Employee Benefits Series

STRATFORD

Health Care Reform Rules for Small Business

(FEWER THAN 50 EMPLOYEES)

Benefits Requirements, Notices, Financial Provisions

Health Care Reform & Small Business (< 50 Employees)

Businesses of all sizes are affected by the Affordable Care Act. While the law does not penalize small employers that do not offer health insurance, those that do provide coverage must ensure that the benefits offered comply with a number of requirements. Small employers may also be eligible for a special tax credit and other advantages under the law. The following guide highlights the key benefits requirements, notices, and financial provisions that may affect **employers with fewer than 50 employees**.

BENEFITS REQUIREMENTS		
Requirement	***Employer Action Items***	***Notes/Tips***
90-Day Limitation on Waiting Periods	Ensure that any **waiting period does not exceed 90 days** for plan years beginning in 2014 (a waiting period is the time that must pass before coverage for an individual who is otherwise eligible to enroll can become effective)	Eligibility conditions that are not based solely on the lapse of a time period (e.g., meeting certain sales goals or successfully completing an orientation period) are generally allowed.
Break Time for Nursing Mothers	Provide **reasonable break time for an employee to express breast milk** for her nursing child for 1 year after the child's birth, as well as a place to do so (other than a bathroom) that is shielded from view and free from intrusion from coworkers and the public	This requirement took effect in 2010. An employer with fewer than 50 employees is not subject to the requirement if it can demonstrate that compliance with the provision would impose an undue hardship.
Coverage of Preventive Services	For non-grandfathered plans, continue to **monitor guidelines for preventive services** (which are regularly updated to reflect new medical advances) to ensure coverage of such services is provided without cost-sharing	As new services are approved, non-grandfathered group plans will be required to cover them with no cost-sharing for plan years beginning one year later.
Dependent Coverage to Age 26 (Without Exception)	If the group plan covers dependents, confirm that **coverage is made available until a child reaches age 26**, regardless of other coverage options	Most group plans have been required to comply with this rule since 2010, but a temporary exception allowed grandfathered plans to exclude adult children who were eligible to enroll in employer-based coverage other than the group health plan of a parent until plan years beginning in 2014.
Essential Health Benefits	For non-grandfathered plans, confirm the plan **covers a core package of items and services** known as "essential health benefits" for plan years starting on or after January 1, 2014 (not applicable for self-insured plans)	If allowed by a particular state and insurer, a small business may be able to renew its current group coverage that does not comply with the requirement to cover essential health benefits, through policy years beginning on or before October 1, 2016.
Guaranteed Availability and Restrictions on Premium Variations	For non-grandfathered plans, determine impact (if any) of the requirements that issuers generally **accept every employer that applies for coverage and limit any variation in premiums** to age and tobacco use, family size, and geography for plan years beginning on or after January 1, 2014	If allowed by a particular state and insurer, a small business may be able to renew its current group coverage that does not comply with the requirements related to guaranteed availability and fair premiums, through policy years beginning on or before October 1, 2016.

This summary is for general reference purposes only and is not all-inclusive. The information is subject to change and your group plan may be exempt from certain requirements and/or subject to more stringent requirements under state law. If you have questions regarding your obligations, please consult a knowledgeable employment law attorney or your state insurance department.

BENEFITS REQUIREMENTS (cont'd)

Requirement	*Employer Action Items*	*Notes/Tips*
No Preexisting Condition Exclusions	**Eliminate preexisting condition exclusions** for individuals of all ages for plan years starting in 2014	The prohibition on exclusions of children under 19 years of age on the basis of pre-existing conditions became effective in 2010.
Nondiscrimination for Wellness Programs	For employers sponsoring a wellness program that requires an individual to satisfy a standard related to a health factor in order to obtain a reward, confirm the program **complies with revised nondiscrimination rules** for plan years beginning on or after January 1, 2014	Under the revised rules, an employer is permitted to increase the maximum permissible reward (up to 30% of the cost of coverage, or 50% for programs designed to prevent or reduce tobacco use).

NOTICES

Notice	*Employer Action Items*	*Notes/Tips*
Exchange Notice (Notice of Coverage Options)	Provide **written notice about the Health Insurance Exchange (Marketplace)** to each new full- and part-time employee at the time of hiring, within 14 days of the employee's start date	Two model notices are available to help employers comply with this requirement—one notice for those that offer a health plan, and another notice for those that do not.
Summary of Benefits and Coverage (SBC)	Confirm contractual arrangements with the carrier or third party administrator to **prepare and provide the SBC** (if the carrier or TPA does not assume responsibility, the employer should provide this notice, without charge, to employees and beneficiaries at specified times during the enrollment process and upon request)	For coverage beginning on or after January 1, 2014, an updated SBC template is available which includes language indicating whether the plan provides "minimum essential coverage," and whether the plan meets the ACA's "minimum value" standard.
Updated COBRA Election Notice	Update the plan's election notice, to be distributed to employees, spouses and dependents who are eligible to continue coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA), to **include additional information regarding coverage alternatives available through the Health Insurance Exchange (Marketplace)**	COBRA applies generally to group health plans sponsored by employers with **at least 20 employees** on more than 50% of their typical business days in the previous calendar year.

