Proskauer

HEALTH CARE REFORM MANDATES
APPLICABILITY TO RETIREE-ONLY PLANS, NON-GRANDFATHERED PLANS WITH CURRENT EMPLOYEES, AND GRANDFATHERED HEALTH PLANS

The chart below sets forth the various provisions of the Patient Protection and Affordable Care Act ("PPACA") that apply to group health plans in general, the year in which the provisions become effective, and, based on the current guidance, whether or not they are applicable to retiree-only group health plans, non-grandfathered group health plans covering two or more current employees ("active plans"), and grandfathered health plans.

Summary of Provision	Retiree Only Plans	Non-Grandfathered, Active Plans	Grandfathered Health Plans
2011 (calendar year plans)			
Early retiree reinsurance program (PPACA §§ 1102, 10102) – Temporary program to reimburse eligible employers that sponsor retiree coverage for 80% of claims between $15,000 and $90,000 for individuals ages 55 to 64 who are not active workers or dependents of active workers and who are not Medicare-eligible. Reimbursement must be used to reduce premium costs of the entity sponsoring the plan or to reduce premium costs or cost-sharing of plan participants.	Applicable to the extent the employer wishes to participate in the program	Applicable; but only if "early retirees" are also part of active employee plan	Applicable; but only if "early retirees" are also part of active employee plan
Nondiscrimination by health program or activity (PPACA § 1557) – May not exclude persons from participation in, or deny benefits under, any health program or activity for a reason that is discriminatory under the Civil Rights Act, the Education Amendments Act, the Age Discrimination in Employment Act, or the Rehabilitation Act.	Applicable	Applicable	Applicable
Preexisting condition exclusion prohibition for those under age 19 (PHSA § 2704; PPACA §§ 1255, 10103) – May not impose any preexisting condition exclusion on children under 19.	Not applicable	Applicable	Applicable
Lifetime limits on essential benefits prohibited (PHSA § 2711) – May not establish lifetime limits on the dollar value of essential benefits for any participant or beneficiary.	Not applicable	Applicable	Applicable
Annual limits on essential benefits restricted (PHSA § 2711) – May only impose restricted annual limits on the dollar value of essential benefits.	Not applicable	Applicable	Applicable

Summary of Provision	Retiree Only Plans	Non-Grandfathered, Active Plans	Grandfathered Health Plans
Prohibition on rescissions (PHSA § 2712) – May not rescind coverage except in the case of fraud or intentional misrepresentation of material fact.	Not applicable	Applicable	Applicable
Preventive health services (PHSA § 2713) – Must provide coverage for and may not impose any cost sharing requirements for preventive coverage.	Not applicable	Applicable	Not applicable
Dependent coverage for children under age 26 (PHSA § 2714; HCERA § 2301) and tax-free coverage to children under age 27 (Code § 105(b); IRS Notice 2010-38) – If dependent coverage provided, must allow an adult dependent to continue coverage until the child turns 26, regardless of student or marital status; employers may exclude the cost of dependent coverage for children under age 27 (until the end of the calendar year in which the child turns 26) from an employee's taxable income.	Not applicable	Applicable	Applicable, but for plan years beginning before January 1, 2014, not required to extend adult dependent coverage if the child is eligible to enroll in another eligible employer-sponsored health plan
Four-page summary of benefits and coverage (PHSA § 2715) – Must use HHS standards for the provision of summary of benefits and coverage explanations. This is subject to regulations which will specify an effective date.	Not applicable	Applicable (effective date uncertain)	Applicable (effective date uncertain)
Nondiscrimination for insured plans (PHSA § 2716) – Insured group health plans are prohibited from discriminating in favor of highly compensated individuals.	Not applicable	Applicable	Not applicable
Quality of care reporting (PHSA § 2717) – Must report on plan benefits and structures that provide incentives for: (i) the implementation of case management, care coordination, chronic disease management, and medication and care compliance activities for treatment or services under the plan or coverage; (ii) the implementation of activities to prevent hospital readmissions; (iii) improving patient safety and reducing medical errors through best clinical practices, evidence based medicine, and health information technology; and (iv) the implementation of wellness and health promotion activities.	Not applicable	Applicable	Not applicable

