

Issued: December 9, 2010

## Email Alert: Health Reform Update

Since passage of the health reform bills in March, the Internal Revenue Service, Department of Labor, and Health and Human Services Department worked to provide guidance on how the law applies. Though we focus on how individuals and employers are affected, there are substantial provisions affecting insurers and governmental agencies, also. Consequently, many details have been slow being addressed. With the current Congressional debates over changes in expiring Bush era tax laws, and possible tax law changes to address the deficit, we do not anticipate it will speed up.

Recently, however, critical guidance has been released, that affects churches and employer health plans in general. This alert provides information on:

- The small employer health insurance tax credit, and how ministers and their compensation are treated, which will affect some church eligibility for the refund.
- The delay in reporting employee medical expenses from 2011, to 2012.
- For grandfathered health plans, the ability to change health insurance policies, without losing grandfathered status.

### Small Employer Health Insurance Tax Credit

While this is a non-refundable credit for businesses, it is a refund for exempt organizations that otherwise meet the size and plan requirements. These size and plan requirements were described in our earlier email alert (May 20, 2010). Since then, the IRS has issued guidance in several areas:

- Both the credit for businesses and refund for exempt organizations will use Form 8941 to demonstrate eligibility and the credit. Businesses will file the form with their business tax return. Exempt organizations will file it with a Form 990T, even if they do not have unrelated business income. See <http://www.irs.gov/newsroom/article/0,,id=231928,00.html?portlet=7>.
- The handling of ministers for the credit has been clarified, and is not the same as we thought when we issued our initial email alert on this topic. In its guidance (Notice 2010-82), the IRS stated:

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- Because a minister's compensation is not subject to FICA & Medicare taxes (it is subject to SECA, a different code section), none of their compensation is counted when making the calculation of the maximum average compensation paid by the employer. Since ministers are often the higher paid individuals in many organizations, this should help smaller organizations and churches qualify.
- The minister, however, does count as an employee, for purposes of determining the number of employees and the average compensation. Also, the premium paid for their medical insurance can be counted in computing the refund.

## Medical Expense Reporting

Under the health reform law, employers were going to report their expenditure for health care on the employee's Form W-2, being with calendar year 2011, to be reported on the Form W-2 issued in January 2012 (for most employees). In October, the IRS issued a draft Form W-2, but also announced that reporting of the medical expenses will be optional for 2011. See <http://www.irs.gov/newsroom/article/0,,id=228881,00.html>.

Some employers are getting this health plan reporting requirement confused with the new Form 1099 reporting requirement when payments are made for services or to corporations. That requirement under the statute does not apply until 2012, to be reported in early 2013. Initial IRS comments (Notice 2010-51) suggested the IRS is looking for ways to minimize this reporting. For instance, they suggested that expenses paid by credit cards might not have to be reported. Stay tuned.

## Grandfathered Plan Requirements Eased

Under the health reform legislation, new requirements apply to all employer provided health plans, effective with the first plan year beginning after September 23, 2010. See <http://www.hhs.gov/ociio/regulations/newconsumerprotection.html>.

Generally, all employer plans are subject to these requirements:

- No lifetime limits on coverage for all plans
- No rescissions of coverage when people get sick and have previously made an unintentional mistake on their application
- Extension of parents' coverage to young adults under 26 years old
- No coverage exclusions for children with pre-existing conditions
- No restricted annual limits (e.g., annual dollar-amount limits on coverage below standards to be set in future regulations)

In addition, unless an existing plan is grandfathered, it will be subject to additional requirements, including:

- Coverage of recommended prevention services with no cost sharing
- Patient protections such as guaranteed access to OB-GYNs and pediatricians
- Non-discrimination in medical insurance
- External appeals process
- Access to out-of-network emergency care without prior authorization or higher cost sharing than would otherwise be charged; and improved appeals processes

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A grandfathered plan is a plan that was in effect on March 23, 2010 and has not significantly changed. Adding employees and employees is not a change. The following, however, describe changes that will be significant, by comparison to plans in effect on March 23, 2010:

- Cannot Significantly Cut or Reduce Benefits
- Cannot Raise Co-Insurance Charges
- Cannot Significantly Raise Co-Payment Charges
- Cannot Significantly Raise Deductibles
- Cannot Significantly Lower Employer Contributions
- May Change Insurance Companies (provided the plan does not make any of the above six changes to its cost or benefits structure)

Previously, an employer could not change insurance companies. The easing of this requirement should make it more feasible to maintain a grandfathered status.

A grandfathered plan, however, is required to provide a notice to its employees every time it distributes materials to them, of its grandfathered status. A model notice is available at <http://www.dol.gov/ebsa/grandfatherregmodelnotice.doc>.

Please contact our Tax Department by email at [info@capincrouse.com](mailto:info@capincrouse.com) or by phone at 317-885-2620 if you have any questions or if we can help in any way.