Health Care Reform: Opportunities and Challenges
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• Employee Benefit Planning Opportunities and Compliance Strategies for Employers – Kirsten Vignec
• Regulatory Driven Business Opportunities – Reid Haney
• Health Care Development Opportunities – Stephen Hudoba
Health Care Reform

• Although impossible to detail all of the provisions of health care reform that affect employers and group health plans, we will
  – Provide a timeline of the relevant provisions
  – Review the small business tax credit
  – Briefly discuss grandfathered plans and the new nondiscrimination rules
  – Review the pros and cons of simple cafeteria plans
Timeline: 2010

- Small business tax credit
- Early retiree reinsurance
- Recognition of taxation of retiree drug subsidy
- Nursing mothers
- State high risk pools
- Automatic enrollment
Timeline: Plan years beginning on or after September 23, 2010

- Restrictions on rescission
- Dependent coverage for adult children under the age of 26
- Changes to appeals process
- First dollar coverage required for certain evidence based preventive care (including well child care and certain immunizations)
Timeline: Plan years beginning on or after September 23, 2010

- Elimination of the pre-existing condition exclusion for children under age 19
- Elimination of lifetime limits related to essential health benefits
- Reasonable annual limits related to essential health benefits
Timeline: Plan years beginning on or after September 23, 2010

- Participants can select primary care provider
- No preauthorization or increased cost-sharing for emergency
- No preauthorization or referral requirement for OB/GYN services
- Nondiscrimination requirements
Timeline: 2011

- Over the counter medications are no longer eligible for reimbursement under a health flexible spending account, health reimbursement arrangement or health savings account

- CLASS ACT: National voluntary employee funded long term care benefit

- Insurance rebates required to the extent that more than 20% of the premium revenue is spent on costs other than benefit claims
Timeline: 2011

- W-2’s issued for 2011 must disclose cost of employer provided health benefits – this has been delayed for one year
- Simple Section 125 cafeteria plans are available for companies with less than 100 employees
- Tax on distributions from a health savings account is increased from 10% to 20%
- Adoption assistance limits increased and extended
Timeline: 2012

• 1099 reporting requirements expanded to require a 1099 to be issued to any corporation, other than a tax exempt, for any property or services over $600:
  – Currently, only for unincorporated, and only for services
  – Must get tax ID numbers for all suppliers

• Report health care quality and wellness initiatives to HHS
Timeline: Plan years ending on or after September 30, 2012

- Fee of $2 per average number of enrollees/lives ($1 for policy/plan years ending during fiscal year 2013):
  - If fully insured, issuer pays
  - If self-funded, plan sponsor pays
  - Indexed
  - This fee sunsets after 2019
Timeline: 2013

- Additional 0.9% Medicare tax on wages in excess of $250,000 for joint return filers, and $200,000 for others
- 3.8% tax on unearned income for joint filers with modified AGI in excess of $250,000, $200,000 for singles, $120,000 for married filing separately
- Effective January 1, 2013 the maximum amount that can be made available through a health flexible spending account is limited to $2,500, indexed
Timeline: 2013

• Employer Notices must be provided to notify employees in writing regarding the Exchange and related issues

• 60-day advanced notice of material modifications
Timeline: 2014

- Establishment of state health insurance exchanges for individuals and small businesses with 100 or less employees
- Individual mandate requiring all individuals to have health insurance
- Employer mandate regarding coverage
Timeline: 2014

- Elimination of pre-existing condition exclusions for all participants
- No annual dollar limits
- Waiting periods cannot exceed 90 days
- No cost sharing in excess of the limits on high deductible health plans
- Limit on wellness incentives is increased from 20% to 30%
- Cover routine costs of patients who are part of clinical trials
Timeline: 2018

- Cadillac plan tax becomes effective
  - Tax imposed on issuers of fully-insured plans and on administrators with respect to self-funded plans
Common Myths
Small Business Tax Credit

- Small business tax credit available to employers who:
  - Pay at least 50% of cost of health coverage
  - Have no more than 25 full time equivalent employees with average annual wages of no more than $50,000
  - Full credit available only to those with 10 or fewer FTE employees, and average wages of $25,000 or less

- Tax credit is equal to 35% (25% for tax exempt entities) of the lesser of
  - the employer contribution and
  - a benchmark premium rate based on the average small employer premium in the state

- Beginning in 2014, the 35% multiple will increase to 50% (35% for tax exempt entities)
Grandfathered Plans

- A grandfathered plan is generally any plan in which an individual was enrolled on March 23, 2010

- Grandfathered plans do not have to comply with many of the health care requirements, the most important of which is the new nondiscrimination requirements for fully insured plans.

