

# HUMAN CAPITAL PRACTICE

Willis

## ALERT: HEALTH CARE REFORM BILL

May 2011

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### WHAT DO WE DO NOW? UPDATED HEALTH CARE REFORM TIMELINE

More than a year after enactment, the health care reform law continues to evolve. Regulators have issued thousands of pages of guidance, Congress has repealed two of the law's provisions, and some lower courts have declared part (in one case, all) of the law unconstitutional. Recent health care reform headlines are summarized in the box below. Meanwhile, employers have been busy implementing health plan changes needed to comply with some of the mandates included in the law.

To give you a snapshot of where we are today on health care reform compliance and what you can expect over the next few years, an updated compliance timeline appears below. It reflects the various enforcement delays and effective date interpretations issued up to May 2011. It also provides links to Willis publications explaining various provisions. Additional materials regarding health care reform obligations are available from your Willis representative.

#### RECENT HEALTH CARE REFORM HEADLINES

##### REPEAL OF FREE CHOICE VOUCHER OBLIGATIONS

In April, the "free choice voucher" provision of the health care reform law was repealed. That provision would have required employers to issue vouchers to certain employees beginning January 1, 2014 if the employees' required contributions for employer-provided health coverage exceeded certain thresholds. Equal to the employer's normal contribution toward health coverage, the vouchers would have been valid for purchasing coverage through a state health insurance exchange.

##### REPEAL OF NEW FORM 1099 REPORTING REQUIREMENTS

Also in April, expanded 1099 reporting obligations were repealed. The health care reform law had expanded businesses' 1099 reporting obligations as a means of raising revenue. As enacted, the provision would have required businesses to report payments greater than \$600 to "persons engaged in a trade or business" on Form 1099. The obligation would have applied to payments made in 2012 or later. According to the Joint Committee on Taxation, this enhanced reporting would have increased tax collections by \$24.7 billion over 10 years.

##### ERRP CLOSED TO NEW APPLICATIONS

Saying that it has "approved a sufficient number of applications to exhaust the program funding," HHS stopped accepting applications for the Early Retiree Reinsurance Program (ERRP) effective May 5, 2011. The ERRP is a \$5 billion program that reimburses a portion of the cost of early retiree health benefits. Reimbursement is available only to plan sponsors who have applied and been accepted into the program. HHS began accepting ERRP applications on June 29, 2010 and, as of as of December 31, 2010, had accepted more than 5,000 such applications. Claim reimbursement began in October 2010 and, as of March 17, 2011, nearly \$1.8 billion in reimbursements had been provided to more than 1,300 approved applicants.

## GUIDANCE ON W-2 REPORTING

In late March, the IRS issued interim guidance regarding the requirement that employers report the cost of employer-sponsored health insurance coverage on Form W-2. Under the guidance, W-2 reporting of health coverage remains optional for coverage provided during 2011 (the W-2s for 2011 generally will be issued in January 2012). For coverage provided during 2012, the new guidance specifies that W-2 reporting will remain optional for employers filing fewer than 250 W-2s (the W-2s for 2012 generally will be issued in January 2013). For larger employers (and those who choose to report voluntarily), the guidance provides details on what coverage must be reported and how to determine the cost of that coverage. Willis' National Legal & Research Group will explain those details in a future publication.

### MARCH 23, 2010

- Date of enactment
- Plans covering at least one individual may be “grandfathered plans,” which get some exemptions from compliance, so long as no disqualifying changes occur (see **Willis Human Capital Practice Alert, Vol. 3, No. 12** and **Willis Human Capital Practice Alert, Vol. 3, No. 17**)
- Employers with fewer than 25 employees that provide health insurance may qualify for a tax credit with respect to their 2010 taxable year if certain conditions are met (see **Willis Human Capital Practice Alert, Vol. 4, No. 1**)
- Employers with 200 or more full-time employees would have become subject to automatic enrollment requirements, except that federal agencies put enforcement on hold pending regulations (see **Willis HR Focus, Issue #44, February 2011, “Agencies Release More FAQ Guidance”**)

### MARCH 30, 2010

- Benefits provided to an employee’s children (as defined) who will be age 26 or younger at year-end are nontaxable regardless of dependent status (see **Willis Human Capital Practice Alert, Vol. 3, No. 6** and **Willis Human Capital Practice Alert, Vol. 3, No. 19**)

### JUNE 1, 2010

- Claims incurred on or after this date may be reimbursable under the early retiree reinsurance program (ERRP) (see **Willis Human Capital Practice Alert, Vol. 3, No. 7** and **Willis HR Focus, Issue #43, January 2011, “HHS Releases New ERRP Application”**)

