

2021 Health Care Reform Rules for Small Business



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Businesses of all sizes are affected by the Affordable Care Act (ACA). 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 (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 a reasonable and bona-fide employment-based 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	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. Employer payment plans (arrangements under which an employer reimburses an employee for some or all of the premium expenses incurred for an individual health insurance policy, or uses its funds to directly pay the premium for an individual policy) generally fail to satisfy this requirement, with exceptions, such as certain types of HRAs .
Dependent Coverage to Age 26	If the group plan covers dependents, confirm that coverage is made available until a child reaches age 26	N/A

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BENEFITS REQUIREMENTS, <i>Continued</i>		
Requirement	Employer Action Items	Notes/Tips
Essential Health Benefits	For non-grandfathered plans, confirm the plan covers a core package of items and services known as "essential health benefits" (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 Oct. 1, 2021, so long as the coverage comes into compliance by Jan. 1, 2022.
Guaranteed Availability and Restrictions on Premium Variations	For non-grandfathered plans, determine impact (if any) of the requirements that issuers generally accept every employee that applies for coverage and limit any variation in premiums to age and tobacco use, family size, and geography	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 Oct. 1, 2021, so long as the coverage comes into compliance by Jan. 1, 2022.
No Preexisting Condition Exclusions	Ensure that preexisting condition exclusions have been eliminated for individuals of all ages	N/A
Nondiscrimination for Wellness Programs	For employers sponsoring wellness programs that require individuals to satisfy a standard related to a health factor in order to obtain a reward, confirm the program complies with nondiscrimination rules	Employers should also ensure that wellness programs comply with other federal laws, such as the Americans with Disabilities Act and the Genetic Information Nondiscrimination Act, if applicable.
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, 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.

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NOTICES, <i>Continued</i>		
Notice	Employer Action Items	Notes/Tips
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)	N/A
Qualified Small Employer HRA Notice	Employers that had fewer than 50 full-time employees in the preceding calendar year, that do not offer a group health plan , and that fund a qualified small employer HRA must provide a notice to eligible employees	Notice must generally be provided no later than 90 days before the beginning of each year in which the QSEHRA is funded
Individual Coverage HRA Notice	For plan years beginning in 2020, provide an Individual Coverage HRA Notice as an alternative to traditional group health coverage , if applicable	Notice must generally be provided no later than 90 days before the beginning of the Individual Coverage HRA plan year

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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	N/A
Elimination of Annual Limits	Confirm that no annual dollar limits apply to coverage of "essential health benefits"	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.
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 Oct. 1, 2021, so long as the coverage comes into compliance by Jan. 1, 2022.
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 Sept. 30.
PCORI Fees	For employers sponsoring certain self-insured health plans, report and pay applicable fees to fund the Patient-Centered Outcomes Research Institute (PCORI)	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.

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FINANCIAL PROVISIONS, *Continued*

Provision	Employer Action Items	Notes/Tips
Requirements for Tax-Favored Arrangements	<p>Ensure that health reimbursement arrangements (HRAs), health flexible spending arrangements (FSAs), and cafeteria plans comply with several ACA requirements:</p> <ul style="list-style-type: none"> • HRAs generally must be integrated with other group health plan coverage and cannot be used to reimburse an employee's individual insurance policy premiums (unless it constitutes a qualified small employer HRA, a retiree-only HRA, or a new type of HRA that may be offered in plan years beginning in or after 2020) • A health FSA must qualify as excepted benefits 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) • 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 	<ul style="list-style-type: none"> • Eligible small employers—generally those with fewer than 50 full-time employees who do not offer a group health plan and that meet the law's notice and benefit requirements—can offer "qualified small employer HRAs" to reimburse employees for qualified medical expenses, including individual health insurance premiums. • For plan years beginning in 2020, two new types of HRAs may be offered by eligible employers. • 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.
SHOP (Small Business Health Options Program)	<p>Consult with your 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</p>	<p>Employers located in a state operating its own SHOP must follow that state's application and enrollment process.</p>
Small Business Health Care Tax Credit	<p>Determine if your company qualifies for the small business health care tax credit</p>	<p>In general, small businesses (i.e., those with fewer than 25 full-time equivalent employees with average annual wages that do not exceed certain amounts), 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.</p>

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.

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