theHR**Benefits**Authority

Employee Benefits
Executive Compensation
ERISA Litigation
Human Resources Law

April 7, 2010

Health Care Reform – A Closer Look

As the details of the *Patient Protection and Affordable Care Act (PPACA)* emerge, we will update you, through the HR Benefits Authority, on selected provisions that affect employer-sponsored group health plans.

Specific Topics. In this issue, we take a closer look at two specific provisions within PPACA:

- ***The Grandfather Rule***, which exempts group health plans that were in effect on March 23, 2010 (*i.e.,* the date of enactment) from many of the health care reforms; and
- ***The Change in the Tax Treatment of the Medicare Part D Subsidy***, resulting in many employers reporting that health care reform will cost businesses billions of dollars.

The Grandfather Rule. PPACA contains a general provision preserving the right of individuals to maintain existing coverage. The grandfather rule exempts group health plans that were in effect on March 23, 2010 (the date of enactment of PPACA) from many of the law's health care reforms.

Specific Exemptions. Plans eligible for grandfathering will be exempt from the following reforms:

- ***Preventive services.*** Prohibition on cost sharing requirements for certain preventive care services and immunizations.
- ***Limits on cost sharing.*** Out-of-pocket expenses may not exceed the current Health Savings Account limits ($5,950 individual and $11,900 family).
- ***Limits on deductibles.*** In the small group market, deductibles may not exceed $2,000 for single and $4,000 for family coverage (as indexed).
- ***Nondiscrimination testing.*** The nondiscrimination testing requirements found in Internal Revenue Code Section 105(h) applicable to self-insured plans will apply to fully insured plans.
- ***Reporting requirements.*** Each year, employers must report the

following to the Secretary of Treasury:

- Whether coverage is offered to full-time employees
- The waiting period for any coverage
- The number of full-time employees for each month
- The name, address and TIN of each full-time employee, along with the months during Which each employee was covered under the plan.

- ***Appeals process.*** Plans must establish internal and external claims appeals processes that meet specified requirements.

A grandfathered plan may allow the dependents of current participants to enroll in the plan and permit new employees (and their dependents) to enroll in the plan without losing its grandfathered status.

<u>Non-Exempt Features</u>. Although grandfathered plans are not required to comply with the PPACA reforms listed above, many of the law's reforms still apply, including:

- ***Waiting periods.*** Group health plans may not require a waiting period in excess of 90 days.
- ***Lifetime limits.*** Group health plans may not impose lifetime limits on the dollar value of essential health benefits.
- ***Annual limits.*** Group health plans may not impose annual limits on the dollar value of essential health benefits (however, restricted annual limits are permitted until December 31, 2013).
- ***Rescission of benefits.*** Group health plans are prohibited from rescinding coverage, except in the case of fraud or intentional misrepresentation.
- ***Pre-existing condition exclusions.*** Group health plans may not impose a pre-existing condition exclusion or limitation with respect to children under age 19.
- ***Coverage of adult children.*** Group health plans that cover dependent children must allow coverage through age 26 if the adult child is not eligible for another employer-sponsored group health plan.
- ***Changes in tax rules relating to health plans.***
  - An excise tax will be imposed on high-cost coverage (the Cadillac tax)
  - Expenses for over-the-counter drugs not prescribed by a physician will be excluded from reimbursement through an HRA, a health FSA, an HSA or an Archer Medical Savings Account (MSA)

    - The tax on distributions from an HSA or MSA that are not used for qualified medical expenses will be increased from 10% to 20%
    - Health FSA contributions will be limited to $2,500

- ***Uniform explanation of coverage.*** A summary of coverage (with specific requirements) must be provided to applicants and enrollees at initial and annual enrollments.
- ***Cost reporting and rebates.*** Health insurers must report to the Secretary of Health and Human Services information relating to loss ratios. If the medical loss ratio is 85% (80% in the small group market) or lower, then enrollees must be provided a rebate.
- ***Automatic enrollment.*** Employers with 200 or more full-time employees that offer a health plan must automatically enroll new employees and continue the enrollment of current employees (employees must elect to opt out of coverage).
- ***Notification of availability of the exchange and subsidies.*** Each employee must be provided with notification (containing specified items) of the exchange option.
- ***Requirement to provide employee vouchers.*** Employers that offer minimum coverage and contribute to the cost of coverage must offer free choice vouchers to qualified employees for the purchase of plans through exchanges.

Medicare Part D Subsidy – Loss of Tax Deduction. The PPACA eliminated the tax deduction of the Medical Part D Subsidy beginning in 2013. The background and effect are as follows:

- ***Status Quo.*** Under the *Medicare Modernization Act (MMA) of 2003*, employers providing prescription drug benefits to Medicare-eligible retirees that are equal to, or better than, the minimum benefits under Part D are eligible to receive a subsidy from the federal government. The purpose of the subsidy is to provide a financial incentive for employers to maintain their retiree prescription drug benefits. The subsidy is currently tax deductible.
- ***Widely Used.*** A recent national survey indicates that three-quarters of employers that provide health coverage to post-65 retirees continue to deliver prescription drug benefits through group health plans that are eligible for this subsidy.
- ***Elimination of Tax Deduction.*** PPACA eliminates the special tax treatment for the subsidy. While employers may continue to receive the Medicare Part D subsidy, effective for taxable years beginning after December 31, 2012, the payment will be subject to tax.
- ***Immediate Financial Accounting Impact.*** Although the actual change in tax treatment does not take effect until 2013, generally accepted accounting

principles require accrual accounting for retiree health benefits. Therefore, the elimination of the tax deductibility of the subsidy must be immediately recognized on company's financial statements.

We will continue to follow the legislation closely and provide you with updates as well as our analysis of what it means to you.

IRS Circular 230 Notice: To ensure compliance with requirements of U.S. Treasury regulations, we inform you that any tax advice contained in this newsletter is not intended to be used, and cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code or promoting, marketing or recommending to another party any transaction or matter addressed herein.

999 Peachtree Street • Suite 1500 • Atlanta, GA 30309
www.MCBenefitsLaw.com • 404.888.8820
www.VCGConsultants.com • 770.863.3600