BRYAN CAVE
A Broader Perspective
Bulletin

Employee Benefits & Executive Compensation Client Service Group

To: Our Clients and Friends March 30, 2010

Health Care Reform Update: What Employers Need to Know Now

The Patient Protection and Affordable Care Act ("PPACA") was signed into law on March 23, 2010. Accompanying PPACA was the Health Care & Education Affordability Reconciliation Act of 2010 (the "Reconciliation Act"), which contains a number of amendments to PPACA and was passed by the Senate and House of Representatives on March 26, 2010. It was signed into law today.

This alert addresses the impact the law will have on employers by providing an introductory overview of certain provisions and the applicable effective dates.

Prohibition of Certain Coverage Limitations *(Except as otherwise noted, effective for plan years beginning on or after six months following enactment (e.g., effective January 1, 2011 for calendar plan years))*

- Group health plans that provide dependent child coverage must offer dependent coverage for adult children until age 26 without regard to the child's marital status.
- Group health plans will be prohibited from rescinding coverage except when rescission is due to fraud or misrepresentation and may be cancelled only with prior notice and upon satisfaction of certain requirements.
- Group health plans are prohibited from utilizing preexisting condition exclusions for children under the age of 19 (expands to all enrollees in 2014).
- Group health plans are prohibited from implementing lifetime limits on the dollar value of benefits for any participant or beneficiary.
- Waiting periods for coverage must be limited to 90 days. *Effective January 1, 2014.*
- Group health plans are prohibited from placing annual limits on the dollar value of coverage. *Effective January 1, 2014.*
- Plans subject to a collective bargaining agreement that was ratified on or before March 23, 2010, are generally not required to comply with the preceding PPACA coverage standards until the date on which the last of the collective bargaining agreements relating to the coverage terminates.

Mandated Preventative Health Services *(Effective for plan years beginning on or after six months following enactment (e.g., effective January 1, 2011 for calendar year plans))*

- New group health plans must provide first-dollar coverage for certain preventative services (i.e., such services are not subject to a deductible).

FSA, HRA and HSA Changes *(Except as otherwise indicated, effective January 1, 2011)*

- Costs for over-the-counter drugs may not be reimbursed through a health reimbursement arrangement ("HRA") or health flexible spending arrangement ("FSA") and may not be reimbursable on a tax-free basis through a health savings account ("HSA") or Archer Medical Savings Account ("MSA") unless such drugs are prescribed by a doctor.
- The penalty taxes on distributions from an HSA or Archer MSA that are not for qualified medical expenses are increased to 20% (from 10% and 15%, respectively).
- Employee salary reductions to a health FSA are limited to $2,500 annually, as adjusted for changes in the cost of living. This does not include any amount an employer may contribute. *Effective January 1, 2013.*

W-2 Reporting *(Effective for taxable years beginning on or after January 1, 2011)*

- Employers will be required to report the aggregate value of health benefits on an employee's Form W-2.

Medicare Part D *(Effective January 1, 2013)*

- Sponsors of qualified retiree prescription drug plans that receive subsidy payments from Health and Human Services with respect to Part D eligible retirees may not claim a business deduction for covered retiree prescription drug expenses incurred to the extent the sponsor excludes from income qualified retiree prescription drug plan subsidies allocable to such expense. Thus, the amount otherwise allowable as a deduction for retiree prescription drug expenses is reduced by the amount of the excludable subsidy payments received.

Employer Mandates *(Effective January 1, 2014)*

- Employers with 200 or more full-time employees must automatically enroll new full-time employees into a health insurance plan offered by the employer. Employees may opt out of coverage.
- Employers with more than 50 full-time (including full-time equivalents) employees that do **not** offer health coverage that meets minimum Federal standards, and have at least one full-time employee qualifying for and receiving a premium tax credit or cost sharing reduction from the government for health care purchased through an exchange, will be assessed a monthly penalty of $166.67 ($2,000 per year) per full-time employee, excluding the first 30 employees.
- Employers with more than 50 full-time (including full-time equivalents) employees that offer coverage that meets minimum Federal standards, but have at least one full-time employee qualifying for and receiving a premium tax credit or cost sharing reduction will be assessed a

monthly fee equal to $250 ($3,000 per year) per full-time employee receiving the tax credit except for those employees receiving free choice vouchers described below.

- Employers offering coverage to employees must provide a free choice voucher to employees with incomes less than or equal to 400% of the federal poverty level where (i) the premium is between 8% and 9.8% of an employee's income and the employee opts to participate in a health insurance exchange, or (ii) the employer contributes less than 60% of the actuarial value of the coverage. The voucher will be equal to what the employer would have paid for the employee's coverage and is used to offset the cost of coverage through an exchange.

