

# HEALTH CARE REFORM: ITEMS OF INTEREST FOR EMPLOYERS

Patient Protection and Affordable Care Act (PPACA)

Health Care and Education Reconciliation Act of 2010 (HCERA)

Topic	Explanation	Effective Date	Applicable to Grandfathered Plans	PPACA HR 3590 Section (Enactment Date 3/23/2010)	HCERA HR 4872 Section (Enactment Date 3/30/2010)	Regulatory and Major Guidance*
<b>GENERAL PROVISIONS</b>						
Adoption Assistance	Increases limit for reimbursable expenses under adoption assistance programs and makes credit refundable.	1/1/2010	N/A	10909	N/A	Rev. Proc. 2010-31; Rev. Proc. 2010-35; IRS Notice 2010-66
Medicare Part D Donut Hole	Immediate decrease in Medicare Part D Donut Hole and total elimination in 2020.	1/1/2010	Yes	3315	1101	
Small Employer Health Insurance Credit	- Adds IRC 45R - Section 45R provides a Federal income tax credit to eligible small employers, including tax-exempt organizations, that make non-elective contributions towards their employees' health insurance premiums under an arrangement that meets certain requirements.	1/1/2010	N/A	1421	N/A	Rev. Rul 2010-13; IRS Notice 2010-44; IRS Notice 2010-82
ERISA / Code Application	Applies Part A of Section XXVII Public Health Service Act (PHSA) to ERISA and the Internal Revenue Code by adding new Sections 715 and 9815, respectively.	3/23/2010	Yes	1562(e) and (f) (changed to 1563(e) and (f) in 10107(b))	N/A	

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Grandfather Rules	Grandfathers existing health plans from PHS provisions of PPACA. HCERA takes away grandfathering for certain provisions.	3/23/2010	Yes	1251, 10103(d) and (e)	2301	Interim Final Rules 75 FR 34538 (June 17, 2010)  Amendment 75 FR 70114 (Nov. 17, 2010)
Tax Free Coverage for Dependents	Expands tax-free coverage under IRC 105(b) to any child described in 152(f)(1) who has not attained age 27.	3/30/2010	Yes	N/A	1004(d)	IRS Notice 2010-38
Early Retirees	Establishes government program for reinsurance of early retirees age 55-65 for employer-based health plans.	Within 90 days of enactment (i.e., by June 23, 2010)	Yes	1102	N/A	Interim Final Regs: 75 FR 24450 (May 5, 2010)
Internet Web Portal	Requires HHS to establish a web portal for identifying and purchasing health coverage in each state.	7/1/2010	N/A	1103	10102(b)	Interim Final Regs: 75 FR 24470 (May 5, 2010)
CLASS Act	- Establishes a voluntary assisted living/long term care insurance program. - Employers may elect to auto enroll employees and withhold premiums. - Employers not required to participate.	1/1/2011	N/A	8001, 8002 and 10801	N/A	
Premium Assistance for Medicaid or CHIP	Requires states to provide group health plan premium assistance to Medicaid or CHIP eligible individuals when it is cost	1/1/2014	Yes	2003 and 10203(b)	N/A	

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	effective to do so.					
<b>MEDICAL BENEFIT DESIGN CHANGES AFFECTING EMPLOYER SPONSORED HEALTH PLANS (Part A of Title XXVII of the PHSa)</b>						
Appeals – PHSa 2719	Requires standardized process for internal claims and appeals, and external appeals.	First plan year after 9/23/2010	No	1001 and 10101(g)	N/A	Interim Final Regs: 75 FR 43330 (July 23, 2010)  Federal External Appeal Release: 75 FR 52597 (August 26, 2010)  DOL Technical Release 2010-01  DOL Model Notices for Internal Claim, Internal Appeal and External Appeal adverse decisions  DOL Technical Release 2010-02
Compliance with Exchange Requirements – PHSa	Requires group health plans to report to HHS, state insurance commissioners and to make available to the public certain	First plan year after 9/23/2010	No	10101(c)	N/A	