FINANCIAL PROVISIONS

Provision	*Employer Action Items*	*Notes/Tips*
Additional Medicare Tax for High Earners	**Withhold Additional Medicare Tax**—at a rate of 0.9%—on wages or compensation paid to an employee in excess of $200,000 in a calendar year	Additional Medicare Tax first became effective in 2013.
Elimination of Annual Limits	Confirm that **no annual dollar limits apply** to coverage of "essential health benefits" for plans issued or renewed beginning January 1, 2014	Health plans may continue to limit the number of visits to health providers and days of treatment, so long as the visit or day limit does not amount to a dollar limit.

FINANCIAL PROVISIONS (cont'd)		
Provision	***Employer Action Items***	***Notes/Tips***
Limits on Cost-Sharing	For non-grandfathered plans, ensure that out-of-pocket maximums under the plan for coverage of "essential health benefits" provided in-network **do not exceed certain annual limitations**	If allowed by a particular state and insurer, a small business may be able to renew its current group coverage that does not comply with the limits on cost-sharing, through policy years beginning on or before October 1, 2016.
Medical Loss Ratio (MLR) Rebates	**Distribute any rebates**, received as a result of insurers not meeting specific standards related to how premium dollars are spent, to eligible plan enrollees as appropriate (not applicable for self-insured plans)	Rebates are due to employer-policyholders by August 1st (starting in 2015, rebates are due by September 30th).
PCORI Fees	For employers sponsoring certain self-insured health plans (including HRAs and FSAs not treated as excepted benefits), **report and pay applicable fees** to fund the Patient-Centered Outcomes Research Institute (PCORI)	For plan years ending on or after October 1, 2012, and before October 1, 2019, IRS Form 720 must be filed annually to report and pay the fees no later than July 31st of the year following the last day of the plan year to which the fee applies.
Requirements for Tax-Favored Arrangements	Ensure **necessary changes** are made to health reimbursement arrangements (HRAs), health flexible spending arrangements (FSAs), and cafeteria plans **to comply with ACA requirements**: • HRAs generally must be "integrated" with other group health plan coverage and may no longer be used to reimburse an employee's individual insurance policy premiums, effective for plan years beginning in 2014 • A health FSA must qualify as excepted benefits for plan years beginning in 2014, and must be offered through a cafeteria plan (a plan which meets specific requirements to allow employees to receive certain benefits on a pre-tax basis) effective as of September 13, 2013 • Except for SHOP coverage, an employer may not provide a qualified health plan offered through the Health Insurance Exchange (Marketplace) as a cafeteria plan benefit, effective for taxable years beginning after December 31, 2013 (a later effective date may apply for non-calendar year plans)	Employers sponsoring health FSAs also need to ensure that plan documents are amended by December 31, 2014 to reflect the $2,500 annual limit on salary reduction contributions to health FSAs (which became effective for plan years beginning in 2013). Effective as of 2011, distributions from HRAs and health FSAs are allowed to reimburse the cost of over-the-counter medicines or drugs only if they are purchased with a prescription, except insulin (a similar rule applies for HSAs and Archer MSAs).

FINANCIAL PROVISIONS (cont'd)		
Provision	***Employer Action Items***	***Notes/Tips***
SHOP (Small Business Health Options Program)	**Consult with agent or broker** to review and compare price, coverage, quality, and other important features of plans offered inside and outside the SHOP Exchange (Marketplace) and for help with applying for plan coverage and enrolling employees	Until online functionality is available, small employers who wish to purchase coverage through the federal SHOP may work with an agent or broker to select a qualified plan and enroll employees. (Employers located in a state operating its own SHOP must follow the state's application and enrollment process.)
Small Business Health Care Tax Credit	**Determine if your company qualifies** for the small business health care tax credit	Small businesses (generally those with no more than 25 full-time equivalent employees with average annual wages that do not exceed $50,800, as adjusted for inflation), that pay at least half of employee health insurance premiums for coverage obtained through SHOP, may be eligible to claim the credit for two consecutive taxable years starting in 2014. (**IRS Update:** The phase-out of the credit operates in such a way that an employer with **exactly 25 full-time equivalent employees** is not in fact eligible for the credit.)

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