

Issued: May 20, 2010

## Email Alert:

# Employer Health Plan Opportunities and Issues in 2010 & 2011

While much has been written about the impact the health reform legislation will have in future years, the legislation has other important consequences, some of which have not received much attention. We'll be using our email alerts to provide you with practical counsel on the steps your organization must or should take this year or next.

Our April 15, 2010 email alert included a time line showing when various elements of the health reform legislation become effective, a quick summary of the small employer tax credit, and information regarding the other major changes.

In this email alert, we provide more details about the small employer tax credit, significant health plan changes in 2010 and 2011, and the simplified cafeteria plan that takes effect in 2011.

Our next email alert will address changes in reporting employee health coverage (for coverage provided to employees in 2011), reporting of payments to corporations and for purchases of goods (both apply to payments made in 2012), and changes to flexible spending accounts in cafeteria plans. If the IRS releases guidance, we will also provide more information on Grandfathered Plans. (See definition and importance in the section below on "Health Plan Changes in 2010 and 2011.")

Future email alerts will continue to provide you with the information you need. For instance, we'll address questions we've received about employers with very few employees.

**We welcome any questions you have about the new health reform legislation and used several of your questions when writing this alert. Please email questions to [healthreform@capincrouse.com](mailto:healthreform@capincrouse.com). This will help us know what to address in future communications.**

In studying this legislation, we have identified several areas where we can assist you by providing information and analysis useful for decision-making and implementation. These are described at the end of this email alert.

### Small Employer Tax Credit

Beginning in 2010, Eligible Small Employers (ESEs, defined below) can receive a tax credit for nonelective contributions to purchase health insurance for employees. This credit is available to both business and exempt organizations.

Atlanta  
**678.518.5301**

Chicago  
**630.682.9797**

Colorado Springs  
**719.528.6225**

Dallas  
**214.624.5077**

Denver  
**720.283.7326**

Indianapolis  
**317.885.2620**

Los Angeles  
**714.671.9300**

Orlando  
**407.883.4671**

San Diego  
**858.638.7220**

Tax Department  
**317.885.2620**

For tax years beginning in 2010 - 2013, businesses have a maximum credit of 35% and exempt organizations may have up to 25%.

The following requirements and provisions apply to both businesses and exempt organizations, unless otherwise noted.

### **Eligible Small Employers**

An ESE is an employer:

1. That has no more than 25 full-time equivalent employees (FTE employees, as defined below) for the tax year of the employer for which the credit is taken,
2. Has average annual wages (defined below) that do not exceed \$50,000 for tax years beginning in 2010, 2011, 2012, and 2013 and that are indexed for inflation in later tax years, and
3. Contributes at least 50% of the premiums.

For businesses, certain workers are not considered employees for this credit. This includes 2% shareholders, 5% owners, family members, and self-employed individuals. (A minister who receives a Form W-2 for income reporting will be an "employee" for this credit, even though they are self-employed for self-employment tax purposes.) Excluded employees aren't included in the employee count, and their compensation is not used in the average annual wage calculation.

### **Full Time Equivalent Employees**

The number of FTE employees is determined by taking the total number of hours of service for which the employer paid wages to employees during the tax year and dividing it by 2,080.

Seasonal workers, who generally work less than 120 days a year, are not included in the calculation. If an employee works more than 2,080 hours a year, the hours in excess of 2,080 are not counted.

### **Average Annual Wages**

The average annual wages of an ESE for any tax year is the amount determined by dividing the total wages paid by the ESE by the number of FTE employees (rounded down to the nearest \$1,000).

Wages refers to FICA wages (determined without regard to any dollar limitation). Wages would include reported compensation of a minister, but not the housing allowance.

### **Employer Contributions for Health Benefits**

For any tax year beginning in 2010, 2011, 2012, or 2013, contributions used to purchase health insurance qualify for the credit. Beginning in 2014, contributions must be made through an insurance exchange. Contributions made to a self-insured program do not qualify for the credit.

