

OSC 12
Ohio Safety Congress & Expo

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455 The Basics of Federal Health-care Reform: What Employers Should Know

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Ohio Bureau of Workers' Compensation

What Employers Need to Know Now About Health Reform Compliance

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Health Care Reform:
Overview

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- The Patient Protection and Affordable Care Act became law on 3/23/2010 (and was amended by the Health Care and Education Reconciliation Act which became law on 3/30/2010).
- The law makes important changes to:
 - Manner in which health coverage is provided by employers;
 - Compliance with federal False Claims Act;
 - Eligibility and reimbursement under Medicare and Medicaid; and
 - Delivery of health care services by various providers.
- Generally, these changes are phased in over the next few years.

Health Care Reform:
PPACA status

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- **Judicial Activity:**
 - Courts upholding constitutionality of PPACA:
 - × 6th Circuit Court of Appeals – includes Ohio
 - × 4th Circuit Court of Appeals.
 - Courts declaring PPACA unconstitutional:
 - × 11th Circuit Court of Appeals – plaintiffs include 26 states, including Ohio.
 - Supreme Court decision expected in summer of 2012. Employers should continue PPACA implementation.
 - Total legislative repeal unlikely given current Democratic strength in Senate and Administration.
- **OH Issue 3 HC Amendment** – symbolic gesture, federal law controls.

Health Care Reform:
Changes to date

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- **Temporary retiree health reinsurance program.**
 - Applications closed 5/6/2011.
 - Funding projected to run out in 2012 (well before the 1/1/2014 expiration).
- **Federal voluntary long-term care program (the “CLASS Act”)** (no intent to implement).
- **Expanded Form 1099 reporting** (repealed).
- **Free choice vouchers** (repealed).

Health Care Reform:
Grandfathered status

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- **Grandfathered (GF) plan** = a plan in existence on 3/23/2010 (date of PPACA enactment).
- **Knowing “grandfathered” status is essential to PPACA compliance.**
 - GF status very likely to change – question is when.
 - Losing GF status = compliance with additional non-grandfathered (NGF) plan mandates then in effect.
 - Status determined for each benefit option (high PPO, low PPO, HDHP/HSA).
 - DOL issued several FAQs on GF plan nuances.
- **If GF plan, notice must be provided to participants (with mandated language) and records kept to document plan in effect on 3/23/2010.**
- **PPACA does not apply to retiree-only plans or stand-alone dental and vision.**
- **Insured collectively bargained plans have special transition rule.**

Change =
loss of grandfathered status

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- **Eliminate coverage** for necessary element to diagnose/treat specific condition.
- Increase in **coinsurance** percentage from 3/23/2010 percentage.
- Increase in dollar amount of **deductible or OOP limit** in effect on 3/23/2010, if increase is greater than medical inflation plus 15%.
- Increase in dollar amount of **copay** in effect on 3/23/2010, if increase exceeds greater of (a) \$5 (adjusted up for medical inflation); or (b) medical inflation plus 15%.
- Decrease in percentage of **employer contribution** for any coverage tier by more than 5% below 3/23/2010 percentage, calculated as [(COBRA rate – employee premium)/COBRA rate].
- New or reduced **global annual dollar limit**, except if limit is not less than former lifetime dollar limit.

Change =
no effect grandfathered status

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- **Smaller changes in dollar amount of deductibles, OOP limits or copays.**
- **Normal enrollment of employees and family members who were not enrolled on 3/23/2010 and employees' normal election changes.**
- **If plan is insured, renewing with current carrier or changing carriers.**
- **If plan is self-insured, renewing with current TPA or engaging new TPA.**

Health Care Reform:
Plan years after 9/23/2010

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- **Mandates effective for plan years starting after 9/23/2010.**
 - Grandfathered and non-grandfathered plans
 - 1. Coverage of children up to age 26, unless eligible for other non-parental, employment-based coverage. Non-grandfathered must offer even if other coverage is available.
 - 2. No preexisting condition limitations on children under age 19.
 - 3. No lifetime dollar limits on essential benefits.
 - 4. No annual dollar limits on certain essential benefits.
 - 5. Insurers must report loss ratios and provide rebates.
 - 6. Rescission prohibited.

