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**Re: Q&As for Employers about Upcoming Health Care Legislation Changes**

Dear Clients and Other Friends:

Historic health care legislation, designated the Patient Protection and Affordable Care Act of 2010, was enacted on March 23, 2010. This legislation was supplemented by the Reconciliation Act enacted a few days later on March 30, 2010. This Client Letter provides questions and answers for employers about key features of the Patient Protection and Affordable Care Act of 2010, as amended by the Reconciliation Act (hereinafter "PPACA"), that must be addressed in the coming months.

**Does PPACA apply to both self-insured plans and fully-insured plans?**

Yes. A short summary of each type of plan is included below.

A self-insured plan is offered by employers that directly assume the major cost of health insurance for their employees. Though some self-insured plans bear the entire risk, other self-insured employers insure against large claims by purchasing reinsurance (also known as stop-loss coverage). Most self-insured employers contract with insurance providers or third-party administrators for claims processing and other administrative services. Self-insured plans tend to be offered by larger employers.

A fully-insured plan is one where the employer contracts with an insurance provider to assume financial responsibility for employees' medical claims/costs. Fully-insured plans tend to be offered by smaller employers or offered individually to certain employees by large employers.

**What is a "grandfathered plan" under PPACA?**

A grandfathered plan is any group health plan, whether self-insured or fully-insured, that was in existence on March 23, 2010. Regulations are expected to further define what constitutes a grandfathered plan under PPACA.

**What does it mean to be a grandfathered plan?**

Some of the coverage and reporting requirements of PPACA, especially those that come into effect in future years, do not apply to grandfathered plans. However, grandfathered plans are *not* exempt from many requirements under PPACA. These key requirements are explained below.

## Can a plan lose its grandfathered status?

While a grandfathered plan may lose its grandfathered status by making plan changes, details of what types of changes would cause the plan to lose grandfather status were not specified in PPACA. It is clear, however, that changes such as employee enrollments/re-enrollments and family member changes will not cause a plan to lose grandfather plan status. Regulatory guidance is needed to shed light on what types of changes may cause a plan to lose grandfather status. Such regulatory guidance should be forthcoming this year.

## How long can a plan keep its grandfathered status?

PPACA is silent about how long a plan may maintain its grandfathered status. It is possible that such a plan may remain exempt indefinitely. Again, regulatory guidance is needed to clarify the scope and duration of grandfathered status.

## How do PPACA's effective dates apply to collectively bargained plans?

Most collectively bargaining plans have a delayed effective date for compliance with PPACA but, ultimately, will not be exempt from PPACA's requirements. Collectively bargained plans ratified before March 23, 2010 are not subject to PPACA's coverage and cost-sharing mandates until the termination date of the last collective bargaining agreement relating to the coverage. Any amendment to a collectively bargained plan to comply with certain PPACA provisions will not accelerate the date on which the Plan is subject to PPACA's other mandates. However, a question remains whether such plans may be able to rely on the general grandfather plan rules. Once again, forthcoming regulatory guidance will likely clarify these rules for collectively bargained plans.

## What are key changes effective soon that impact grandfathered plans *and* non-grandfathered plans?

<b>Summary of Key Changes Effective Soon that Impact Grandfathered and Non-Grandfathered Plans</b>			
<b>Plan Type</b>	<b>Effective for Calendar Year Plan Years</b>	<b>Key Change</b>	<b>Explanation</b>
Both	2010	Extension of dependent coverage to children up to age 26	Coverage of children who have not attained age 27 by the end of the year will not be taxed to the employee. This provision is effective as of March 30, 2010. Effective for plan years beginning on or after September 23, 2010. <ul style="list-style-type: none"><li>Plans that offer family coverage must continue to make dependent coverage of children available until the child attains age 26.</li><li>For grandfathered plans, this rule will not apply until 2014 if the child is eligible to</li></ul>