An employer's contributions must bear a uniform percentage (not less than 50%) of the premium cost of the qualified health plan. For 2010 only, the IRS does not require a uniform percentage, provided all percentages are at least 50%. In addition, for 2010 it is sufficient if an employer pays at least 50% of single-only coverage, even if the employee has family or dependent coverage.

Contributions by employees via a cafeteria plan do not qualify as nonelective contributions.

## **We Can Help!**

The staff at CapinCrouse works with hundreds of churches and not-for-profit organizations. This experience base allows us to quickly identify areas for improvement in many organizations. If your organization desires to improve its efficiency, please contact your CapinCrouse representative or one of our offices to discuss how we may help you.

## **About CapinCrouse LLP**

With more than 500 not-for-profit organizations and 1,500 tax clients, CapinCrouse is the country's leading accounting and advisory firm primarily serving the Christian not-for-profit community.

Since 1972, CapinCrouse has been serving not-for-profit entities including megachurches, institutions of higher education and secondary schools, and international missions agencies by providing a full range of audit, review, tax, and advisory services.

CapinCrouse is dedicated to helping our clients operate with financial integrity so that they can dedicate themselves to fulfilling their mission.

## Calculating the Credit

Only premiums paid by the employer are counted when calculating the credit. Any amount paid by the employee is not counted.

The employer's premium payment is limited by the average premium for the small group market in a state or an area within the state. These limits are determined by the Department of Health and Human Services (DHHS). They are published in IRS Revenue Ruling 2010-13.

For tax-exempt organizations, the maximum credit is 25% of the employer's premium expenses that count toward the credit. The amount of the credit, however, cannot exceed the total of required amount of income tax, FICA, and Medicare withholding, plus the employer's share of FICA and Medicare tax on employees' wages for the calendar year in which the employer's tax year begins.

For businesses, the maximum credit is 35% of the employer's premium expenses that count toward the credit, but the credit is only deductible from taxable income.

For both businesses and exempt organizations, the amount of the credit is reduced if there are more than 10 FTE employees, or if average wages exceed \$25,000. A formula is used to calculate the reduction, though the IRS may publish tables.

A business will claim the credit on its business tax return. As of May 17, 2010, the IRS had not announced how an exempt organization will claim the credit.

## Health Plan Changes in 2010 and 2011

Several new or expanded requirements for Group Health Plans become effective in 2010 or 2011. Most of these take effect for the first plan year beginning after September 23, 2010, but a few take effect later. Some of the new requirements do not apply to Grandfathered Plans.

Two definitions are critically important:

**Group Health Plan** - Any plan, fund, or program established or maintained by an employer to the extent that such plan, fund, or program was established or is maintained for the purpose of providing medical care to employees or their dependents directly or through insurance, reimbursement, or otherwise.

- Churches' health plans are Group Health Plans.
- Generally, these rules apply to both self-insured and insured Group Health Plans. Some exceptions are noted in the following table.

**Grandfathered Plan** - A Group Health Plan (self- or fully- insured) in effect on March 23, 2010. A Grandfathered Plan retains grandfathered status even if (i) family members of a participant who was enrolled in the Grandfathered Plan on March 23, 2010, are permitted to enroll in the Plan after March 23, 2010; and (ii) new employees and their families are permitted to enroll in the plan after March 23, 2010.

- Many aspects of Grandfathered Plans are not yet clear. Guidance is expected soon. In the meantime, employers that want to take advantage of the exceptions for Grandfathered Plans should avoid changes to the terms of their health plans to the extent possible.

The following table highlights some of the more significant issues. **A more in-depth description is available upon request. Please email [elatino@capincrouse.com](mailto:elatino@capincrouse.com) with “Health Plan Changes Handout” in the subject line.**

### **Requirements Effective for Plan Years Beginning On or After September 23, 2010**

- No lifetime or annual coverage limits
  - Applies to Group Health Plans (self- and fully- insured), including Grandfathered Plans
  
- Extension of dependent coverage to dependents up to age 26
  - Applies to Group Health Plans (self- and fully- insured), including Grandfathered Plans
  - However, for plan years beginning before January 1, 2014, this rule applies to Grandfathered Plans that are Group Health Plans only if the adult child is not eligible to enroll in any other Eligible Employer Sponsored Health Plan
  