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2715A	financial disclosures, information regarding claims policies and practices, and other information.					
Coverage Rescission – PHS 2712	Prohibits rescission of coverage except for fraud or misrepresentation.	First plan year after 9/23/2010	Yes	1001	N/A	Interim Final Regs 75 FR 37188 (June 28, 2010)
Dependent Coverage – PHS 2714	- Requires coverage of dependents until the child turns age 26 – i.e., 26 <sup>th</sup> birthday. - Prior to 1/1/2014, applies only if dependent not eligible to enroll in other employer provided coverage (GF plans only).	First plan year after 9/23/2010	Yes	1001	2301 and 1004(d)	Interim Final Regs 75 FR 27122 (May 13, 2010)
Discrimination – PHS 2716	- Applies similar IRC 105(h) rules to insured plans. - Not applicable to self-insured plans. - Statute provides that Section 2716 applies January 1, 2011, but Notice 2011-1 has delayed the effective date until at least the first plan year after guidance is issued, which will be no earlier than January 1, 2012.	First plan year after guidance is issued.	No	1001; 10101(d)	N/A	IRS Notice 2010-63; IRS Notice 2011-1
Lifetime and Annual Limits – PHS 2711	- Prevents lifetime dollar limits and annual dollar limits on essential benefits. - Allows per benefit annual or lifetime	First plan year after 9/23/2010	Yes	1001, 10101(a)	N/A	Interim Final Regs 75 FR 37188 (June 28, 2010)

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	dollar limits on non-essential benefits. - Allows certain annual dollar limits on essential benefits prior to 1/1/2014.			1302(b) (essential benefits)		
Patient Protections – PHSAs 2719A	- Guarantees choice of health care professionals. - Guarantees certain rights with respect to emergency room services and reimbursements for such services.	First plan year after 9/23/2010	No	10101(h)	N/A	Interim Final Regs 75 FR 37188 (June 28, 2010)
Pre-existing Conditions – PHSAs 2704	- Prevents pre-existing condition exclusions for children under age 19. - Extended to all plan participants on 1/1/2014.	First plan year after 9/23/2010	Yes	1201 and 10103(e)	N/A	Interim Final Regs 75 FR 37188 (June 28, 2010)
Preventive Care – PHSAs 2713	- Requires coverage of preventive care visits, immunizations and other wellness services. - Expansive listing of preventive care services at: <a href="http://www.healthcare.gov/center/regulations/prevention/recommendations.html">http://www.healthcare.gov/center/regulations/prevention/recommendations.html</a>	First plan year after 9/23/2010	No	1001	N/A	Interim Final Regs: 75 FR 41726 (July 19, 2010)  RFI regarding value-based designs 75 FR 81544 (Dec. 28, 2010)

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Reporting – PHSa 2717	Requires reporting of health outcomes and wellness activities.	First plan year after 9/23/2010; various other effective dates	No	1001 and 10101(e)	N/A	
MLR Rules – PHSa 2718	<ul style="list-style-type: none"> <li>- Requires reporting on premiums and other revenue related issues.</li> <li>- Referred to as the medical loss ratio rules or MLR.</li> <li>- Not applicable to self-insured plans.</li> </ul>	First plan year after 9/23/2010; various other effective dates	Yes	1001, 10101(f), and 10103(d) [reference is to extension of application to grand-fathered plans]	N/A	<p>HHS RFI: 75 FR 19297 (April 14, 2010)</p> <p>Interim Final Regs: 75 FR 74864 (Dec. 1, 2010)</p> <p>IFR Corrections: 75 FR 82277 (Dec. 30, 2010)</p>

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Uniform Coverage Explanation and Standardized Definitions – PHSA 2715	- Requires HHS to develop uniform explanation of coverage documents and uniform standard definitions for coverage. - Requires plans to provide the standard documents. - Requires prior notice of coverage modifications.	First plan year after 9/23/2010; various other effective dates	Yes	1001, 10101(b), and 10103(d) [reference is to extension of application to grandfathered plans]	N/A	
Clinical Trials – PHSA 2709	Requires coverage and standards for individuals participating in clinical trials.	1/1/2014	No	10103(c)	N/A	
Comprehensive Benefits – PHSA 2707	Requires coverage of essential health benefits in individual and small group market.	1/1/2014	No	1201	N/A	
Fair Premiums – PHSA 2701	Sets forth standards on how to calculate health coverage premiums in the individual and group markets.	1/1/2014	No	1201 and 10103(a)	N/A	
Guaranteed Availability – PHSA 2702	Requires guaranteed issuance in individual and group markets.	1/1/2014	No	1201	N/A	
Guaranteed Renewability – PHSA 2703	Requires guaranteed renewability.	1/1/2014	No	1201	N/A	
Non-Discrimination Against Providers – PHSA 2706	Prohibits discrimination against providers.	1/1/2014	No	1201	N/A	
Non-Discrimination in	- Prohibits discrimination in health status.	1/1/2014	No	1201	N/A	

