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Planning Ahead: Seven Health Care Reform Tips for Employers

In case you've been struggling to keep up with the flood of new guidance on Health Care Reform, here's a list of important issues to keep in mind as you plan your health plan benefits for 2014:

1. **Identify Your "Full-Time" Employees.** Under the employer responsibility provisions of Health Care Reform, you will have to offer health benefits to all workers who average 30 or more hours of service per week. This could include temporary workers, interns and even workers on variable schedules. If you fail to offer coverage to substantially all of your full-time workers, you could face substantial penalties based on the total number of full-time workers. (This applies to employers with 50 or more full-time equivalent employees during 2013.)

2. **Make Sure Your Coverage is Affordable.** To avoid penalties, you will need to make sure that employee contributions to your medical plan do not exceed 9.5% of household income. Proposed regulations include a very helpful rate of pay safe harbor, under which you will not be penalized if the cost of coverage is no more than 9.5% of an employee's hourly rate of pay multiplied by 130 hours. (For salaried workers, you can simply look at monthly salary.) One restriction on this safe harbor: You cannot use it for any employee for whom you have decreased pay for the year. (This applies to employers with 50 or more full-time equivalent employees during 2013 and penalties are triggered only if an employee obtains subsidized coverage through an exchange.)

3. **Make Sure Your Coverage Offers Minimum Value.** Another aspect of the affordability requirement is that your plan, on an actuarial basis, pays at least 60% of the covered costs. To help with this determination, the Department of Health & Human Services has made available a minimum value calculator that you may access at http://cciio.cms.gov/resources/regulations/index.html. If your coverage fails this test, a significant part of your workforce may qualify for subsidized coverage through an exchange, which could lead to substantial penalties. (This applies to employers with 50 or more full-time equivalent employees during 2013.)

4. **Be Sure Your Health Reimbursement Accounts (HRAs) are Integrated with Group Health Coverage.** Under Health Care Reform, annual limits on essential health benefits are being phased out and will completely disappear starting in 2014. While HRAs have been working under a general exemption from this prohibition for the last few years, many HRAs will no longer be viable arrangements starting in 2014. To remain viable, the HRA generally must fall into one of two exemptions: (1) an HRA that covers only retirees and other former employees; or (2) an HRA that is integrated with other employer-sponsored group health plan coverage and allows unused amounts to rollover to future years. Notably, employers will no longer be able to contribute to HRAs for employees who decline group health plan coverage or HRAs that integrate with employees' individual policies. (This applies to all HRAs that cover two or more employees.)

5. **Be Sure to Comply with New Out-Of-Pocket Limits.** Beginning in 2014, all non-grandfathered health plans will have to comply with annual out-of-pocket maximums. Initially, these will be the same as the out-of-pocket maximums that apply to high-deductible health plans that coordinate with HSAs. While we don't yet know what these limits will be for 2014, they are currently $6,250 for single coverage and $12,500 for family coverage. Going forward, the limits will be adjusted based on average increases in health

care premiums, which is a different than the consumer price index used with high-deductible health plans that coordinate with HSAs. During the first year, there is a limited exception for plans with certain carve-out arrangements, such as prescription drug and pediatric dental coverage; but mental health services are expressly excluded from this exception. (This applies to all non-grandfathered group health plans.)

6. **Plan to Pay Fees.** Health Care Reform introduces a number of additional costs that employers need to plan on paying:

    - Beginning in July of 2013, many health plans will have to start paying fees to fund the Patient Centered Outcomes Research Institute. For seven plan years (ending after October 1, 2012 and before October 1, 2019), you will have to pay the fee ($1 per covered life for 2012, $2 per covered life for future years and adjusted thereafter for inflation) using Form 720, to be submitted by July 31 in the calendar year following the calendar year in which the plan year ends. (This applies to all plans providing accident or health coverage.

    - From 2014 through 2016, plans will also have to pay an annual fee to establish a temporary re-insurance program. While we are still waiting for more details, the initial proposed fee is $63 per covered life, though the final amount may be more and could vary from state to state. (This applies to plans providing major medical coverage.)

    - Employers buying insured coverage should expect prices to reflect a new fee that will be imposed on insurers starting in 2014. While the amount imposed on each particular insurer is still unknown, the fee is intended to collect $8 billion in 2014, $11.3 billion in 2015 and 2016, $13.9 billion in 2017 and $14.3 billion in 2018, with the amount in future years indexed to inflation. (This applies to insurers providing health insurance covering U.S. health risk.)

7. **Brace Yourself for Initial Confusion.** When exchanges start taking applications later this year, they will have to determine whether individuals applying for coverage are eligible for federal subsidies. Unfortunately, the exchanges will not have sufficient information to accurately make this determination. Thus, even if you are providing affordable coverage to all of your employees, you should still expect to receive inquiries in 2014 about potential penalty payments. You will want to be prepared to demonstrate that you offered a specific employee health plan coverage, that it was affordable and that it met minimum value requirements.

Also, keep in mind that we are still waiting for guidance on a notice to distribute to employees about the new insurance exchanges. Initially scheduled for March 1, the distribution deadline now will likely be late summer or early fall, in closer proximity to the exchanges' open enrollment period, which starts in October.

If you have any questions about these or other Health Care Reform issues, please contact Norbert F. Kugele (nkugele@wnj.com or 616.752.2186), April A. Goff (agoff@wnj.com or 616.752.2154) or any other member of Warner Norcross & Judd's Employee Benefits/Executive Compensation Practice Group.