Health Care Reform

Executive Summary

What follows is a brief outline of the changes to your health insurance plans that have occurred in 2010 and 2011. The first section, “Informational Items", do not require any action or decision by you. These are extensions of coverage mandated by the new law for all heath insurance plans.

The key decision is whether to maintain “Grandfathered” status or not. This decision will be required when your plans renew after September 23, 2010. At that renewal date, if you lose your “Grandfathered” status, certain practices that were allowed previously will now be forbidden and potentially subject to a fines. Please note that you may have more than one renewal date should you have coverage with multiple health insurance carriers. The practice most relevant is the ability to discriminate. Some employers have management carve outs providing superior benefits for executives and other valuable employees. Others will provide a higher contribution level to different classes of employees. You must maintain “Grandfather” status to continue to discriminate.

The rules for maintaining such status are discussed below.

Also, please note that any union plans that are subject to collective bargaining are not affected by any of the changes described below.

As with all summaries, this white paper is not complete. The Health Care Reform act is very complex. Before you take any action, please consult with Greg Dobson, the Team Leader of Suhr Risk Services Employee Benefits Group at 408-510-5454 or your employee benefits consulting firm.

2010-2011

Informational Items

The following changes will affect all plans renewing after September 23, 2010 as of renewal date.

Benefit changes regardless of "grandfather" status:

- Extends dependent coverage to adult children up to age 26 for all individual and group policies regardless of student or financial dependence status.
- Eliminates lifetime and annual maximums.
- Prohibits pre-existing condition exclusions on dependent children under age 19.
- Limits insurers from rescinding coverage after it has been issued except in cases of fraud.
- Plans must conform to an 80% medical loss ratio or pay rebates (rebates will be assessed in 2012 based on the 2011 year) to enrollees if they fail to meet the requirement
  - 85% for large groups (employers with 100 or more employees)

Changes applicable to non-"grandfather" plans:

- Eliminates co-pays and deductibles on preventive care services. Services must be paid at 100%.
- Emergency Services must meet certain standards
  - not require pre-authorization
  - must cover services from nonparticipating providers
  - cost sharing not to exceed in network rates
- Plans must provide an internal process for appeals of coverage as well as provide notice of the external process for appeals
- Plans must allow members to choose their own Primary Care Physician's, OB/GYN's and Pediatricians.

**** Update ** - A recent change to the "grandfather" rules was issued allowing employers' to maintain their grandfather status if they change carriers as long as they maintain similar benefits. The previous rules disallowed carrier changes and caused plans to lose grandfather status.**

A temporary program will reimburse employer plans 80% of claims for early retirees who are over age 55 but not eligible for Medicare

For more information go to www.healthcare.gov

Action items:

- **Small business tax credits**
  - Starting with tax year 2010 small businesses may have beeen eligible for a tax credit on their annual tax return to offset the cost of coverage. The maximum credit is 35% of employer's contribution. The qualifications are:
    - Must provide at least 50% of the cost of health care coverage
    - Have fewer than the equivalent of 25 full time employees (excluding owners and family members)

    - Pay annual wages that average less than $50,000 per full time equivalent employee
        - Employers with 10 or fewer employees with average annual wages less than $25,000 may be able to receive full tax credit

For tax credit calculations go to http://www.irs.ustreas.gov/pub/irs-utl/3_simple_steps.pdf . For more information please contact your tax advisor.

- **Non-Discrimination testing – applies to non-“grandfathered” plans**
    - Section 105(h) nondiscrimination rules are set to discourage employee benefit plans from offering more desirable benefits, contributions or eligibility to highly compensated employees (HCE).
    - An employer that offers benefits as follows would not violate Section 105(h):
        - Offer identical benefits to all full time employees with the same contribution requirements regardless of age, years of service or compensation.
        - EE’s covered by a collective bargaining agreement and not covered by the plan can be ignored for testing purposes.

**** Update ** - The IRS has issued Notice 2011-1 which delays the application of the nondiscrimination rules to insured group health plans until after regulations are issued. The nondiscrimination rules are expected to apply to plan years after the guidance is issued. The IRS plans to include the effects of later health care reform changes in any guidance. Specifically, the state health insurance exchanges and the individual and plan sponsor requirements that go into effect in 2014.**

For further information about the discrimination testing, please call Greg Dobson, Employee Benefits Team Leader, Suhr Risk Services, 408-510-5454.

Grandfathered status

- What is Grandfathered health plan?
    - A plan that existed prior to March 23, 2010 and
    - A plan that renewed after September 23, 2010 and did not materially change plan design (deductibles, co-payments, etc.) or participant contribution. Minor changes are allowed without losing grandfather status. Significant cuts in benefits or increases to out of pocket expenses to members will cause a plan to lose grandfather status

- What are the advantages to retaining your grandfathered status?
    - The ability to continue existing discriminatory management carve outs and contribution plans.
    - A potential reduction in cost due to the elimination of mandates on “non-grandfathered” plans listed above.

- What are the disadvantages to retaining grandfathered status?
    - The additional premium cost of not increasing deductibles, co-payments, and coinsurance amounts.

2011

The following changes will take effect after January 1, 2011 as of renewal date.

Benefit changes regardless of "grandfather" status:

- Providing free preventive care for Seniors on Medicare.
    - For more information go to www.cms.gov
- Medical loss ratio requirements for plans sold to employers in which 80% (small group; <100 full-time employees) to 85% (large group; >100 full-time employees) premium must be spent on benefits and quality improvement. If insurance companies do not meet these goals in 2011, they must provide rebates in 2012.
- Over the counter drugs no longer considered an eligible expense through an HSA and FSA accounts without a prescription from Primary Care Physician.
- Higher penalty for HSA account withdrawals for non-qualified expenses
- CLASS program (Voluntary, public long-term care program) enrollment opens to employers and individuals.

**** Update ** - The CLASS Act is in review currently for financial feasibility. Current analysis indicates the CLASS Act is not sustainable and requires modification or complete repeal.**

- For more information go to www.passtheclassact.org

- Annual fee on pharmaceutical manufacturers and importers.
- Employer discloser of value of health plans to employees on W2 forms is optional for 2011, but will be mandatory in 2012.

For more information go to www.healthcare.gov or contact your benefits advisor.