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Health Status – PHSAs 2705	- Adds certain wellness rules.					
Waiting Periods – PHSAs 2708	Prohibits waiting periods that exceed 90 days.	1/1/2014	Yes	1201 and 10103(b)	N/A	
<b>OTHER INSURANCE PROVISIONS</b>						
Premium Reporting – PHSAs 2794	Requires reporting of unreasonable increases in insured premium rates	3/23/2010	Yes	1003 and 10101(i)	N/A	HHS Proposed Reg. 75 FR 81004 (Dec. 23, 2010)
<b>REVENUE PROVISIONS</b>						
Economic Substance Doctrine – IRC 7701(o), 6662(b)(6), 6664(c)(2) and (d)(2), and 6667(c)	Codification of economic substance doctrine and imposition of penalties for underpayments relating to transactions not having economic substance.	3/30/2010	N/A	N/A	1409	IRS Notice 2010-62
Additional HSA Distribution Tax	Increase in excise tax for distributions not used for qualified medical expenses from 10% to 20%.	1/1/2011	Yes	9004	N/A	
Form W-2	Employers must report the aggregate cost of group health coverage.	1/1/2011	Yes	9002	N/A	IRS Notice 2010-69 (delayed until 2012 tax year)
Over-the-Counter Drugs	Over-the-counter drugs without a prescription cannot be reimbursed under a Health FSA, HSA or HRA.	1/1/2011	Yes	9003	N/A	IRS Notice 2010-59; Rev. Rul. 2010-23; IRS Notice 2011-5

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Plan Fees – IRC 4375, 4376, 4377	- Temporary fees on insured and self-insured plans equal to \$1 per covered life for plan years ending during fiscal year 2013 and \$2 per covered life thereafter, adjusted for inflation in healthcare costs. Based on average covered lives. - Scheduled to expire for plan years after 9/30/2019.	Plan years ending after 9/30/2012	Yes	6301	N/A	
Health FSA Limit	Limit on salary reduction under a cafeteria plan to \$2,500, adjusted for inflation.	1/1/2013	Yes	9005 and 10902	1403	
Itemized Deductions	- Increase in threshold for deducting qualified medical expenses from 7.5% to 10% of AGI. - Exception through 2017 for individuals who attain age 65 before the close of the tax year.	1/1/2013	N/A	9013	N/A	
Medicare Taxes	- Additional 0.9% Medicare withholding tax on wages in excess of \$250,000 for joint filers or \$200,000 for other filers – applicable to employee portion only. - Additional 3.8% tax on unearned income for taxpayers with MAGI of \$250,000 for joint filers or \$200,000 for other filers.	1/1/2013	N/A	9015 and 10906	1402	
Part D Subsidy	Eliminates the employer's deduction for the retiree drug subsidy payments.	1/1/2013	Yes	9012	1407	
Excise Tax on Cadillac	Imposes a 40% excise tax on health	1/1/2018	Yes	9001 and	1401	

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Plans – IRC 4980I	insurance issuers or administrators of self-insured plans for the value of health coverage that is greater than certain dollar thresholds.			10901		
<b>EMPLOYER MANDATES</b>						
Employer Requirement to Inform Employees of Coverage Options	<ul style="list-style-type: none"> <li>- Employers must provide notices to new employees at hiring and to current employees not later than the effective date informing them of the Exchange.</li> <li>- Notice must explain that the individual may be eligible for subsidies if the employer contributes less than 60% of allowed costs under a group health plan and that the individual may lose the employer's contribution by purchasing insurance through the Exchange unless a free choice voucher is offered.</li> </ul>	3/1/2013	Yes	1512 and 10108(i)(2)	N/A	
Automatic Enrollment for Employees of Large Employers	<ul style="list-style-type: none"> <li>- Employers must automatically enroll new full-time employees in a coverage option and carry forward existing coverage from year to year.</li> <li>- Applies to employers with more than 200 employees.</li> <li>- Employees must be provided with adequate notice and the ability to opt out of auto enrollments.</li> </ul>	1/1/2014 (unless applied sooner by regulation)	Yes	1511	N/A	

