



HEALTH REFORM IN 2011

WHAT EMPLOYERS AND BROKERS NEED TO KNOW NOW

SUMMARY & ACTION ITEMS

Health reform is now law of the land and small businesses will be impacted in various ways, from insurance market reforms striving to expand coverage to new administrative requirements intended to make health care coverage more transparent for consumers and employer purchasers alike.

This brief, the latest in a series of HealthPass health reform communications, is aimed at equipping brokers and small businesses with the relevant health reform information they need to know for 2011. The topics addressed in-depth in the brief, and action items associated with each, are listed in the below chart. Following the chart on subsequent pages is an in-depth description of each of the health reform provisions that may affect small businesses in 2011.

HEALTH REFORM PROVISION	BROKER ACTION ITEMS	EMPLOYER ACTION ITEMS
INSURANCE MARKET REFORMS: A number of insurance market reforms became law in September, 2010. All new, non-grandfathered health plans must contain these provisions.	<ul style="list-style-type: none"> Be sure that your employer clients know that these protections now apply to their plans. 	<ul style="list-style-type: none"> Educate your employees so they know that their health care coverage may now include these new consumer protections.
W-2 REPORTING REQUIREMENT DELAYED: The requirement that all employers report the aggregate value of each employee's health care coverage on their annual IRS Form W-2 has been delayed until 2012.	<ul style="list-style-type: none"> Educate your employer clients about this new requirement and inform them that it is optional for 2011 and not required as was originally specified in the health reform bill. 	<ul style="list-style-type: none"> Ensure that your payroll and other accounting systems are setup properly so as to ensure compliance with this requirement. If you work with a payroll company, ask them if they are providing this service for your business.
NON-DISCRIMINATION 105(H) RULES: The health reform package extends the non-discrimination rules of section 105(h) of the Internal Revenue Code to apply to fully-insured plans.	<ul style="list-style-type: none"> Make sure that your employer clients know that these rules now apply to fully-insured groups in addition to self-insured groups. HealthPass will provide you with more information as it is released. 	<ul style="list-style-type: none"> Be aware that high/low plan offerings as well as executive-only health benefit plans may no longer be allowed under these rules. Also be aware that a flat-dollar defined contribution may be a useful solution to complying with these rules.
SIMPLE CAFETERIA PLANS: This new arrangement may potentially empower an employer with fewer than 100 employees to avoid some non-discrimination rules. The employer must make a contribution to qualify.	<ul style="list-style-type: none"> Educate your employer clients about the availability of this new cafeteria plan arrangement. Make sure employers know that they must make a contribution. 	<ul style="list-style-type: none"> Meet with your broker to determine whether you qualify for this type of arrangement. Also ensure that your budget has enough flexibility to make a contribution to each employee's account.
FSA, HSA, HRA RESTRICTIONS: Most OTC meds are not reimbursable without a prescription and the penalty for withdrawals for non-qualified expenses increases from 10% to 20%.	<ul style="list-style-type: none"> Ensure that your employer clients that use these account-based plans are aware of these changes. 	<ul style="list-style-type: none"> Communicate these changes to your employees who use these benefit arrangements.
MEDICARE PART D REBATES: Part D beneficiaries who hit the "doughnut hole" will receive a \$250 check from the federal government.	<ul style="list-style-type: none"> Communicate the narrowing of the Medicare Part D "doughnut hole" to your employers with eligible employees. 	<ul style="list-style-type: none"> Educate your Medicare Part D employees about the possibility of receiving a rebate check to help with their prescription costs.

INSURANCE MARKET REFORMS

Various insurance market reforms became effective for plan years that begin on or after September 23, 2010. These include a prohibition on pre-existing condition exclusions, the extension of dependent coverage up to age 26, a prohibition on lifetime dollar limits, a restriction on annual dollar limits, the ability for women to designate an OB/GYN as their primary care provider, enhanced claims appeals processes, and the coverage of certain preventive services without cost-sharing requirements.

All new, non-grandfathered plans going forward must contain all of these elements of the health reform bill.

W-2 REPORTING REQUIREMENT DELAYED

The health reform bill requires employers of all sizes (including small group) to report the value of each employee's health care coverage on their annual Form W-2. However, the Internal Revenue Service (IRS) recently provided a dose of employer relief. For tax year 2011 (that is, the Form W-2 that one would receive in early 2012), this reporting requirement is **optional**. Beginning in tax year 2012, though, this requirement will be mandatory for all employers.

NON-DISCRIMINATION 105(h) RULES

Prior to the passage of health reform, self-insured plans were prohibited from discriminating in favor of highly compensated employees under section 105(h) of the Internal Revenue Code. Now, this rule also applies to all fully-insured, non-grandfathered group health plans that begin on or after September 23, 2010 (per section 2716 of the Public Health Service Act, which was added by PPACA).

In this instance, a highly compensated employee is defined as one of the five highest paid officers, a shareholder who owns more than 10% in value of the stock of the employer, or among the highest paid 25% of all employees.