### PLAN YEARS STARTING ON OR AFTER SEPTEMBER 23, 2010

- Group health plans – including, for most items, self-insured plans – become subject to the following insurance reforms (calendar-year plans become subject to these requirements starting January 1, 2011):
  - Lifetime dollar limits on essential benefits prohibited (see **Willis Human Capital Practice Alert, Vol. 3, No. 13**)
  - Annual dollar limits on essential benefits prohibited, except that phase-in rules allow annual limits no lower than \$750,000 for plan years starting before September 23, 2011, and lower annual limits are allowed for plans approved under HHS waiver program (see **Willis Human Capital Practice Alert, Vol. 3, No. 13** and **Willis HR Focus, Issue #43, January 2011, “HHS Issues Additional Guidance for Waiver Process”**)



- Rescissions prohibited except in cases of fraud or intentional misrepresentation (see **Willis Human Capital Practice Alert, Vol. 3, No. 13**)
- Preexisting condition exclusions prohibited for enrollees under age 19 (see **Willis Human Capital Practice Alert, Vol. 3, No. 13**)
- To the extent that a plan makes coverage available to employees' children (as defined), the plan cannot use an age limit earlier than a child's 26<sup>th</sup> birthday and, subject to a limited exception for grandfathered plans, must base such children's eligibility solely on their relationship to the employee and their age (see entry at "Plan Years Starting On or After January 1, 2014" for the limited exception applicable to grandfathered plans, **Willis Human Capital Practice Alert, Vol. 3, No. 8** and **Willis HR Focus, Issue #41, November 2010, "New Guidance on Age 26 Mandate and Other Topics"**)
- Cost sharing on preventive care expenses prohibited, except that grandfathered plans are exempt (see **Willis Human Capital Practice Alert, Vol. 3, No. 15**)
- Insured plans subject to nondiscrimination rules that currently apply only to self-insured plans, except that grandfathered plans are exempt and federal agencies have put enforcement on hold for other plans pending regulations (see **Willis HR Focus Issue #44, February 2011, "Nondiscrimination Requirements For Insured Health Plans Delayed," Willis HR Focus, Issue #41, November 2010, "MERPS – How Will Health Care Reform Affect Them?"** and **Willis Human Capital Practice Alert, Vol. 3, No. 3**)
- Plans must allow participants to choose any primary care provider available to accept them, except that grandfathered plans are exempt (see **Willis Human Capital Practice Alert, Vol. 3, No. 13**)
- Choice of pediatrician as a child's primary care provider must be allowed, except that grandfathered plans are exempt (see **Willis Human Capital Practice Alert, Vol. 3, No. 13**)
- Plans that provide benefits for emergency services must eliminate requirements for preauthorization and certain differences between benefits for in- and out-of-network services, except that grandfathered plans are exempt (see **Willis Human Capital Practice Alert, Vol. 3, No. 13**)
- Plans that provide benefits for obstetrical and gynecological care must eliminate certain referral or preauthorization requirements with respect to such services for female participants, except that grandfathered plans are exempt (see **Willis Human Capital Practice Alert, Vol. 3, No. 13**)
- Requirements for internal claim and appeals procedures and external reviews must be implemented, except that enforcement delays apply to some of the new internal procedures and grandfathered plans are exempt (see entries below at "Plan Years Starting On or After July 1, 2011" and "Plan Years Starting On or After January 1, 2012" for delayed provisions, **Willis Human Capital Practice Alert, Vol. 3, No. 16**, **Willis HR Focus, Issue #41, November 2010, "New Guidance on Age 26 Mandate and Other Topics"** and **Willis HR Focus, Issue #47, May 2011, "Agencies Extend Regulatory Grace Period for Some New Internal Claims Processing Requirements"**)

## JANUARY 1, 2011

- Unless prescribed by a provider, over-the-counter medications are not qualifying medical expenses for purposes of health plans, including health flexible spending accounts (FSAs), health reimbursement arrangements and health savings accounts (HSAs) (see **Willis HR Focus, Issue #41, November 2010, "IRS**

**Issues Guidance: Reimbursement of OTC Medicine From Account-Based Plans” and Willis HR Focus, Issue #44, February 2011, “Guidance Issued on Debit Cards and Reimbursement of OTC Medicines”)**