Plan Type	Effective for Calendar Year Plan Years	Key Change	Explanation
			enroll in any other employer sponsored health plan. However, if the child is eligible to enroll in both parents' employer sponsored health plan, neither plan may exclude the child from coverage.
Both	2010	Automatic enrollment	Employers with more than 200 full time employees must automatically enroll new employees in its health plan. Advance notice and an opt-out opportunity must be provided to employees. Since no effective date is provided, this provision is effective as of March 23, 2010. Additional guidance is expected to clarify details of this new automatic enrollment feature.
Both	2011	No lifetime or annual coverage limits	Effective for plan years beginning on or after September 23, 2010. <ul style="list-style-type: none"> <li>Plans may place annual or lifetime limits on specific covered benefits that are not "essential health benefits"</li> <li>For plan years beginning before 2014, grandfathered plans may place reasonable restrictions on annual limits (but not lifetime limits) that apply to "essential health benefits."</li> </ul>
Both	2011	Prohibition on pre-existing exclusions for enrollees under age 19.	Effective for plan years beginning on or after September 23, 2010.
Both	2011	Prohibition on rescission of coverage	Effective for plan years beginning on or after September 23, 2010. Plans may not rescind coverage of an enrollee once the enrollee is covered, except where the individual has engaged in fraud or misrepresentation.
Non-Grandfathered Plans Only	2011	Non-discrimination rules	Effective for plan years beginning on or after September 23, 2010. Non-discrimination rules under Internal Revenue Code § 105(h) that were previously applicable to self-insured plans apply to fully-insured plans as well.
Non-Grandfathered Plans Only	2011	Preventative services coverage	Effective for plan years beginning on or after September 23, 2010. <ul style="list-style-type: none"> <li>Coverage must be provided for preventive services, such as certain immunizations and women's preventive care, with no cost sharing.</li> </ul>

Plan Type	Effective for Calendar Year Plan Years	Key Change	Explanation
			<ul style="list-style-type: none"> <li>Preventative services guidelines are set by both the U.S. Preventative Services Task Force (USPSTF) and the Centers for Disease Control and Prevention (CDC).</li> </ul>
Non-Grandfathered Plans Only	2011	No preauthorization or referral requirements	<p>Effective for plan years beginning on or after September 23, 2010.</p> <ul style="list-style-type: none"> <li>If a plan requires or permits designation of a primary care physician (“PCP”), it must allow a participant to designate any participating Primary Care Physician or pediatrician and cannot require preauthorization or a referral for OB/GYN services.</li> <li>A participating Primary Care Physician is any primary care provider that participates in the plan’s network.</li> <li>Emergency services cannot require preauthorization, be limited to in-network providers or impose a higher cost sharing for out-of-network services.</li> </ul>
Non-Grandfathered Plans Only	2011	Notice of Appeals Processes	Effective for plan years beginning on or after September 23, 2010. Plans must provide notice of internal and external appeals processes.

**What additional changes must employers prepare to address soon?**

- The cost of **over-the-counter drugs** may not be reimbursed by flexible spending accounts, health reimbursement accounts or health savings accounts without a prescription, effective for tax years after December 31, 2010.
- Beginning in the 2011 tax year, **employers must report the cost of employer-provided health care coverage on employees’ Form W-2**. This is required for all of the employer’s health care plans, whether they are grandfathered or non-grandfathered, self-insured or fully-insured.
- Effective for 2011, PPACA establishes a **public long-term care insurance program** that is voluntary and may be offered through employer plans.
- The **adoption assistance exclusion is increased by \$1,000** (indexed for inflation) for tax years beginning after December 31, 2009.
- Effective June 23, 2010, a **temporary reinsurance program for employers** providing health coverage to retirees over age 55 who are not eligible for Medicare will reimburse

employers 80% of claims between \$15,000 - \$90,000 (indexed). This program ends upon the earlier of when the \$5 billion government funding runs out or January 1, 2014.

- **Flexible spending account contributions are limited to \$2,500** (indexed for inflation) effective for tax years beginning after December 31, 2012.

As is becoming a common theme with PPACA, regulatory guidance is needed to clarify changes required to plans in the coming months and years.

We welcome your inquiries regarding PPACA or other employee benefit matters.

Very truly yours,

Very truly yours,

Ted Rice

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Very truly yours,

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