

Health Care Reform Update

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U.S. House Passes Health Care Reform Repeal Bill

On Wednesday, the House of Representatives passed a bill to repeal President Obama's health care reform measure, the Patient Protection and Affordable Care Act, by a vote of 245 to 189. The bill is expected to die in the Senate, which still has a Democratic majority. The action by the House is largely symbolic that allows legislators to keep election promises to repeal what has widely been labeled as "Obamacare". The House Republican-led leadership has instructed committees to begin crafting replacement legislation for the current health care reform law as a means of keeping the issue in the public eye.

While repeal of the health care reform law is unlikely until at least after the next election, it is expected that there will be amendments and "fixes" in the meantime. Among these is repealing the increased Form 1099 reporting requirement that takes full effect in 2012. Sen. Max Baucus introduced a bill to repeal this provision during the lame duck session of Congress that did not pass. It is likely to be reintroduced and appears to have bi-partisan support.

Form 1099-MISC Reporting Confusion

Many plan sponsors have experienced confusion regarding reporting requirements for the IRS Form 1099-MISC. Many have wondered whether or not they were supposed to report health plan premium payments made to their insurance carriers. Although box 6 of the 1099-MISC is labeled "*Medical and Health Care Payments*", it does not apply to health insurance premiums. It actually applies to direct payments to health care providers such as doctors and hospitals for medical or health care services. A plan sponsor paying premium to an insurer is not required to report premium payments on a Form 1099-MISC.

Fully-Insured Non-discrimination Testing Put on Hold

Recently, the IRS released Notice 2011-1 exempting fully-insured plans from the new non-discrimination rules in the Affordable Care Act (and related penalties for non-compliance) until the IRS issues further guidance. The earliest the nondiscrimination rules would likely apply to calendar year plans is January 1, 2012. Self-funded plans have been subject to the non-discrimination requirements of Internal Revenue Code Section 105(h) for many of years. Employers with self-funded plans should continue to comply with these non-discrimination rules.

Additional FAQs Released

The Departments of Labor, Health and Human Services, and Treasury recently released additional Frequently Asked Questions (FAQs) regarding implementation of the Affordable Care Act and also the Mental Health Parity and Addiction Equity Act. A copy of the FAQs is available at: <http://www.dol.gov/ebsa/faqs/faq-aca5.html>.

Q&A 1 confirmed that plans may use reasonable medical management techniques to control costs, including applying a co-payment to steer patients towards a particular high-value setting such as an ambulatory care setting for providing preventive care services.

Q&A 3 clarified that the automatic enrollment requirement for employers with more than 200 full-time employees will go into effect only after the regulations are developed, which is not expected to be earlier than 2014.

Q&A 4 reiterated that the requirement for 60-day prior notice for material modifications to the plan or coverage will not go into effect until after standards have been issued by the Departments. The target effective date for the notice requirement is the first plan year on or after March 23, 2012.

Q&A 7 discussed retention of grandfathered status. If a plan or coverage has a fixed-amount cost-sharing requirement other than a copayment (for example, a deductible or out-of-pocket limit) that is based on a percentage-of-compensation formula, that cost-sharing arrangement will not cause the plan or coverage

to cease to be a grandfathered health plan as long as the formula remains the same as that which was in effect on March 23, 2010.

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