- Notice required
Grandfathered Plans

• Only limited changes can be made to a plan as it existed on March 23, 2010 without affecting grandfathered status

• The following changes affect grandfathered status:
  – Entering into a new policy with the insurance issuer or changing the insurance issuer
  – Adding annual limits
  – Increasing co-insurance, co-pays, deductibles or cost sharing beyond certain permitted limits
  – Decreases in employer subsidies
  – Eliminating benefits for a certain condition
Nondiscrimination

• For plan years beginning on or after September 23, 2010, the nondiscrimination requirements under Section 105(h) of the Internal Revenue Code will apply to fully insured plans.

• There are two nondiscrimination tests: the "eligibility test" and the "benefits test."
Nondiscrimination Issues

• The eligibility test provides that a plan cannot discriminate in favor of highly compensated individuals (“HCIs”) as to eligibility to participate
  – HCIs are
    • the five highest paid officers, or
    • shareholders who own more that 10% of the value of the employer stock, or
    • the highest paid 25% of all employees
Nondiscrimination

– Three alternative tests can be used to satisfy the eligibility test
  • 70% test
  • 70/80% test
  • Nondiscriminatory classification test

– The following employees can be excluded from the test if not eligible for coverage:
  • employees who have less than 3 years of service
  • employees who have not attained age 25
  • part-time and seasonal employees
  • collectively bargained employees and
  • non-resident aliens with no U.S. source income
Nondiscrimination

– Excluded employees:
  • employees who have less than 3 years of service
  • employees who have not attained age 25
  • part-time (under 35 hours -- if everyone else works substantially more) and seasonal employees (less than 9 months)
  • collectively bargained employees and
  • non-resident aliens with no U.S. source income
Nondiscrimination

• The benefits test ensures that benefits provided for participants who are HCIs (and their dependents), are also provided to non-HCIs (and their dependents)

• The benefits test requires that the plan not be discriminatory on its terms or in operation
Nondiscrimination

– To be nondiscriminatory on its terms:
  • required employee contributions must be identical for each benefit level
  • maximum benefit level must not vary based on age, years of service, or compensation
  • the same type of benefits must be available to HCIs and to non-HCIs
  • different waiting periods must not be imposed

– Whether a plan discriminates in actual operation is a facts and circumstances determination
Simple Cafeteria Plans

• If an eligible small employer satisfies certain eligibility and contribution requirements the employer can take advantage of a safe harbor from certain nondiscrimination rules.
Simple Cafeteria Plans

- Eligibility and participation requirements
  - Eligible employees are those who are credited with at least 1,000 hours of service for the preceding year. However, the employer may choose to exclude:
    - Employees who have not attained age 21 before the close of the plan year
    - Employees who have less than 1 year of service with the employer as of any day during the plan year
Simple Cafeteria Plans

- Employees who are covered under a collective bargaining agreement in which cafeteria plan benefits were the subject of good faith bargaining
- Nonresident aliens working outside the United States

– Once an employee is eligible, he or she must be permitted to elect any benefit available under the plan, subject to any terms and conditions that are applicable to all participants.
Simple Cafeteria Plans

• An employer must make a contribution on behalf of every "qualified employee," whether or not the qualified employee makes a salary deferral to the plan.
  – A "qualified employee" includes any employee who is eligible to participate in the plan and who is not a highly compensated employee or a key employee (as those terms are defined in the IRC).
Simple Cafeteria Plans

• The contribution may equal either:
  – a uniform nonelective employer contribution equal to at least 2% of each qualified employee's compensation; or
  – an amount not less than the lesser of:
    • 6% of the qualified employee's compensation for the plan year; or
    • a matching contribution equal to twice the amount of the salary reduction contributions of each qualified employee.
Simple Cafeteria Plans

- If an employer decides to provide the matching contribution, it cannot provide a greater matching contribution to highly compensated or key employees.
- The employer must use the same method to calculate the minimum contribution for all non-highly compensated employees.
- An employer can make contributions to provide additional “qualified benefits” under the plan, as long as the above requirements are met.
Simple Cafeteria Plan

- If a simple cafeteria plan is used, the "eligibility," "contributions and benefits" and "key employee concentration" testing requirements applicable to cafeteria plans will be deemed satisfied.

- The following discrimination tests will also be deemed to be satisfied if the benefits are provided through the simple cafeteria plan:
  - Nondiscrimination tests for group term life insurance
  - Nondiscrimination tests for self-insured medical plans in Section 105(h) - not clear if covers nondiscrimination tests for fully insured plans.
  - Nondiscrimination tests for dependent care assistance plans.
Next Steps
QUESTIONS
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