

**EMPLOYER NOTES RE HEALTH CARE LAW**  
**Prepared by PA Association of Health Underwriters May 2011**

**SUMMARY** The Patient Protection and Affordable Health Care Act is a complex product encompassing too many moving parts to list in a brief presentation. There are a significant number of items affecting employers of all sizes and some specifically affecting smaller and larger employers.

**ALL EMPLOYERS**

- Nursing mothers accommodations by businesses effective 3/23/2010. Requires “reasonable” time in a private area free from intrusion and must not be company washroom.
- Grandfathering 3/23/10; Rules published in Federal Register June 17, 2010 **REVISED NOVEMBER 2010 TO ALLOW EMPLOYERS TO CHANGE INSURANCE COMPANIES**
- Notification to employees re grandfathering after 9/23/10
- Dependent up to age 26 effective at first plan renewal after 9/23/10 unless open enrollment earlier or until next collective bargaining agreement; IRS issued tax guidance through age 27
- Lifetime benefit caps ended on all plans 9/23/10; phase-out of annual limits for grandfathered plans to 2014 **HHS PROVIDES MINI-MED WAIVERS** (see below)
- No insurance policy rescissions 9/23/10
- No health plan discrimination for highly compensated individuals unless grandfathered (105h) **IRS PUT THIS ON HOLD PER NOTICE 2011-1**
- HHS has backed off somewhat re limited medical benefit plans 9/2010 (also known as mini-Meds) after pressure came from employers particularly in the food industry. Businesses may seek a one-year waiver from the law’s provisions that basically make mini-Med plans illegal.
- Health Savings Account/HRAs/Flexible Spending Accounts prohibition on over the counter drugs unless prescription; Penalties increased to 20% Effective 1/1/2011 (IRS Notice 2010-23) FSA limit contribution for medical expenses to \$2,500 effective 1/1/13; HRA deductions limited in 2014
- **CLASS Act** employer benefit ( payroll deduction long-term care program) 1/1/11 although rules will not be available until 2012
- Aggregate value of health plans on W-2s (calendar 2011 to employees is now voluntary for 2011 with **DELAY FOR FIRMS UNDER 250 EEs UNTIL 2014** per Notice 2011-28)
- 1099 forms for ALL business contract relationships (calendar 2011; to vendors 2012) **REPEALED PER HR 4 SIGNED INTO LAW APRIL 15, 2011**
- Summary of Benefits using HHS format (4-page, 12-point type, “culturally linguistically appropriate manner”) given by employers 3/2012; **HHS RELEASED DRAFT March 2011.**
- \$2.00 per enrollee tax to fund Patient Centered Outcome Research after 9/30/12
- No pre-existing conditions (medical underwriting prohibited); criteria for rates may include smoking, age, family composition, geographic regions; Eff. 1/1/14
- Employer Mandates for employers with 50 EE plus and \$2,000 per employee fine for not offering a health plan and \$3,000 per employee after first 30 employees receiving a premium tax credit and paying more than 9.5% of household income as their premium share; Effective 1/1/14
- Free Choice Vouchers 1/1/14 for each employee who must contribute 8 and 9.8% of household income used to purchase coverage from Exchanges
- Minimum Essential Benefits for all plans 1/1/14 **DEPT. OF LABOR ISSUED ITS VIEW MARCH 2011 WITH HHS PROMISING A COMMENT PERIOD LATER THIS YEAR**

- Medicaid expansion to 133% Federal Poverty Level 1/1/2014; State Premium Assistance Programs
- 40% Excise Tax for so-called Cadillac Plans (aggregate values exceeding \$10,200 for individual and \$27,500 for families; includes Health Savings Accounts, employer contribution and reimbursements for HRAs and FSAs. NOTE: Does not include dental, vision, disability, long-term care, after tax indemnity and specific disease coverage; Effective 1/1/18
- No waiting period longer than 90 days