Summary of Provision	Retiree Only Plans	Non-Grandfathered, Active Plans	Grandfathered Health Plans
Appeals process (PHSA § 2719) – Must have an effective appeals process for appeals of coverage determinations and claims. Participants must have the ability to receive continued coverage during the review process. Also, must have an effective internal appeals process, including notice to enrollees of available appeals processes, along with an opportunity to review their file and present evidence and must establish an external appeals process that meets the NAIC Uniform Review Model Act or the standards established by HHS.	Not applicable	Applicable	Not applicable
Patient protections (primary care provider designations, ER services, etc.) (PHSA § 2719A) – (1) If designation of primary care provider required, must permit each participant to designate any participating primary care provider who is available to accept such individual.; (2) May not require a referral or preauthorization for and must provide the same level of cost-sharing out-of-network as is normally provided for emergency care in-network in a hospital where the plan offers coverage for some services; (3) Must permit a participant to designate a pediatrician as the primary care provider for a child; (4) May not require a referral or preauthorization for female participants who seek coverage for obstetrical or gynecological care provided by a participating health care professional who specializes in such care.	Not applicable	Applicable	Not applicable
Automatic Enrollment (FLSA § 18A) – Employer with more than 200 full time employees must offer automatic enrollment with notice and opt out rights. Effective date not clear; dependent on guidance.	Not applicable	Applicable	Applicable

Summary of Provision	Retiree Only Plans	Non-Grandfathered, Active Plans	Grandfathered Health Plans
HSA/Archer MSA penalty tax increase (Code §§ 223(f)(4)(A), 220(f)(4)(A)) – The additional tax on distributions from an HSA or Archer MSA that are not used for qualified medical expenses is increased to 20 percent of the disbursed amount.	Applicable to retirees with HSAs	Applicable	Applicable
Bringing down cost of coverage (reporting and rebates) (PHSA § 2718) – (1) Must publicly report (in a manner to be established by the Secretary through regulation) the percentage of total premium revenue that such coverage expends: (i) on reimbursement for clinical services provided to enrollees under such plan or coverage; (ii) for activities that improve health care quality; and (iii) on all other non-claims costs, including costs associated with compliance with health care reform, with an explanation of the nature of such costs; and (2) Must provide an annual rebate to each enrollee if more than 15% of premium revenue is expended on non-claims costs (excluding taxes) or 20% (or lower by state regulation) for insurers offering coverage in the small group and individual market. States may adopt a higher percentage. Insurance issuers shall report to HHS the ratio of incurred claims to earned premiums.	Not applicable	Applicable to insured plans	Applicable to insured grandfathered plans
OTC drug limits (Code §§ 106(f), 223(d)(2), 220(d)(2)) – The definition of qualified medical expense for HSAs, FSAs, HRAs, and other employer-provided health coverage is amended to exclude over-the-counter drugs unless the drug is a prescribed drug or is insulin.	Applicable to retirees with HSAs or HRAs	Applicable	Applicable
W-2 reporting (Code § 6051(a)) – Employers must include the aggregate cost of employer-sponsored coverage on an employee's W-2.	Should be applicable; guidance needed to confirm	Applicable	Applicable

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2013			
Health FSA Cap (Code § 125(i)) – Employee salary reduction contributions under a cafeteria plan to a Health FSA are limited to $2,500 per year, indexed for cost-of-living increases.	Not applicable	Applicable	Applicable
Notice of Exchange (FLSA § 18B) – Employer must notify employees (i) about the Exchange, (ii) that employees may be eligible for premium assistance and cost-sharing reduction if the plan's share of the cost of benefits is less than 60% of the costs, and (iii) that if the employee chooses coverage through the Exchange, the employee will lose the employer's contribution to coverage, all or part of which may be excludable from taxable income.	Not applicable (notice only required to be provided to employees at time of hire)	Applicable	Applicable
HIPAA electronic transaction standards (SSA § 1173(g)) – Accelerates HHS adoption of uniform standards and operating rules for the electronic transactions that occur between providers and health plans that are governed under HIPAA (such as benefit eligibility verification, prior authorization and electronic funds transfer (EFT) payments). Requires health plans to certify compliance or face financial penalties collected by the Treasury Secretary. Adopts unique plan identifier and transaction standards for EFT.	Applicable	Applicable	Applicable
Increase in Code § 213 medical deduction (Code § 213(a)) – The threshold for the itemized deduction for medical expenses is increased from the current 7.5% of AGI to 10% of AGI for taxable years beginning after December 31, 2012. Individuals age 65 and older (and their spouses) are exempt from the increased threshold and would continue to be eligible to deduct expenses that exceed 7.5% AGI through 2016.	Applicable (but note later effective date for persons age 65 and older)	Applicable	Applicable