Health Care Reform:
Plan years after 9/23/2010 (cont'd)

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- **Non-grandfathered plans only – additional mandates effective for plan years starting after 9/23/2010.**
 - 1. Coverage of children up to age 26, even if eligible for other non-parental, employment-based coverage.
 - 2. First dollar coverage of in-network preventative care.
 - 3. Nondiscrimination rules for insured plans.
 - 4. New appeals standards (including external appeals).
 - 5. Enhanced participation protections. Limits on prior authorization/referral for Ob/Gyn and selection or primary care physician/pediatrician. Special rules for emergency care.
- **Significant penalties for failure to comply with first wave of mandates - \$100/day/affected participant/violation, along with qui tam right.**

Health Care Reform:
Other items in effect now

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- **Grandfathered and non-grandfathered plans**
- **FSAs and HRAs cannot reimburse over-the-counter (OTC) medications (other than insulin) without a prescription.**
- **Tax on HAS distributions not used for medical expenses will be increased from 10% to 20%.**
 - OTC medications (other than insulin) without a prescription will not be considered to be medical expenses.

Health Care Reform:
Other items in effect now (cont'd)

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- **Small business tax credit for health coverage.**
 - http://www.irs.gov/newsroom/article/0_id=220848.00.html
 - Available for small employers (both taxable and IRC 50t(c)(3)) with fewer than 25 full-time equivalent employees (FTE), with average annual wages less than \$50,000 per FTE if the employer pays at least 50% of the premium cost for all enrolled employees.
- **Temporary high-risk pool – program to provide insurance for individuals who have been without coverage for at least six months due to pre-existing condition.**
 - Applications and information about the program for Ohio residents are available at www.ohiohighriskpool.com
- **HHS Web Portal – individual/small employer insurance information.**
 - <http://www.healthcare.gov/>

Health Care Reform: New for 2010 – W-2 Reporting

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- Grandfathered and non-grandfathered plans
- Form W-2s will have to show the cost of employer health coverage (employer and employee contributions) starting in 2012 (really, Jan. 2013; optional for 2011).
 - New reporting required for:
 - Small employers (issue less than 250 W-2s in year, reporting not required for following year).
 - Multiemployer plans.
 - Non-employees and W-2s issued before year end.
 - Reporting only informational – no impact on taxation of coverage.
- Cost will be based on COBRA premiums – 2% fee. Excludes FSA, HSA and HRA contributions and stand-alone vision and dental.
- Inclusion of COBRA value optional – develop uniform rule.

Health Care Reform: New for 2012 - SBCs

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- Grandfathered and non-grandfathered plans
- All plans must provide uniform summary of benefits and coverage (SBC).
 - Requirements in addition to existing SPD and SMM requirements. Format, content and distribution requirements set by regulations.
 - Must begin distribution 3/23/2012.
 - Must give prior written notice of any material change to benefits described in SBC:
 - 60 days' notice for changes during plan year.
 - 30 days' notice for changes in open enrollment.
 - Willful failure to give notices can result in penalties up to \$1,000/day/participant.

Health Care Reform: More for 2012 and 2013

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- Patient Centered Research Fee: funds research into the clinical effectiveness of medical treatments, procedures, drugs and other strategies.
 - Applies to plan years ending after 9/23/2012. Does not apply to plan years ending after 9/30/2019.
 - \$1 (\$2 after the first year, indexed) per-covered-life fee.
- In 2012, new government reporting by NGF plans regarding wellness programs and plan designs to improve health outcomes.
- Effective for 2013, health FSAs will be capped at \$2,500 (indexed).
- By 3/1/2013 (upon hire after), employers must provide employees with exchange education notice (describing exchanges and individual tax credits).