- Health insurers must report medical loss ratios to HHS with respect to coverage provided during 2011 (see entry at June 1, 2012 regarding rebates to enrollees if medical loss ratio is less than 85% (80% for small groups) and **Willis Human Capital Practice Alert, Vol. 3, No. 3**)
- Penalty for using HSA or Archer MSA funds for items other than qualifying medical expenses increases to 20% (see **Willis Human Capital Practice Alert, Vol. 3, No. 3**)
- Qualifying small employers may establish “simple cafeteria plans” (see **Willis Human Capital Practice Alert, Vol. 3, No. 5**)
- W-2s issued for 2011 earnings (which generally will be issued in January 2012) have the option – but are not required – to report value of health coverage provided during the year (see **Willis Human Capital Practice Alert, Vol. 3, No. 3, Willis HR Focus, Issue #42, December 2010, “IRS: W-2 Reporting of Health Coverage is Optional for 2011”** and **Willis HR Focus, Issue #47, May 2011, “Reporting Health Care Coverage Costs on Form W-2”**)

## **MARCH 23, 2011**

- Deadline for HHS to establish standards for uniform four-page summary of coverage, but nothing has been issued as of publication date (see **Willis Human Capital Practice Alert, Vol. 3, No. 3**)

## **MAY 5, 2011**

- ERRP applications received by HHS after this date will not be considered for participation in the ERRP (see **Willis Human Capital Practice Alert, Vol. 3, No. 7, Willis HR Focus, Issue #43, January 2011, “HHS Releases New ERRP Application”** and **Willis HR Focus, Issue #47, May 2011, “HHS Will Stop Accepting ERRP Applications May 5”**)

## **PLAN YEARS STARTING ON OR AFTER JULY 1, 2011**

- Enforcement delay ends for internal claims and appeals requirements that certain notices include the following:
  - Sufficient details to identify a claim (except that diagnosis and treatment codes and their meanings need not be provided)
  - The reasons for an adverse benefit determination
  - A description of available internal appeals and external review processes
  - For plans and issuers in states in which a health consumer assistance program or ombudsman is operational, disclosure of the availability of, and contact information for, such program

(see **Willis Human Capital Practice Alert, Vol. 3, No. 16, Willis HR Focus, Issue #41, November 2010, “New Guidance on Age 26 Mandate and Other Topics”** and **Willis HR Focus, Issue #47, May 2011, “Agencies Extend Regulatory Grace Period for Some New Internal Claims Processing Requirements”**)

## PLAN YEARS STARTING ON OR AFTER SEPTEMBER 23, 2011

- Phase-in of annual dollar limits prohibition allows annual limits no lower than \$1,250,000 for plan years starting before September 23, 2012; lower annual limits allowed for plans approved under HHS waiver program (see **Willis Human Capital Practice Alert, Vol. 3, No. 13** and **Willis HR Focus, Issue #43, January 2011, “HHS Issues Additional Guidance for Waiver Process”**)

## JANUARY 1, 2012

- W-2s issued for 2012 earnings (which generally will be issued in January 2013) must report value of health coverage provided during the year, except that employers issuing fewer than 250 W-2s for 2011 earnings are not required to do so (see **Willis Human Capital Practice Alert, Vol. 3, No. 3, Willis HR Focus, Issue #42, December 2010, “IRS: W-2 Reporting of Health Coverage is Optional for 2011”** and **Willis HR Focus, Issue #47, May 2011, “Reporting Health Care Coverage Costs on Form W-2”**)

## PLAN YEARS STARTING ON OR AFTER JANUARY 1, 2012

- Enforcement delay ends for internal claim and appeals requirements of:
  - Notifying a claimant of an initial decision on an urgent pre-service claim within 24 hours after receipt of the claim (as opposed to 72 hours, required under current rules)
  - Providing notices in an alternate language as provided in regulations
  - Strictly adhering to all requirements of the interim final regulations regarding internal claim and appeals procedures

(see **Willis Human Capital Practice Alert, Vol. 3, No. 16, Willis HR Focus, Issue #41, November 2010, “New Guidance on Age 26 Mandate and Other Topics”** and **Willis HR Focus, Issue #47, May 2011, “Agencies Extend Regulatory Grace Period for Some New Internal Claims Processing Requirements”**)

## MARCH 23, 2012

- Deadline for group health plans to provide uniform four-page summaries of coverage that meet HHS standards (see entry at March 23, 2011 and **Willis Human Capital Practice Alert, Vol. 3, No. 3**)
- Group health plans must notify enrollees of material changes no less than 60 days before effective date (see **Willis Human Capital Practice Alert, Vol. 3, No. 3** and **Willis HR Focus, Issue #44, February 2011, “Agencies Release More FAQ Guidance”**)
- Deadline for HHS to develop standards for annual reports to enrollees and HHS on plan benefits that improve health (deadline for plans to begin providing such reports is unclear)

## JUNE 1, 2012

- Deadline for insurers to file with HHS report of medical loss ratios for coverage provided during 2011; if medical loss ratio is less than 85% (80% for small groups), insurer is to pay rebate to enrollees by August 2012 (see **Willis Human Capital Practice Alert, Vol. 3, No. 3**)