Retiree Health Benefits *(Effective 90 days following enactment until January 1, 2014)*

- A temporary reinsurance program will be created for employers providing health insurance coverage to retirees over age 55, but who are not yet eligible for Medicare. Participating employers will be entitled to reimbursement of 80% of claims by such retirees between $15,000 and $90,000. Reimbursements must be used to lower retiree and beneficiary costs.

Exchanges *(Effective January 1, 2014)*

- Health insurance exchanges will be established at the state level for individuals and small employers (generally under 100 employees). The exchanges may include large employers January 1, 2017.

Wellness Program *(Effective January 1, 2014)*

- Plans must satisfy HIPAA's current rules regarding wellness programs, with an increase in the limit applicable to wellness incentives from 20 percent to 30 percent. This means that generally the reward for satisfying the wellness program, together with the reward for other wellness programs available under the plan, may not exceed 30 percent of the cost of employee-only coverage under the plan

High-Cost Coverage *(Effective January 1, 2018)*

- An excise tax is imposed on health insurance issuers and self-insurers with aggregate values exceeding $10,200 for individual coverage or $27,500 for other coverage. The excise tax is equal to 40% of the value of the coverage that exceeds the threshold amounts. The limits are increased for individuals age 55 or older who are not eligible for Medicare and those in certain specified high-risk professions by $1,650 for individuals and $3,450 for other coverage. The aggregate value of health benefits includes reimbursements under a health FSA, HRA or HSA and coverage for any supplementary insurance coverage, not including vision and dental.

Please feel free to contact any member of the Bryan Cave LLP Employee Benefits and Executive Compensation Group listed below if you require assistance or have any questions regarding the information contained in this Bulletin.

Richard (Rick) L. Arenburg	(404) 572-6765	richard.arenburg@bryancave.com
Brian W. Berglund	(314) 259-2445	bwberglund@bryancave.com
Harold G. Blatt	(314) 259-2216	hgblatt@bryancave.com
Armin G. Brecher	(404) 572-6634	armin.brecher@bryancave.com
Bard Brockman	(404) 572-4507	bard.brockman@bryancave.com
Carrie E. Byrnes	(312) 602-5063	carrie.byrnes@bryancave.com
Paul F. Concannon	(404) 572-6856	paul.concannon@bryancave.com
Chad R. DeGroot	(314) 259-2803	chad.degroot@bryancave.com
Edmund (Ed) Emerson	(404) 572-6739	edmund.emerson@bryancave.com
Jennifer Faucett	(404) 572-4516	jennifer.faucett@bryancave.com
Kyle P. Flaherty	(212) 541-2134	kpflaherty@bryancave.com
Mark H. Goran	(314) 259-2686	mhgoran@bryancave.com
Carrie E. Herrick	(314) 259-2212	carrie.herrick@bryancave.com
Jonathan Hull	(314) 259-2359	jthull@bryancave.com
Charles B. Jellinek	(314) 259-2138	cbjellinek@bryancave.com
Michele L. Lux	(314) 259-2519	mllux@bryancave.com
Hal B. Morgan	(314) 259-2511	hbmorgan@bryancave.com
Dan O'Keefe	(314) 259-2179	dmokeefe@bryancave.com
Christian Poland	(312) 602-5085	christian.poland@bryancave.com
Kathy Reardon	(314) 259-2269	kcreardon@bryancave.com
Jeffrey S. Russell	(314) 259-2725	jsrussell@bryancave.com
Christopher (Chris) Rylands	(404) 572-6657	chris.rylands@bryancave.com
Michael G. Salters	+44-20-7246-5844	michael.salters@bryancave.com
Steven G. (Steve) Schaffer	(404) 572-6830	steven.schaffer@bryancave.com
Kathleen R. Sherby	(314) 259-2224	krsherby@bryancave.com
Sarah Roe Sise	(314) 259-2741	srsise@bryancave.com
Michael Corey Slagle	(214) 721-8031	corey.slagle@bryancave.com
Alan H. Solarz	(212) 541-2075	ahsolarz@bryancave.com
Jennifer W. Stokes	(314) 259-2671	jennifer.stokes@bryancave.com
Lisa A. Van Fleet	(314) 259-2326	lavanfleet@bryancave.com
Tom Wack	(314) 259-2182	tewack@bryancave.com
Julie A. Wagner	(314) 259-2637	jawagner@bryancave.com
Qian "Bonita" Wang	(404) 572-6628	q.bonita.wang@bryancave.com
Jay P. Warren	(212) 541-2110	jpwarren@bryancave.com
Carolyn Wolff	(314) 259-2206	carolyn.wolff@bryancave.com
Serena F. Yee	(314) 259-2372	sfyee@bryancave.com