Health Care Reform: A look ahead to 2014

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- Plan years starting on or after 1/1/2014.
 - Grandfathered and non-grandfathered plans
 - 1.No waiting period in excess of 90 days.
 - 2.New rules for standards-based wellness programs.
 - 3.Must cover adult children up to age 26, even if the child is eligible for non-parental employment-based coverage.
 - 4.No pre-existing condition limitations.
 - 5.No annual dollar limits on “essential benefits”

Health Care Reform: A look ahead to 2014 (cont'd)

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- Plan years starting on or after 1/1/2014.
 - Non-grandfathered plans only
 - 1.Cost-sharing limited to HSA-compatible HDHP out-of-pocket maximum (\$5,950 for individual coverage and \$11,900 for family coverage, indexed for inflation).
 - 2.Deductibles limited to \$2,000 for individual coverage and \$4,000 for family coverage, plus flexible spending account contribution limit (all indexed for inflation).
 - 3.Mandated coverage of clinical trial expenses related to cancer or other life-threatening diseases.

Health Care Reform: A look ahead to 2014 (cont'd)

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- Exchanges: By 1/1/2014, states will set up exchanges where individuals and small employers (less than 50 or 100 employees; 100 in 2016) can buy insurance.
 - “Large” employers may participate in 2017 (optional for states).
 - Even if employers do not offer health coverage, they will have to interact with the exchanges.
 - 2017 state opt-out may be moved up.
- “Individual Mandate”: Starting in 2014, individuals must have health coverage or pay a fee.
 - Fee is the greater 1% (phased up to 2.5%) of income or \$95 (phased up to \$695 in 2016).
 - Individual enrolled in employer plan will not have to pay the fee.

Health Care Reform:

A look ahead to 2014 (cont'd)

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- Starting in 2014, a large employer will have to pay or play (and maybe pay even if it plays).
 - Grandfathered and non-grandfathered plans
 - Large employer = an average of at least 50 full-time equivalent employees on business days in the preceding calendar year.
 - Full-time equivalent employees include:
 - ✦ "Full-time" employees working on average 30 or more hours per week.
 - ✦ Equivalent employees calculated by dividing all hours worked in a month (other than hours worked by a full-time employee) by 120 hours.

Health Care Reform:

A look ahead to 2014 (cont'd)

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- No-offer penalty (play or pay) – if a large employer does not offer coverage to all full-time employees (averaging 30 hours/week in a month) and their dependents.
 - If:
 - ✦ Employer does not offer coverage to all full-time employees and dependents in that month; and
 - ✦ Even one employee gets a subsidy to buy coverage during that month through an exchange, employer must pay \$166.67/mo. (\$2,000/yr.) X (# of FT employees minus 30).
 - Part-time employees do not count for the calculation.

Health Care Reform:

A look ahead to 2014 (cont'd)

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- Unaffordable coverage penalty (play and pay) – even if a large employer offers coverage to all full-time employees and their dependents, but that coverage is deemed to be unaffordable.
 - Applies if either:
 - ✦ Employer pays less than 60% of the value of the plan; or
 - ✦ Employee's share of the premium is more than 9.5% of the employee's family income.
 - Monthly penalty is the lesser of:
 - ✦ \$250/mo. (\$3,000/yr.) X # of FT employees receiving a subsidy on the exchange; or
 - ✦ \$166.67/mo. (\$2,000/yr.) X (#FT employees minus 30).

Health Care Reform:

A look ahead to 2014 (cont'd)

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- Grandfathered and non-grandfathered plans
- New IRS reporting requirements to enforce individual coverage mandate and employer play-or-pay penalties.
 - Actual timing of the IRS reporting is to be determined by the Secretary of Treasury in future guidance.
 - May be combined with other reports.
 - Related disclosures must also be made to certain plan participants.

Health Care Reform: Useful links and caveats

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- Links to government resources:
 - <http://www.healthcare.gov/>
 - <http://www.dol.gov/ebsa/healthreform/>
- Link to Vorys Health Care Reform webpage:
 - <http://www.vorys.com/healthcarereform/>
- Health care reform mandates are subject to future guidance from governmental agencies, such as the Secretary of Health and Human Services.
 - As a result, the process for compliance with this law is very fluid.
 - Therefore, the materials contained in this presentation are subject to change based upon future guidance.

This presentation is for general information only.

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