## PLAN YEARS STARTING ON OR AFTER SEPTEMBER 23, 2012

- Phase-in of annual dollar limits prohibition allows annual limits no lower than \$2,000,000 for plan years starting before January 1, 2014; lower annual limits allowed for plans approved under HHS waiver program (see **Willis Human**

**Capital Practice Alert, Vol. 3, No. 13 and Willis HR Focus, Issue #43, January 2011, “HHS Issues Additional Guidance for Waiver Process”)**

## **POLICY YEARS ENDING AFTER SEPTEMBER 30, 2012**

- Fee of \$1 times the average number of covered lives is required for both insured and self-insured coverage (see **Willis Human Capital Practice Alert, Vol. 3, No. 9**)

## **JANUARY 1, 2013**

- Annual salary reduction contributions to a health FSA may not exceed \$2,500
- Employers receiving the nontaxable subsidy for providing certain retirees with coverage equivalent to Medicare Part D must reduce federal income tax deduction taken for providing such coverage by the amount of the subsidy (see **Willis Human Capital Practice Alert, Vol. 3, No. 9**)
- 1.45% Medicare payroll tax increases to 2.35% on wages over \$200,000 (\$250,000 for joint return filers) (see **Willis Human Capital Practice Alert, Vol. 3, No. 9**)

## **MARCH 1, 2013**

- Employers become subject to notification requirements regarding insurance exchanges and subsidies (effective dates for these disclosure requirements are unclear – regulatory guidance needed)

## **POLICY YEARS ENDING AFTER SEPTEMBER 30, 2013**

- Fee noted at September 30, 2012 increases to \$2 times the average number of covered lives (see **Willis Human Capital Practice Alert, Vol. 3, No. 9**)

## **JANUARY 1, 2014**

- Employers with 50 or more full-time employees may incur “free rider” penalties if they offer no coverage or coverage that is unaffordable or insufficient AND one or more full-time employees receive subsidized coverage through an exchange
- Individuals who do not have qualifying coverage must pay an excise tax (coverage under any grandfathered plan satisfies requirement)
- Plans must report coverage information to enrollees and the IRS
- State health insurance exchanges begin operation for individuals and small employers
- Employers that offer coverage through an exchange may permit pre-tax contributions through their cafeteria plans to pay for such coverage

## **PLAN YEARS STARTING ON OR AFTER JANUARY 1, 2014**

- Group health plans – including, for most items, self-insured plans – become subject to additional insurance reforms (calendar-year plans become subject to these requirements starting January 1, 2014):
  - Waiting periods longer than 90 days prohibited
  - Preexisting condition exclusions prohibited for all enrollees (see **Willis Human Capital Practice Alert, Vol. 3, No. 13**)
  - All annual dollar limits on essential benefits prohibited (see **Willis Human Capital Practice Alert, Vol. 3, No. 13**)
  - Grandfathered plans lose the ability to deny coverage to employees’ children who are under age 26 based on eligibility for other employment-based coverage (see **Willis Human Capital Practice Alert, Vol. 3, No. 8, Willis HR Focus, Issue #41, November 2010, “New Guidance on Age 26 Mandate and Other Topics”**)

- Plans must cover routine patient costs for care in connection with clinical trials, except that grandfathered plans are exempt
- Discrimination against providers prohibited as long as they act within the scope of their licenses, except that grandfathered plans are exempt
- Out-of-pocket maximum can be no greater than that allowed for a high-deductible health plan offered in connection with a health savings account, except that grandfathered plans are exempt
- Deductibles can be no greater than \$2,000 for single coverage and \$4,000 for family coverage, except that grandfathered plans are exempt
- Wellness incentives up to 30% of individual COBRA rate permitted; federal agencies may allow additional increases up to 50% (see **Willis HR Focus, Issue #44, February 2011, “Agencies Release More FAQ Guidance”**)

## JANUARY 1, 2016

- State health insurance exchanges must be available for employers with up to 100 employees

## JANUARY 1, 2017

- States may allow employers of any size to access coverage through health insurance exchanges

## JANUARY 1, 2018

- Excise tax applies to high-cost coverage

## JANUARY 1, 2020

- Fee noted at “Policy Years Ending After September 30, 2012” and “Policy Years Ending After September 30, 2013” sunsets (see **Willis Human Capital Practice Alert, Vol. 3, No. 9**)

Employee benefits veterans have learned that employers generally are best served by waiting for as much guidance as possible before devoting time and attention to implementation of new legislation. That may be particularly true in the case of the health care reform law, given current efforts to repeal it, de-fund it and have it declared unconstitutional. Additional changes to this timeline should be expected, and Willis’ National Legal & Research Group will continue to monitor developments and provide updates.

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