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Healthcare re-FORUM

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Healthcare Reform and Self-Insured Plans

Self-insured employers and other self-funded group health plan sponsors have historically enjoyed very broad discretion with respect to the scope and design of the benefits covered by their plans. This is no longer the case. The Patient Protection and Affordable Care Act (PPACA) amends the Public Health Services Act (PHSA), the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code, and therefore applies to all self-insured group health plans, including those governed by ERISA. The PPACA imposes a number of new requirements regarding both the eligibility for plan membership and the scope of benefits that self-insured plans must provide. Self-insured plans, which typically use the administrative services of an insurer or third-party administrator, will be required to follow most of the same rules set forth in the PPACA that apply to fully insured plans.

Rules for self-insured plans were clarified in the preamble to the interim final regulations about grandfathering issued June 14, 2010. A portion of the preamble clearly defines self-insured plans as "group health plans" on par with fully insured plans, with the subsequent responsibilities defined in the PPACA. In addition, the preamble clarifies the PPACA does not provide self-insured, non-government plans the exceptions granted to such plans by HIPAA and certain other federal employee benefit plans.

Provisions Not Affecting Self-Insured Plans

The PPACA imposes a variety of detailed obligations on all group plans. However, the following reforms **do not apply to self-insured plans:**

- **Ensuring Consumers get Value for their Dollars** – Effective in 2010, insurers are required to have their premium increases approved by both the applicable states and the Secretary of Health and Human Services (HHS).
- **Medical Loss Ratios (i.e., the percentage of every premium dollar spent on medical benefits)** – Effective for plan years on or after January 1, 2011, Medical Loss Ratios (MLRs) are set at 80 percent in the small group and individual markets and 85 percent in the large group market. Self-insured groups do not have the same reporting requirement that fully insured groups have to substantiate compliance with the MLRs.
- **Fair Health Insurance Premiums** – Effective for plan years on or after January 1, 2014, insurers will be restricted in their use of rating factors as defined by states and HHS. The factors that can be used by underwriters to calculate a premium include geography (to be defined), age (3:1 ratio) and tobacco usage (1.5:1 ratio).
- **Guaranteed Availability and Renewability of Coverage** – Effective January 1, 2014, insurers must cover or renew all applicants for both new and renewing policies.
- **Annual Tax on Net Premiums** – A new annual tax on net premiums divided by market share is established by the PPACA effective January 1, 2014, that will apply to fully insured plans and raise a total of $14.3 billion (increasing on an annual basis). Each issuer of health insurance will be assessed a fraction of this yearly, phased-in, non-deductible fee. Self-insured plans and their administrators are exempt from this tax.

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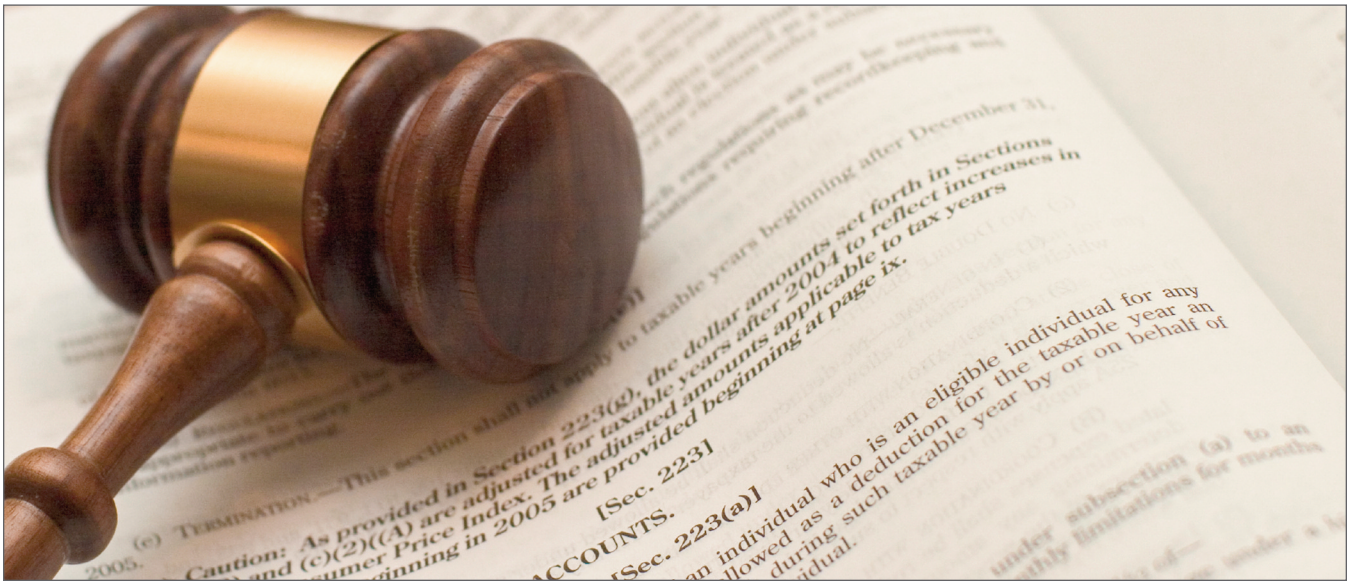

Provisions Affecting Self-Insured Plans

Grandfathering

It is important for both fully insured and self-insured groups to study the ramifications of maintaining grandfathered plan status.

Under the rules for grandfathered plans, health insurance coverage maintained pursuant to a collective bargaining agreement is grandfathered through the expiration date of the last agreement relating to the coverage in effect on March 23, 2010. The special grandfathering rule for collectively bargained plans does not apply to self-insured plans.

Self-insured plans that decide to maintain grandfathered status will be exempt from new requirements for an internal appeal/external review process. However, the PPACA does not change the ERISA requirement for self-insured plans to provide an internal appeal procedure to plan enrollees who have experienced an adverse benefit determination.

Taxes and Fees

There are a number of new taxes and fees established by the PPACA. These taxes and fees apply to both self-insured and fully insured plans, with the exception of the annual tax on net premiums, as noted above.

Stop-Loss Coverage

While employers who self-insure take on the financial risk of their employees' healthcare coverage, they are able to limit their risk through the purchase of stop-loss insurance policies. The stop-loss policy is one of the most crucial elements of a self-insured plan. Under the PPACA, after September 2010, employers will be prohibited from capping the lifetime limits for "essential health benefits." It will be important for employers to discuss the impact of this change with their stop-loss carriers. Employers will also need to review their stop-loss policies carefully to determine what caps, if any, exist on stop-loss coverage, both aggregate and specific.

Future Topics:

- Simple Cafeteria Plans
- Medical Loss Ratios