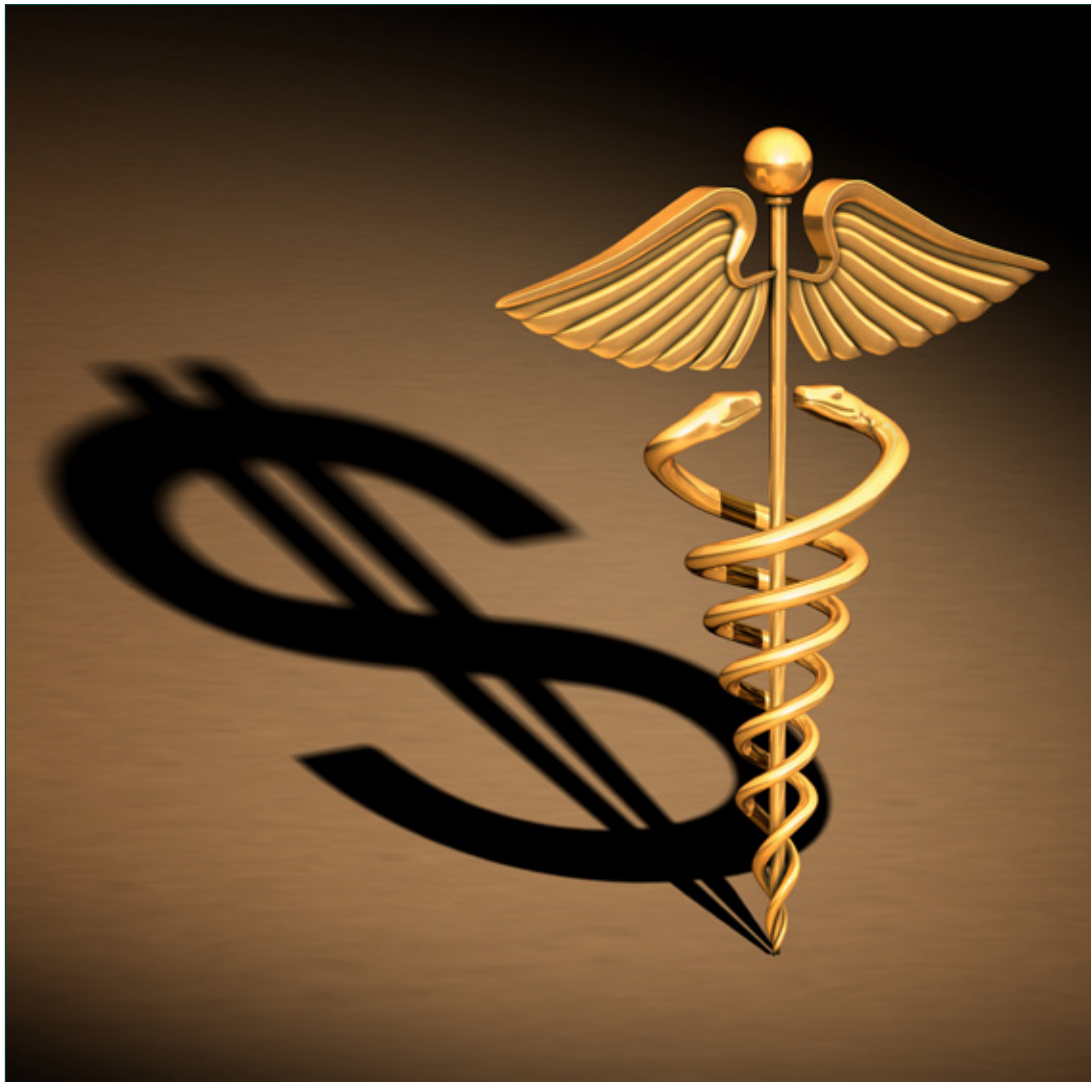


CBIZ Health Reform Brief #2

THE IMPACT OF HEALTH REFORM ON YOUR BUSINESS:

*Navigating the Complexities of the
Patient Protection and Affordable Care Act*



DETAILS EMERGE ON REFORM'S GRANDFATHER CLAUSE



Given the ambiguity that continues to surround the Patient Protection and Affordable Care Act (PPACA), it is essential that employers work closely with their CBIZ account representatives to stay abreast of emerging regulatory developments and details.

Perhaps the most significant new information to come out since the law's passage relates to the "grandfathering" of existing plans. According to regulations collectively issued on June 17th by the departments of Health and Human Services, Treasury and Labor, any plan that was in existence on March 23, 2010 is grandfathered and thus exempt from some — but not all — of the insurance reforms that make up the first wave of PPACA mandates. Several of these reforms take effect for plan years beginning on or after September 23, 2010.

