

Health Care Reform

for Employers and Advisors



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What's New in the 1st Qtr. 2012 Edition

This What's New section highlights the changes made in the last quarter to the *Health Care Reform for Employers and Advisors* guidebook—the authoritative guidebook for employers, administrators, and advisors.

Also see the 1st Qtr. 2012 *Current Developments* newsletter, which can be accessed under the Bookmarks tab. The *Current Developments* newsletter summarizes important legal developments that occurred during the quarter.

- **Section II—Effective Dates and Timeline.**
 - II.B—*Timeline of Health Care Reform Effective Dates for Employers and Advisors.* We've updated certain of the entries in the timeline, as needed, for changes in effective dates. In addition, the material has been reorganized to make it more accessible.
- **Section VII—PHSA Mandates: Consequences of Noncompliance.**
 - VII.A—*Overview.* We note that the 2011 Form M-1 has been updated to address compliance with certain health care reform mandates.
- **Section IX—Lifetime, Annual, and Cost-Sharing Limits.**
 - IX.A—*Lifetime and Annual Dollar Limits.* We cover the issuance of HHS guidance regarding “essential health benefits” since it is applicable for purposes of complying with the prohibition on lifetime and annual dollar limits. In particular, we note the impact of the guidance on self-funded, large group market, and grandfathered health plans. We've also added discussion on the impact on grandfathered status for a plan with a waiver of annual limit restrictions (permissible until 2014) that moves to a new insurance policy.
- **Section X—Preexisting Condition Exclusions, Waiting Periods, and Rescissions.**
 - X.C—*Prohibition on Excessive Waiting Periods.* This subsection covers the recent FAQ guidance on waiting periods, which is intended to provide information and identify various approaches that the agencies are considering proposing in future regulations or other guidance.
 - X.D—*Prohibition on Rescissions.* We have enhanced the discussion of the prohibition on rescissions by adding a cautionary text box regarding retroactive cancellation of coverage and revising the material on the interaction with COBRA.
- **Section XII—Patient Protections, Preventive Health Services, and Clinical Trials.**
 - XII.C—*Coverage of Preventive Health Services.* In this subsection, we cover guidance relating to the coverage of contraceptive services by religious employers, including final regulations on this topic, and a one-year safe harbor from agency enforcement available to employers who are nonexempted, nonprofit organizations with religious objections to covering contraceptive services.
- **Section XIV—Insurance Mandates.**
 - XIV.F—*Comprehensive Health Coverage Requirement (Essential Health Benefits Package)—Applicable Only in the Individual and Small Group Markets.* We note the issuance of HHS guidance, which sets forth the intended approach to defining “essential health benefits.” In addition, discussion has been added on the HHS bulletin outlining the methodology the agency intends to propose for calculating the actuarial value of non-grandfathered plans in the individual and small group markets—whether or not offered as qualified health plans inside an Exchange.