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Free Choice Vouchers	<ul style="list-style-type: none"> <li>- Employers who contribute to the cost of coverage under a group health plan must provide "free choice vouchers" for purchasing insurance through the Exchange to employees who have household income of not more than 400% of the poverty line and whose required contribution would be between 8% and 9.8% of household income.</li> <li>- The amount of the voucher is equal to the employer contribution under the option that the employer pays the most and for which the employee would be eligible.</li> <li>- The free choice voucher is non-taxable for the employee and deductible for the employer.</li> </ul>	1/1/2014	Yes	10108	N/A	
Offering of Exchange-Participating Qualified Health Plans through Cafeteria Plans	<ul style="list-style-type: none"> <li>- Only qualified employers (small employers initially) may purchase group health insurance through an Exchange.</li> <li>- Only qualified employers may allow for the payment of premiums on a pre-tax basis for coverage purchased through an Exchange under a cafeteria plan.</li> </ul>	1/1/2014; States may extend to large employers in 2017	N/A	1312 and 1515	N/A	

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Reporting of Employer Health Insurance Coverage	<ul style="list-style-type: none"> <li>- Group health plans that provide minimum essential coverage are required to file a return reporting individuals who were covered under the plan and provide a statement to the individuals.</li> <li>- Large employers and employers who offer free choice vouchers are subject to expanded reporting requirements.</li> </ul>	1/1/2014	Yes	1502, 1514 and 10108	N/A	
Shared Responsibility for Employers – IRC 4980H	<ul style="list-style-type: none"> <li>- Large employers must offer health coverage to full-time employees or be subject to a penalty. Penalty is equal to \$2,000 per year per full-time employee.</li> <li>- Large employers also subject to a separate penalty for under-subsidizing health coverage for full-time employees, if the employee enrolls in an Exchange plan and qualifies for taxpayer subsidized coverage (i.e., household income below 400% of poverty line, and employer does not pay at least 60% of allowed costs under the employer plan or employee's required contribution greater than 9.5% of household income).</li> <li>- Large employer is one that has 50 or more full-time equivalent employees determined on controlled group basis.</li> </ul>	1/1/2014	Yes	1513 and 10108(i)(1)	1003	

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	- Full time employees are employees who on average work at least 30 hours per week.					
Retaliation	Employers are prohibited from discharging or discriminating against employees who purchase subsidized coverage through the Exchange.	1/1/2014	Yes	1558	N/A	
<b>INDIVIDUAL MANDATES</b>						
Exchanges	<ul style="list-style-type: none"> <li>- States are required to operate Exchanges, through which individuals and qualified employers (initially, small employers) can purchase private health insurance under standardized plans.</li> <li>- Insurance offered through the Exchanges must offer an essential benefits package similar to that under the typical employer plan, and with specified levels of coverage (<i>i.e.</i>, platinum, gold, silver, bronze and catastrophic plans for individuals under 30).</li> <li>- States may impose additional requirements for Exchange plans.</li> </ul>	1/1/2014	N/A	1301-1304 and 1311	N/A	Request for Comments regarding Exchanges, 75 Fed Reg. 45584 (August 3, 2010)
Requirement to Maintain Minimum Essential Coverage – IRC 5000A	- Individuals required to maintain minimum essential coverage for themselves or pay a variable penalty based on the tax year and income.	1/1/2014	Yes	1501 and 10106	1002	

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	<ul style="list-style-type: none"> <li>- Exceptions for members of certain religious groups, individuals not lawfully present and incarcerated individuals.</li> <li>- No penalty applies for individuals who cannot afford coverage (e.g., because the required contribution for coverage would be 8% of household income), who have household income less than the threshold for filing a Federal tax return, or for short (less than three months) gaps in coverage.</li> <li>- "Minimum essential coverage" includes coverage under an eligible group health plan, an individual insurance plan, or certain governmental programs (e.g., Medicare, Medicaid, the CHIP Program or TRICARE).</li> </ul>					

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Taxpayer-Subsidized Coverage – IRC 36B	<ul style="list-style-type: none"> <li>- Taxpayers with household incomes of not more than 400% of the Federal poverty line for the size of the family involved may qualify for taxpayer subsidized coverage for insurance purchased through the Exchange.</li> <li>- Individuals eligible under a group health plan where the employer covers less than 60% of required costs and whose required contribution is more than 9.5% of household income are eligible for subsidies.</li> </ul>	1/1/2014	Yes	1401, 1402, 10105(a) - (d), 10108(h)(1)	1001	

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