their employees. The credit amount varies by employer size.