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- XIV.G—*Medical Loss Ratio (MLR) Requirements*. This subsection includes discussion of a Government Accountability Office (GAO) report providing insight into the medical loss ratio rules. We also note the availability of proposed model notices, which are available on the HHS website, informing employees that they or their employer will receive a rebate.
- **Section XV—*Appeals Process and External Review Requirements***.
 - XV.G—*State Standards for External Review for Most Insurers and Certain Others*. We've updated this subsection to indicate that HHS maintains a list of the option selected by states in complying with the external review process.
- **Section XVI—*Four-Page Summary of Benefits and Coverage (SBC)***. This Section has been thoroughly revised for the issuance of final regulations and related guidance implementing this new disclosure requirement, including new applicability date and application to account-type arrangements (including HRAs and health FSAs).
- **Section XX—*Mechanisms to Allocate Risk***.
 - XX.B—*Reinsurance*. We note that HHS issued a request for information in January 2012 to gain market information on entities that could administer a transitional reinsurance program.
- **Section XXI—*Exchanges, Qualified Health Plans (QHPs), and CO-OPs***.
 - XXI.C—*Qualified Health Plans (QHPs)*. In this subsection, we cover the details in the HHS guidance outlining the approach the agency intends to follow in defining “essential health benefits,” which will allow each state to select a benchmark plan. In addition, discussion has been added on the HHS bulletin outlining the methodology the agency intends to propose for calculating the actuarial value of nongrandfathered plans in the individual and small group markets—whether or not offered as qualified health plans inside an Exchange.
 - XXI.G—*“Innovation Waivers” Allow State Health Reform Alternatives*. This subsection has been updated for the issuance of HHS final regulations outlining the process for submission and review of state applications for innovation waivers.
 - XXI.H—*Consumer Operated and Oriented Plans (CO-OPs)*. We cover the issuance of HHS final regulations implementing the CO-OP program, which address eligibility standards, establish terms for loans, and provide certain basic standards that organizations must meet to participate in the program and become a CO-OP. In addition, we discuss the IRS guidance, which will allow qualified insurers participating in the CO-OP program to seek exemption from federal income tax. We also note that HHS has posted a list of the loan awardees under the CO-OP program, arranged alphabetically by state.
- **Section XXII—*Temporary High Risk Pool: PCIP Program***.
 - XXII.A—*Introduction*. We've updated the link to the state-specific information available on the PCIP program, and we also reference a report that was published with notable highlights and the latest information on the program.
- **Section XXVI—*Small Business Health Care Tax Credit***. This Section has updated references to newly reorganized IRS FAQs on the small business health care tax credit. We've added mention of a recent IRS news release encouraging small businesses to take advantage of the tax credit and a White House fact sheet highlighting proposals in President Obama's fiscal year 2013 budget that, if enacted, would “expand and simplify” the tax credit. In addition, our discussion on claiming the tax credit notes the release of the 2011 version of IRS Form 8941.
- **Section XXVII—*Early Retiree Reinsurance Program (ERRP)***.
 - XXVII.A—*Overview*. This subsection discusses the HHS announcement that no more reimbursement requests under the program would be accepted that include claims after December 31, 2011. We also provide information on the latest reimbursement update, which notes that payments have been issued up to the program's \$5 billion capacity.
 - XXVII.C—*Basic Reimbursement Requirements*. We discuss an update to the previously issued guidance on allocating negotiated price concessions under the ERRP. In addition, this subsection notes the issuance of a new ERRP common question relating to when a plan sponsor has to use ERRP reimbursement funds.
 - XXVII.E—*Submission of Reimbursement Claims*. We've enhanced the discussion in this subsection to include new and updated common questions relating to qualifying costs and reimbursements as well as information on how to submit an ERRP appeal.
- **Section XXVIII—*Shared Responsibility for Employers (Play or Pay Penalty Tax)***.
 - XXVIII.B—*What Employers Are Subject to an Assessable Payment (Penalty Tax)?* This subsection covers the recent FAQs on the employer shared responsibility provisions, which provide a preview of the guidance the agencies are considering proposing. The FAQs note that future guidance will address the interaction of shared responsibility and waiting periods (discussed in Section X.C).
- **Section XXIX—*Shared Responsibility for Individuals (Individual Mandate)***.
 - XXIX.F—*Refundable Premium Tax Credit for Low-Income Individuals*. We note the amendment to the statutory requirements for purposes of calculating modified adjusted gross income to determine eligibility for the premium tax credit.

- **Section XXXI—Automatic Enrollment.** We discuss recent FAQ guidance, which provides that regulations are not expected to be promulgated in time to implement the automatic enrollment provisions by 2014. We've also made several enhancements throughout this Section identifying some of the unique challenges relating to the implementation of this provision, such as cafeteria plan issues and determining full-time employee status.
- **Section XXXII—HIPAA Electronic Transactions and Operating Rules.**
 - XXXII.C—*Expansion of HIPAA Electronic Transaction Rules Under Health Care Reform.* Our coverage has been expanded to cover the issuance of HHS interim final regulations in January 2011 adopting standards for electronic fund transfer transactions.
- **Section XXXV—Special Issues for FSAs, HRAs, HSAs, and Cafeteria Plans (Including Simple Cafeteria Plans).**
 - XXXV.C—*Limitation on Health FSA Salary Reductions.* We have expanded this subsection to discuss additional issues regarding the \$2,500 limit on annual health FSA salary reductions, including the question of whether the limit applies on a calendar-year or plan-year basis.
- **Section XXXVI—Reporting and Fees.**
 - XXXVI.B—*W-2 Reporting: Cost of Employer-Sponsored Health Coverage.* This subsection has been updated for the restated and amended guidance in IRS Notice 2012-9, which clarifies several points and addresses additional issues for purposes of reporting the aggregate cost of employer-sponsored health coverage on each employee's Form W-2. We also note that the updated IRS FAQ webpage includes a chart that lists many of types of health care coverage and various situations, and explains whether W-2 reporting is required, prohibited, or optional.

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Substantive Changes to the Appendix:

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| <ul style="list-style-type: none">• Tab 2—Regulations<ul style="list-style-type: none">– Updated TOC– Updated Coverage of Preventive Services regulations– Added new SBC regulations and preamble | <ul style="list-style-type: none">• Tab 3—Other Guidance<ul style="list-style-type: none">– Updated TOC |
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Lots More to Come! From the feedback we've received, we know that our manuals are the premier group health plans resources in the country. But here at EBIA we're not satisfied. We are constantly striving to make the manual even better. In upcoming editions, look forward to complete coverage of all legal developments affecting health care reform, and to our further analysis of existing law, with more examples and Q/As, etc.

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