

HEALTH REFORM IMPACT

What you need to know NOW

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

Existing Health Plans - Changes Requiring Attention this Year

April 8, 2010

Understanding and ensuring compliance with the numerous changes contained in the recently enacted health reform legislation¹ is a daunting task for employers. And while group health plans that were in existence on March 23, 2010 (“grandfathered group health plans”) are treated more favorably under the Act, several of the key provisions of the Act nevertheless continue to apply to these grandfathered plans. With the effective dates regarding the first round of these required changes quickly approaching (generally, the beginning of the first plan year occurring after September 22, 2010, which would be January 1, 2011 for calendar year plans), this alert focuses on the key changes that grandfathered group health plans must address within the next twelve (12) months. The application of the Act to non-grandfathered group health plans and the provisions of the Act with later effective dates will be discussed in future alerts.

Coverage Extended to Adult Children. Effective for plan years beginning after September 22, 2010, grandfathered group health plans that offer dependent coverage must make coverage available to children of a participant who are under age 26. The extension of coverage is not limited to full-time students or unmarried children, and the value of any subsidy by the employer will not be imputed to the income of the employee. However, grandfathered group health plans may continue to exclude adult children prior to January 1, 2014 if the children are eligible to enroll in another employer-sponsored health plan. The Department of Health and Human Services (“HHS”) is expected to issue regulations clarifying that coverage of adult children under age 26 must be available without regard to whether the child is a “dependent” of the participant for tax purposes.

No Lifetime Limits. Effective for plan years beginning after September 22, 2010, grandfathered group health plans may not impose a lifetime dollar limit on “essential health benefits,” as defined by HHS in forthcoming regulations. Dental and vision care, for example, are not expected to be treated as “essential” for this purpose.

¹ The Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010 (collectively, the “Act”) was signed into law, in final form, on March 30, 2010.

Restrictions on Annual Limits. Effective for plan years beginning after September 22, 2010, HHS will set a cap on annual limits that may be imposed by grandfathered group health plans for “essential health benefits,” as defined in future regulations (again, it is expected that dental and vision care will not be “essential” for this purpose). However, as of January 1, 2014, annual limits on “essential health benefits” may not be imposed at all.

No Pre-existing Exclusions. Effective for plan years beginning after September 22, 2010, grandfathered group health plans may not impose a pre-existing condition exclusion against a child under the age of 19. ERISA’s 6-month “look back” and 12-month exclusionary periods (which could previously be used to limit coverage of pre-existing conditions) will no longer apply. Effective as of January 1, 2014, no grandfathered health plan may impose a pre-existing condition exclusion on a participant of any age.

No Rescission. Effective for plan years beginning after September 22, 2010, grandfathered group health plans may not rescind coverage of any individual once the individual has already become a covered participant, unless the individual has committed fraud or made an intentional misrepresentation of material fact.

No Reimbursement of Over-the-Counter Medications. Effective for plan years beginning after September 22, 2010, grandfathered group health plans that include a health flexible spending account (“FSA”), health savings account (“HSA”) or health reimbursement account (“HRA”) may not provide reimbursement for over-the-counter medicines without a prescription.

Automatic Enrollment. Effective upon the issuance of implementing regulations by HHS, all employers that have 200 or more full-time employees must provide for automatic enrollment of new full-time employees in a grandfathered health plan under the coverage option with the lowest employee premium, unless the employee makes an affirmative election to opt out or elects a different option. Automatic enrollment may be subject to a waiting period, to the extent permitted by law. Additional guidance is needed on how automatic enrollment will coordinate with cafeteria plans (which typically require an affirmative election of coverage).

Retiree Health Subsidy. The Act allocates a \$5 billion subsidy for retiree health coverage to individuals age 55 and over who are not yet eligible for Medicare. The subsidy program will take effect by June 23, 2010 and plans will need to apply to participate. The subsidy program will reimburse plans for 80 percent of claims between \$15,000 and \$90,000 for a given year. This retiree health subsidy will be covered in depth in a future alert.

With the effective dates of these key provisions rapidly approaching, employers should begin reviewing their group health plans now to ensure that the required changes are timely completed. To better understand whether or not an existing group health plan will be treated as a grandfathered plan and what actions an employer may take with regard to such plans without jeopardizing their grandfathered status please see our recent alert entitled: [*Grandfathered Health Plans – Significant Exemptions From Health Reform Legislation.*](#)

If you have questions regarding the information in this alert, or with respect to other provisions of the health reform legislation as it relates to your employee benefits plans, please contact any of the attorneys in our Employee Benefits Practice Group listed below.

Also, please [click here](#) to visit our special web page for Health Reform IMPACT.

Bass, Berry & Sims Employee Benefits Attorneys

Fritz Richter
(615) 742-6256
frichter@bassberry.com

David Thornton
(901) 543-5922
dthornton@bassberry.com

Richard Barry
(615) 742-6230
rbarry@bassberry.com

Curtis Fisher
(615) 742-7892
cfisher@bassberry.com

John Kirk
(615) 742-7808
jkirk@bassberry.com

Michael Moore
(901) 543-5916
mtmoore@bassberry.com

The materials contained herein have been abridged from the statutory sources and should not be construed or relied upon for legal advice. Readers are urged to consult legal counsel concerning particular situations and specific legal questions.

To ensure compliance with requirements imposed by the IRS, we inform you that this message is not intended to be used, and cannot be used, by the addressee or any other person for the purpose of avoiding penalties that may be imposed under the