Eligibility tests

According to section 105(h), there are two ways in which an employer's plan can discriminate: (1) eligibility for benefits and (2) benefits provided. A plan satisfies the eligibility requirements if it is available to:

1. 70% or more of all employees; or
2. 80% or more of all the employees who are eligible to benefit under the plan if 70% or more of all employees elect to participate in the plan (i.e., 56% [80% multiplied by 70%] of all employees must participate in the plan)

Certain employees may be excluded from eligibility tests. These include employees who: have not completed three years of service, are younger than age 25, are employed on a part-time or seasonal basis, are union employees, and are nonresident aliens and who receive no U.S. earned income.

Benefits test

In addition to the above eligibility rules, to avoid violating the non-discrimination rules, all benefits provided to highly compensated employees must be provided to all other participants. It is important to note that controlled group rules apply, which specifies that employees of controlled groups of corporations and partnerships and employees of affiliated service groups are to be treated as employees of a single employer.

Non-Compliance Penalty

Fully-insured employers, including small groups, that violate this provision of the law will be subject to a penalty of \$100 per day per enrollee in the discriminatory plan.

Note: As of publication of this document, formal clarifying guidance related to this provision of the health reform bill has not been released by the federal agencies charged with implementing health reform. Guidance is expected, though, sometime in 2011. At that time, the HealthPass team will provide you with a detailed breakdown of the clarified rule.

SIMPLE CAFETERIA PLANS

To avoid a number of various non-discrimination requirements applicable to traditional cafeteria plans, a small employer may want to consider implementing a simple cafeteria plan, which is a new arrangement created by the health reform law (**important note:** until further clarifying guidance is released, it is unclear whether simple cafeteria plans avoid the above section's non-discrimination rules that were added by the health reform law to section 2716 of the Public Health Service Act and applicable to fully-insured plans; HealthPass will provide additional information as it becomes available).

Employer eligibility

Employers eligible to sponsor a simple cafeteria plan are those that have employed an average of 100 or fewer employees on business days during either of the two preceding years. The law also allows small but growing employers

to continue sponsoring a simple cafeteria plan. In the event that an employer employs 100 or fewer workers in any year and establishes a simple cafeteria plan for that year, the employer will be treated as meeting the requirement for any subsequent year even if the employer has more than 100 employees in the subsequent year. However, this exception does not apply if the employer has an average of 200 or more employees during the subsequent year.

Eligible employees

A simple cafeteria plan must also meet certain minimum eligibility and participation requirements. Specifically, all employees who had at least 1,000 hours of service in the preceding plan year must be eligible to participate. And, all employees must have the same election rights under the plan. Certain employees may be excluded from these eligibility and participation requirements; these include employees who: have been employed for less than one year; are younger than age 21; are employees covered by a collective bargaining agreement where health benefits have been the subject of good faith bargaining; or are nonresident aliens with no U.S. source of income.

Contribution Requirements

Regardless of whether an employee makes any salary reduction contribution, the employer must make a contribution under the plan on behalf of each qualified employee in an amount equal to:

1. The *non-elective contribution*: a uniform percentage (but not less than two percent) of the employee's compensation for the year, or
2. The *matching contribution*: an amount not less than the lesser of:
 - a. six percent of the employee's compensation for the play year, or
 - b. twice the amount of the salary reduction contributions of each qualified employee

Note: The matching contribution cannot be greater for highly compensated individuals or key employees, as defined by classic cafeteria plan rules, than it is for all other employees.

FSA, HSA, HRA RESTRICTIONS

Beginning January 1, 2011, the costs of over-the-counter drugs will not be eligible for reimbursement from a flexible spending account (FSA), health savings account (HSA), or health reimbursement arrangement (HRA) unless accompanied by a provider's prescription. The only exception to this rule is insulin. Further, the rule applies to only medicines and drugs. Other items that qualify as medical expenses (under section 213(d)(1) of the Internal Revenue Code) such as bandages, contact lens solution, blood sugar test kits, and durable medical equipment (e.g., wheelchairs) will indeed be reimbursed without a prescription. This new rule applies to all drug purchases beginning January 1, 2011 even for plans that are not calendar year plans.

Also beginning January 1, 2011, the tax penalty for reimbursements for non-qualified medical expenses will increase from 10% to 20%.

MEDICARE PART D REBATE

In 2010, Medicare Part D enrollees whose drug spending exceeds the \$2,830 initial coverage limit will receive a \$250 rebate check from the federal government. Beginning in 2011, Part D enrollees who reach the coverage gap that Medicare does not pay for will receive a 50% manufacturer discount on the total cost of their brand-name drugs in the gap. As part of the health reform bill's effort to close the Part D coverage gap, beginning in 2011 and phased in until 2020, all Part D plans will cover a portion of the cost of generic drugs in the gap.

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HealthPass is a non-profit, commercial health insurance exchange offering New York-based small businesses and sole proprietors quality, affordable, and flexible health care coverage. Since 1999, the HealthPass choice model has enable eligible employees to choose comprehensive health care coverage that fits their unique medical needs and budget. To choose from are more than 20 different coverage options from four leading carriers as well as two dental plans, and a bundled security product. Currently, HealthPass serves 33,000 covered lives associated with 4,000 small businesses in the five boroughs of New York City, Long Island, and the Mid-Hudson Valley of New York State.

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