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2014			
Reporting of health insurance coverage (Code § 6056) – Employers subject to the shared responsibility requirement and those required to offer free choice vouchers must file a return regarding health insurance coverage, including the number of months during which coverage was offered. Those employers must also provide this information in a statement provided to covered individuals.	Not applicable (reporting only relates to full-time employees, not retirees)	Applicable	Applicable
Transparency in coverage (QHP) reporting (PPACA §§ 1311(e)(3), 10104; PHSA § 2715A) – Large employers are required to file a new annual report with the IRS certifying whether the employer offers health care insurance to its employees and, if so, describing the details regarding plan participation, applicable waiting periods, coverage availability, the lowest cost premium option under the plan in each enrollment category, and other information.	Not applicable	Applicable	Not applicable
Vouchers (PPACA § 10108; Code § 139C) – Qualified employees are eligible to receive free choice vouchers to purchase qualified health plan coverage through the Exchange.	Not applicable (vouchers only required to be provided to employees, not retirees)	Applicable	Applicable
Individual mandate (PPACA §§ 1501, 10106; Code § 5000A) – Individuals are required to maintain minimum essential coverage for each month beginning in 2014.	Applicable to retirees (all individuals)	Applicable	Applicable
Play or pay tax (Code § 4980H) – Employers (with an average of at least 50 full-time employees) that do not offer minimum essential coverage to full-time employees (i.e., average of 30 or more hours per week) and have at least one employee receiving federal premium assistance credits for coverage through an Exchange are subject to up to a $2,000 annual fee for each full-time employee employed (calculated on a monthly basis). The penalty is calculated based on number of full-time employees after subtracting the first 30.	Not applicable	Applicable	Applicable
Preexisting condition exclusion prohibition (for all) (PHSA § 2704) – May not impose any preexisting condition exclusion on anyone.	Not applicable	Applicable	Applicable

Summary of Provision	Retiree Only Plans	Non-Grandfathered, Active Plans	Grandfathered Health Plans
Nondiscrimination based on health status (PHSA § 2705) – May not establish rules for eligibility (including continued eligibility) of any individual to enroll under the terms of the plan or coverage based on any of the following health status-related factors in relation to the individual or a dependent of the individual: (i) health status; (ii) medical condition (including both physical and mental illnesses); (iii) claims experience; (iv) receipt of health care; (v) medical history; (vi) genetic information; (vii) evidence of insurability (including conditions arising out of acts of domestic violence); (viii) disability; or (ix) any other health status-related factor determined appropriate by the Secretary.	Not applicable	Applicable	HIPAA nondiscrimination rules apply to grandfathered health plans and group health insurance issuers. The PPACA extensions (such as the wellness provisions) are not applicable to grandfathered health plans.
Nondiscrimination against health care providers (PHSA § 2706) – May not discriminate with respect to participation under the plan against any health care provider.	Not applicable	Applicable	Not applicable
Cost-sharing limitations (PHSA § 2707(b); PPACA § 1302(c)) – Group health plans must ensure that any annual cost-sharing imposed does not exceed the limits for qualified health plans offered through the Exchange, which are based on the individual and family limits for high deductible health plans.	Not applicable	Applicable	Not applicable
Prohibition on excessive waiting periods (PHSA § 2708) – May not apply any waiting period that exceeds 90 days.	Not applicable	Applicable	Applicable
Coverage for clinical trials (PHSA § 2709) – May not discriminate against an individual for participating in a clinical trial. If plan covers qualified individual, it may not deny or impose additional conditions for participation in clinical trial.	Not applicable	Applicable	Not applicable
Annual limits prohibited on essential benefits (PHSA § 2711) – May not establish annual limits on the dollar value of essential benefits for any participant or beneficiary.	Not applicable	Applicable	Applicable

Summary of Provision	Retiree Only Plans	Non-Grandfathered, Active Plans	Grandfathered Health Plans
2018			
High cost coverage tax (Code § 4980I) – Excise tax of 40 percent applies to the aggregate value of employer-sponsored health plan coverage in excess of $10,200 for self-only and $27,500 for family coverage (indexed annually).	Applicable; but likely to be changes between now and 2018	Applicable; but likely to be changes between now and 2018	Applicable; but likely to be changes between now and 2018