- Rescission of coverage prohibited
  - Applies to Group Health Plans (self- and fully- insured), including Grandfathered Plans
  
- Coverage for preventive health services without any cost-sharing requirements (e.g. deductibles, co-pays, and co-insurance)
  - Applies to Group Health Plans (self- and fully- insured)
  - Grandfathered Plans are exempt
  
- Mandated specific patient protections
  - Applies to Group Health Plans (self- and fully- insured)
  - Grandfathered Plans are exempt
  
- Insured health plans cannot discriminate in favor of higher compensated employees
  - Applies to insured Group Health Plans (self-insured already subject to this requirement)
  - Grandfathered Plans are exempt
  
- Mandated Claims Appeals and Review Processes
  - Applies to Group Health Plans (self- and fully- insured)
  - Grandfathered Plans are exempt
  
- Prohibition on Pre-Existing Condition Exclusions
  - Applies to Group Health Plans (self- and fully- insured), including Grandfathered Plans
  
- Information to Secretary of Health and Human Services
  - Applies to Group Health Plans (self- and fully- insured)
  - Grandfathered Plans are exempt

## Requirements With Later Effective Dates

- Employer annual reporting requirements regarding quality of care
  - Effective after regulations are issued; regulations are required by March 23, 2012
  - Applies to Group Health Plans (self- and fully- insured)
  - Grandfathered Plans are exempt
- No waiting period restrictions in excess of 90 days
  - Effective for plan years beginning on or after January 1, 2014
  - Applies to Group Health Plans (self- and fully- insured), including Grandfathered Plans
- No discrimination based on health status
  - Effective for plan years beginning on or after January 1, 2014
  - Applies to Group Health Plans (self- and fully- insured)
  - Grandfathered Plans are exempt
- Mandated cost-sharing limits
  - Effective for plan years beginning on or after January 1, 2014
  - Applies to Group Health Plans (self- and fully- insured)
  - Grandfathered Plans are exempt

## Simple Cafeteria Plans Beginning in 2011

The 2010 Health Care Act created a “simple cafeteria plan” for small employers (those with 100 or fewer employees in either of the prior two years). Under such a plan, an eligible small employer is provided with a safe harbor from the nondiscrimination requirements for cafeteria plans, as well as from the nondiscrimination requirements for specified qualified benefits offered under a cafeteria plan. This includes group term life insurance, benefits under a self-insured medical expense reimbursement plan, and benefits under a dependent care assistance program.

Employers may establish simple cafeteria plans for years beginning after December 31, 2010.

To create a simple cafeteria plan, the employer must contribute to qualified benefits under the plan on behalf of each qualified employee, whether or not the qualified employee makes a contribution. The contribution can either be a uniform percentage (not less than 2%) of the employee’s compensation for the plan year, or a non-uniform amount based on a formula in the statute. Employer contributions cannot discriminate in favor of highly compensated employees.

All employees who had at least 1,000 hours of service for the preceding plan year must be eligible to participate. Each employee eligible to participate in the plan may, subject to terms and conditions applicable to all participants, elect any benefit available under the plan. Exclusions for employees under age 21 and those who have less than one year of service are allowed.

## Professional Assistance

CapinCrouse can provide assistance in these areas covered in this email alert and our previous alert:

- Small employer health plan credit - Analysis of FTE employees, average annual wage, compliance with employer premium requirements, and estimates of the credit available.
- Simple cafeteria plans - Consultation on plan design, assessment of employer contribution options, and estimates of employer and employee tax savings from having a lawful cafeteria plan.
- Health plan changes in 2010 and 2011 - Consultation on the impact of specific statutory elements on your plan structure.
- Grandfathered Plan requirements - Assistance with requirements as guidance becomes available.
- Employer credit for hiring unemployed individuals - Analysis your organization's eligibility for the credit for hiring unemployed individuals.

Please contact John Butler, Tax Counsel, at [jbutler@capincrouse.com](mailto:jbutler@capincrouse.com) to learn more.