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Immediate concerns of employers under healthcare reform legislation

Massive healthcare reform legislation signed into law on March 23, 2010, imposes significant new responsibilities on employers that will likely, over time, fundamentally alter the nature of employer-sponsored group healthcare. While many of the provisions of the act will not apply until 2014, many are effective right now or will be very soon. Therefore, it is essential that employers begin planning and preparing for healthcare reform legislation immediately:

The legislation “grandfathers” all group health plans that are in place on March 23, 2010. Grandfathered plans are exempt from some, but not all, of the provisions of the legislation. The legislation is not clear about how amendments to a grandfathered plan will impact the plan’s grandfathered status. Interim regulations were recently issued addressing these concerns, but questions remain. Loss of grandfathered status should be considered by an employer before making any changes to its health plans.

The legislation makes many reforms to healthcare plans, some of which are effective for plan years beginning six months after March 23, 2010 (i.e., January 1, 2011 for calendar year plans). One of the most noteworthy provisions is that health coverage must generally be extended to children until they reach age 26. Employers may choose to implement this provision before the applicable effective date (January 1, 2011, for calendar year plans), although this generally requires the consent of the health insurance carrier.

Beginning January 1, 2011 (for calendar year plans), non-discrimination rules will apply to fully insured plans unless the plan is grandfathered. The nondiscrimination rules require essentially two things. First, that a plan must cover a reasonable number of non-highly

paid employees, and second, that the benefits provided by the plan do not discriminate in favor of highly paid employees. Red flag items for employers that need to be considered include any practice under which the employer is contributing more on behalf of highly paid employees, providing more generous benefits to highly paid employees, and excluding all or certain groups of non-highly paid employees from coverage.

The legislation allocates \$5 billion to finance a temporary federal reinsurance program to reimburse employers that provide health insurance to retirees ages 55 to 64 and their families. The program will reimburse employers for 80% of the cost of benefits in excess of \$15,000 and below \$90,000.

Effective for tax years beginning on or after January 1, 2010, employers with less than 25 full-time employees are eligible for a tax credit based on the employer’s cost of providing health coverage.

Employers will need to focus immediately on the provisions of the Act, including those discussed above. Administration, operation, processes, contracts, plans, and summary plan descriptions will all need to be reviewed and revised to reflect many of these provisions. Because the legislation goes into effect gradually over the course of many years, and regulatory guidance will be constant, employers should consult with their legal counsel immediately and regularly on how to best prepare for the coming changes. ■

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