### **SMALL EMPLOYER**

- 35% Small Business Health Insurance Premium Tax Credit effective beginning tax year 2010 (25% for non-profits) Explanation IRS Notice 2010-44
- Wellness Grant Program for under 100 EE was supposed to start 10/1/10 but details not released; HIPAA wellness program incentives expanded to 30% of premiums effective 1/1/14
- Benefit changes effective 9/23/10 on health plans (unless grandfathered)
- Cafeteria Plan Safe Harbor for small employers to simplify cafeteria (100 or fewer employees) 1/2011
- Annual reports to HHS on whether or plan health plan complies with specified components; to be posted on Internet; non-compliance penalties; effective 3/2012
- Small group size redefined as 1-100 employees effective 1/2014 but states may elect to reduce size of small to 50 for plan years prior to 2016
- Employer mandate exempts under 50 EE firms from offering health insurance but firms with over 50 employees pay fines (1/2014)
- State Exchanges operational 1/1/14 along with multi-state Exchanges and CO-OP (non-profit) plans; State may chose to let large groups of over 100 EE purchase coverage in the Exchanges 1/1/17. States must show progress by 1/1/2013 or HHS will take it over. Framework of Exchanges are decided by the state legislature.

### **LARGE EMPLOYER**

- Elimination of employer deductibility of Medicare Part D subsidy of Donut Hole (effective 2013 but FAS 109 accounting rule showing charge against 2010 and 2011 earnings)
- 250 plus EE employer tax credit if firm invests in acute & chronic disease research for 2009 and 2010
- Medical Loss Ratio of 85% for groups 100 EE plus; Effective 9/23/10
- Early Retiree Reinsurance Program reimburses employers retrospectively for 80% of claims between \$15-90,000 after a \$15,000 threshold; started 2010, ends 2014; NO NEW APPLICATIONS TAKEN MAY 2011
- Two studies of Insurance Reforms on Large Groups and ERISA Plans 3/23/11
- Auto-enrollment of new employees in group plans with 200-plus employees 1/1/14
- Self-funded plans would be required to report coverage status data on all plan participants to the IRS annually as part of the Individual Mandate; Effective 2014

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## QUICK RESOURCE SHEET May 2011

With the March 23, 2010 enactment of the farthest reaching piece of health legislation in fifty years, insurance producers and their clients are trying to gain a measure of what the law means to businesses and their employees. Resources that may be helpful to you are:

### **National Association of Health Underwriters (NAHU) [www.nahu.org](http://www.nahu.org)**

This may be as close to a one-stop shop on insurance changes that one may find. NAHU represents health insurance agents and brokers. (Also see [www.pahu.org](http://www.pahu.org)) This site contains:

- Analysis and implementation of the new law as it relates to insurance
- Health insurance issues for insurance agents who don't do a lot of health as well as consumer education materials

### **Kaiser Family Foundation [www.kff.org](http://www.kff.org)**

Kaiser Family Foundation is an excellent resource to understand what the legislation does on the health care side of the equation. It also focuses on Medicare changes. This is a resource for data on the uninsured and other areas of interest. It also has an electronic newsletter with the top media stories on health insurance.

### **The United States Congress [www.thomas.gov](http://www.thomas.gov)**

The Library of Congress web site offers summaries and text of all legislation whether it be cap and trade, education, health insurance etc. The plus is that you have access to the actual text of the laws. Problem is that there are two newly enacted health laws, HR 3590 plus the reconciliation bill, HR 4872 also known as the Reconciliation Act. Also seek [www.searchthebill.com](http://www.searchthebill.com).

### **The Internal Revenue Service [www.irs.gov](http://www.irs.gov)**

The IRS has a number of features on its web site including compliance memos and help to figure out the small business health premium tax credit. Ruling 2010-44.

### **Department of Health and Human Services [www.hhs.gov](http://www.hhs.gov) or [www.HealthCare.gov](http://www.HealthCare.gov).**

HHHS is the lead agency for implementation of the new law. When there, sign up for their daily digest of HHS rulings, press releases etc. That summary gives you the fastest updates on HHS policies regarding implementation.

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