That said, it is critical for employers to understand that grandfathered status can and will be revoked as the result of virtually any substantive change in the existing plan, including changes in co-pays, employee contributions or carriers. Both self-insured and commercially insured employers must, therefore, be fully cognizant not only of the exemptions they currently enjoy but also of the factors that will lead to termination of those exemptions.

What's Mandatory

As the rules currently stand, all plans — both grandfathered and non-grandfathered — are subject to the following provisions for plan years beginning on or after September 23, 2010:

- A ban on pre-existing condition exclusions for children under the age of 19 (The ban applies to all covered lives beginning January 1, 2014.)

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- A ban on lifetime or annual limits, based on the dollar value of benefits. From now until January 1, 2014, plans are permitted to use the following annual limit schedule on the dollar value of benefits:

Annual Limit	Applicable to Plan Years Between
\$750,000	9/23/2010 and 9/23/2011
\$1.25 million	9/23/2011 and 9/23/2012
\$2 million	9/23/2012 and 9/23/2013

- A ban on coverage rescissions, except in cases of fraud or misrepresentation
- An extension of dependent coverage until age 26 (Grandfathered plans enjoy limited relief from this provision from plan years beginning before 2014. Between now and the 2014 plan year, grandfathered plans may, but are not required to, limit coverage to older age dependents who do not have access to other employer coverage, excluding parents' coverage.)

Exemptions for Grandfathered Plans

Grandfathered plans are exempt from the following provisions scheduled to take effect for plan years beginning on or after September 23, 2010, providing nothing has occurred that will trigger the loss of grandfathered status:

- Patient protections, such as choice of primary care provider or pediatrician, in the case of a child
- The requirement that individuals must be given direct access to OB/GYN care without a referral
- The prohibition of prior authorization, or increased cost sharing, for out-of-network emergency services
- Coverage of preventive health services, immunizations and screenings without any cost sharing
- Salary-based discrimination rules applicable to fully insured plans
- Development of an internal and external independent appeals process

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Loss of Grandfathered Status

Events that could trigger loss of grandfathered health plan status and result in employer compliance problems, including penalties, include the following:

- Eliminating all, or substantially all, benefits for the diagnosis or treatment of a particular condition
- Increasing the percentage of a cost-sharing arrangement, such as coinsurance, above the level at which it was on March 23, 2010
- Increasing co-payments by an amount that exceeds a formula prescribed by the law
- Changing annual limits of group health plans in existence on March 23, 2010, including:
 - adding an annual limit on the dollar value of benefits;
 - decreasing the limit for a plan with only a lifetime limit;
 - or
 - decreasing the limit for a plan with an annual limit.
- Decreasing the contribution rate by employer or employee organization based on a percentage or formula toward the cost of any tier of coverage for any class of similarly situated individuals by more than five points below the contribution rate on March 23, 2010
- Changing insurers (does not include changing plan administrators for self-funded health plans)

Real-World Examples

Here are some examples of how the grandfathering regulations would affect specific plan situations:

- Amending a plan on or after March 23, 2010 to increase a coinsurance amount from 20 percent to 25 percent for inpatient surgery would result in loss of grandfathered status.
- Increasing the employee share of the premium from 15 percent to 25 percent would result in loss of grandfathered status.

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Events that would **not** cause a loss of grandfathered status include:

- Adding new dependents or employees at open enrollment or special enrollment events;
- Adding new benefits;
- Making modest adjustments to existing benefits;
- Voluntarily adopting new consumer protections under the new law; or,
- Making changes to comply with state or other federal laws.

A Hidden Trap

All plans — both grandfathered and non-grandfathered — will be prohibited from rescinding employee or dependent coverage for plan years beginning on or after September 23, 2010. As a result, some employers may find themselves inadvertently paying the insurance premium for an individual who moves from a class of employees eligible for benefits to a class of employees ineligible for benefits. In this scenario, once the employer realizes that the individual has not been removed from the existing plan, it cannot then rescind coverage retroactively.

To avoid this kind of scenario, employers should make sure that effective processes are in place to ensure that only eligible individuals are on the plan and that employees who have left the company are taken off the plan in a timely manner. Using an outsourced benefits manager may be helpful in establishing and maintaining this kind of benefit management vigilance.

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Major Fines for Discrimination

Another area of potentially significant financial risk for employers involves the expanded applicability of Internal Revenue Code (IRC) Section 105(h). Salary-based discrimination rules — as added to IRC Section 105 in 1978 and applicable only to self-insured plans — will now also apply to non-grandfathered, fully insured plans for plan years beginning on or after September 23, 2010. Essentially, this means that executives and others may no longer enjoy special plan options or benefits that either improve the individual's coverage or reduce their costs vis-à-vis other employees.

