

SUMMER 2010

**Selected Health Care Reform Provisions Affecting Group Health Plans**  
**By Douglass A. Farnsworth and Roberta Casper Watson**  
**Trenam Kemker**  
**Tampa and St. Petersburg, Florida**

The following are a few key provisions of the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Affordability Reconciliation Act (collectively the “Act”) that will affect employer-sponsored group health plans (GHPs), with implementation periods that begin immediately and continue over the coming years. Some provisions apply to so-called “grandfathered plans,” while others apply initially only to non-grandfathered GHPs. A grandfathered GHP is defined by the Act as a GHP that was in existence, with at least one person enrolled, as of March 23, 2010. It is not yet clear, and further guidance will be needed to determine, what types of changes will affect the grandfathered status of these plans.

The following is only a summary of key provisions, and is not exhaustive.

<b>Period of Implementation</b>	<b>Provision</b>	<b>Applies to GF GHPs</b>	<b>Applies to Non-GF GHPs</b>
Immediate (applicable to calendar year 2010)	<b>Small-employer tax credit</b> Employers with up to 25 full-time employees, with average wages up to \$50,000, who pay at least 50% of premiums	Yes	Yes
Employer’s tax year 2010	<b>Consider whether booking loss of deduction for retiree drug subsidy is required by GAAP</b>	Yes	Yes
June 2010	<b>Early retiree coverage reinsurance program</b> <ul style="list-style-type: none"> <li>• For plans providing coverage to retirees over age 55 but not eligible for Medicare</li> <li>• Will reimburse 80% of claims incurred between \$15,000 and \$19,000 per year, until \$5 billion funding exhausted</li> <li>• Limited reimbursement pool of \$5 billion and is expected to run out within first year or two. HHS says plan participation (based on estimates) will be FIFO, and actual claims payments for those plans will be FIFO, so get estimated claims in quickly</li> </ul>	Yes	Yes

*continued on next page*

*continued*

<b>Period of Implementation</b>	<b>Provision</b>	<b>Applies to GF GHPs</b>	<b>Applies to Non-GF GHPs</b>
Plan Years after 9/23/10	<b>Pre-existing condition exclusions or limitations prohibited for children under age 19</b> Administration requests immediate voluntary compliance	Yes	Yes
Plan Years after 9/23/10	<b>Annual and lifetime benefit limits prohibited</b> Limits may be allowed on coverage that does not constitute “essential health benefits” (as defined in HHS regulations to be issued)	Yes	Yes
Plan Years after 9/23/10	<b>Rescissions prohibited</b> Beginning in 2011, plans will not be able to rescind existing coverage or terminate existing plans except with notice to enrollees and only in the case of fraud or misrepresentation Guidance is needed to determine if this provision applies only to insured plans or to all non-GF GHPs or possibly to GF GHPs	<b>Possibly Yes</b> (unclear, further guidance needed)	Yes
Plan Years after 9/23/10	<b>Coverage of certain preventive services required</b> Plans will be required to provide coverage, without cost-sharing (i.e. deductibles, copayments, or coinsurance) for certain preventive services to be determined by regulation	No	Yes
Plan Years after 9/23/10	<b>Coverage for dependent children until age 26</b> <ul style="list-style-type: none"><li>• Coverage will be required for unmarried children</li><li>• Does not require coverage of adult dependent’s children or spouse</li><li>• Administration is requesting immediate voluntary compliance to avoid gap in coverage for children who would be terminated before date on which their reentry will be required</li><li>• Pre-tax treatment of premiums through end of calendar year of 26th birthday, even though mandate only runs through 26th birthday</li><li>• Pre-tax treatment of voluntary inclusion is allowed beginning March 30, 2010</li></ul>	Yes (unless adult dependent has other employer plan available)	Yes (applies whether other coverage available or not)

*continued on next page*

*continued*

<b>Period of Implementation</b>	<b>Provision</b>	<b>Applies to GF GHPs</b>	<b>Applies to Non-GF GHPs</b>
Plan Years after 9/23/10	<b>Nondiscrimination testing</b> <ul style="list-style-type: none"><li>• Applies portions of Section 105(h) nondiscrimination testing to insured plans that currently applies only to self-insured plans</li></ul>	No	Yes
Plan Years after 9/23/10	<b>Claims and appeal processes</b> <ul style="list-style-type: none"><li>• Applies claims and appeals process requirements complying with ERISA Section 503</li><li>• External review process must be established that complies with state law (insured plans) or DOL regulations (self-insured plans)</li></ul>	No	Yes
Plan Years after 9/23/10	<b>Coverage for emergency services</b> <ul style="list-style-type: none"><li>• Plan must cover services provided in an emergency without authorization and with same cost-sharing as in-network</li></ul>	No	Yes
Aug. 23, 2010	<b>Choice of physician</b> <ul style="list-style-type: none"><li>• Plans that include a primary care provider (PCP) must allow participant to have the participating provider of his/her choice, and must allow OB/gyn to act as a PCP</li></ul>	No	Yes
1/1/2011	<b>Health FSA cannot reimburse for OTC drugs</b> <ul style="list-style-type: none"><li>• Employer-sponsored account plans (FSAs, HSAs, HRAs) will be prohibited from reimbursing for nonprescription drugs unless prescribed by a physician</li></ul>	Yes	Yes
1/1/2011	<b>Simple Cafeteria Plans</b> <ul style="list-style-type: none"><li>• Employers with up to 100 eligible to participate in simple cafeteria plan with simplified testing if safe harbor contributions to plans are made by employer</li></ul>	Yes	Yes
2012	<b>W-2 reporting of value of employer-provided coverage</b> <ul style="list-style-type: none"><li>• Beginning with the value of coverage provided in year 2011, employers must report the value of employer-provided health coverage, excluding FSA, HSA, and Archer MSA contributions</li></ul>	Yes	Yes