In addition, major financial penalties have been added to the Code as part of the PPACA. In the past, individuals who received more valuable, discriminatory benefits through self-insured plans were subjected to additional income tax on the portion of their benefit that exceeded the employer's standard benefit. Now, however, plan sponsors of fully insured plans could be assessed an excise tax of \$100 per day for each individual receiving the special benefit. The excise tax does not apply to self-funded plans, which remain subject to the income tax inclusion.

Because considerable uncertainty surrounds this aspect of the regulation as it is currently written, employers that are not grandfathered should immediately begin charging all employees the same health insurance premium, and, if they so desire, provide additional remuneration to executives in another form.

New Review Process

Another change taking effect for plan years beginning on or after September 23rd — and applicable to non-grandfathered, self-insured plans — is the requirement that a new external review process be created to assess the validity of denied claims. In the fully insured arena, this function typically is provided by the insurance carrier. To meet the requirement, employers who sponsor self-insured plans will need to contract with independent, external review organizations.

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Tax Credit

Because the PPACA includes a tax credit opportunity for small businesses, CBIZ has developed a calculator that CBIZ representatives can use to help companies determine the after-tax impact of the credit on their bottom line.

As currently written, the law provides employers that have no more than 25 employees and average annual wages of less than \$50,000 with a tax credit of up to 35 percent of premiums, so long as the employer pays at least half the cost of the insurance for covered employees. The credit is phased out for employers with more than 10 employees or with average wages above \$25,000, so it is important to determine not only whether a company is eligible for the credit, but also how much of the credit the company can expect to utilize. The full credit is available to employers below those levels.

Employers eligible for the credit must reduce their deductions for premiums paid by the amount of the credit claimed. The CBIZ calculator shows the net effect of both the savings from the credit and the cost of the lost deductions to give companies a true picture of the net financial impact.

Clarifying a Major Misconception

Some observers have suggested since the passage of the PPACA that employer health contributions will be reported on the Form W-2 employee wage and salary document as additional income. While the aggregate cost of employer-sponsored health coverage — including both employer and employee contributions — must be reported on an employee's Form W-2 beginning in 2011, no portion of the amount is included in the employee's taxable compensation income.

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New 1099 Reporting Requirements

At least one new requirement for employers likely will add significant cost and burden to their tax-reporting requirements. Beginning in 2012, payments of \$600 or more in any taxable year made for both goods and services will be subject to Form 1099 reporting, regardless of the recipient. Historically, only services have been subject to Form 1099 reporting, and payments to corporations were exempt. Reporting the payments for goods was added, however, as part of PPACA as a means of raising revenue to help offset the costs of other reform provisions.

Certain business purchases made with credit or debit cards will be exempt from the requirement, as these purchases already are reported by banks and other payment processors.

The Taxpayer Advocate Service (TAS) recently submitted a report to Congress expressing concern that the new requirement will impose significant compliance burdens on businesses, charities and government agencies.¹ Businesses and other entities will have to keep track of all purchases they make by vendor and then issue a Form 1099 to the vendor and the Internal Revenue Service that shows the exact amount of the total purchases. The TAS analysis estimated that nearly 40 million businesses will be subject to the new reporting requirement. Other observers have suggested that the requirement will disproportionately affect small business, which will find the new record-keeping requirements inordinately costly and time-consuming.

The Senate rejected two amendments in mid-September that would have eased or repealed the new Form 1099 information reporting requirements as part of the Small Business Jobs Act bill (H.R. 5297), immediately prompting new legislation to be introduced separately by each party to amend or repeal the new rules.

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Meeting the Challenge

Despite the recent emergence of additional details regarding the PPACA — notably those surrounding grandfathered status — much uncertainty continues to surround the landmark legislation.

Fortunately, CBIZ is uniquely qualified to provide expert guidance and counsel for meeting the challenges ahead. As the nation's leading provider of integrated business services to small and mid-sized firms, we're able to bring an unmatched array of skills and disciplines to bear on the tasks and opportunities presented by health care reform.

Our expertise in health benefit design, productivity and wellness, tax and accounting services, payroll management and related areas creates the comprehensive intellectual framework needed to help organizations develop viable strategic responses to the health care reform initiative.

Please note that the information provided herein is not intended to be, and should not be construed as, a legal or tax opinion or advice. It is recommended that you consult with your own attorney or other adviser relating to your specific circumstances or those of any person or entity you advise.

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- 1 Taxpayer Advocate Service, "National Taxpayer Advocate Report to Congress, Fiscal Year 2011 Objectives," June 30, 2010, <http://www.irs.gov/pub/irs-utl/nta2011objectivesfinal.pdf>.