*continued on next page*

*continued*

<b>Period of Implementation</b>	<b>Provision</b>	<b>Applies to GF GHPs</b>	<b>Applies to Non-GF GHPs</b>
3/23/2012	<b>Uniform explanation of coverage</b> <ul style="list-style-type: none"><li>• Requires summary of coverage under plan be provided in a format to be prescribed in regulations (in addition to SPD)</li><li>• Penalty for failure to provide is up to \$1,000 per enrollee</li></ul>	Yes	Yes
3/23/2012	<b>Advance notice of material modifications</b> <ul style="list-style-type: none"><li>• Plan must provide notice of a material modification at least 60 days in advance of the change</li><li>• Applies in addition to regular summary of material modifications (SMM) required by ERISA</li><li>• Penalty for failure to provide is up to \$1,000 per enrollee</li></ul>	Yes	Yes
1/1/2013	<b>FSA contributions limited to \$2,500 per year</b>	Yes	Yes
1/1/2013	<b>Deduction for amount of retiree drug subsidy eliminated</b>	Yes	Yes
1/1/2013	<b>Increased Medicare payroll tax for high earners</b> <ul style="list-style-type: none"><li>• Employee's portion of Medicare payroll tax increases to 2.35% for those earning \$200,000 (individuals) or \$250,000 (joint filers)</li><li>• Employer is responsible to withhold based only on wages from the employer without regard to the employee's other jobs or tax status</li></ul>	Yes	Yes
3/1/2013	<b>Employer must provide notice to employees of availability of exchanges beginning in 2014</b>	Yes	Yes
Plan years beginning 1/1/2014	<b>Pre-existing condition exclusions or limitations prohibited</b> <ul style="list-style-type: none"><li>• Applies to all participants beginning in 2014</li></ul>	Yes	Yes
Plan years beginning 1/1/2014	<b>Plan waiting periods cannot exceed 90 days</b>	Yes	Yes

*continued on next page*

continued

<b>Period of Implementation</b>	<b>Provision</b>	<b>Applies to GF GHPs</b>	<b>Applies to Non-GF GHPs</b>
Plan years beginning 1/1/2014	<b>Small, fully-insured plans must provide “essential health benefits”</b> <ul style="list-style-type: none"><li>• Includes emergency care, inpatient care, prescription drugs, lab testing, maternity and newborn care, pediatric care</li></ul>	No	Yes
Plan years beginning 1/1/2014	<b>Plan cost sharing limited to high-deductible health plan limits</b> <ul style="list-style-type: none"><li>• Deductibles, coinsurance, copayments, etc</li></ul>	No	Yes
1/1/2014	<b>Employers with 50+ employees coverage mandate</b> <ul style="list-style-type: none"><li>• Coverage must be “affordable” and available to all full-time employees</li><li>• Penalty for total failure to offer coverage = \$2,000 per FTE if qualified employee (&lt;400% poverty level) enrolls in an exchange</li><li>• Penalty for failure to offer affordable coverage = \$3,000 per FTE if qualified employee (&lt;400% poverty level) enrolls in an exchange</li><li>• Voucher equal to cost of employer contribution to coverage must be provided if a qualified employee’s plan contribution would be more than 8% but less than 9.8% of income, the employee doesn’t enroll in plan and does enroll in exchange</li></ul>	Yes	Yes
Effective based on regulations	<b>Automatic plan enrollment for employers with 200+ employees</b> <ul style="list-style-type: none"><li>• Employer must automatically enroll new employees, and must give notice of option to opt-out of plan</li></ul>	Yes	Yes
2018	<b>So-called “Cadillac” tax on excess value of coverage</b> <ul style="list-style-type: none"><li>• Coverage value calculated similar to COBRA coverage</li><li>• 40% excise tax imposed on amount by which value of coverage exceeds applicable threshold amounts</li></ul>	Yes	Yes