

Fisher & Phillips LLP

ATTORNEYS AT LAW

Solutions at Work®

TWG

The Wright Group Services

*Connecting Employers with
Benefits & Insurance Solutions*

Healthcare Reform What Employers Need to Know

William Wright

(610) 230-2137

wwright@laborlawyers.com

bwright@twgservices.com

www.laborlawyers.com

Atlanta · Charlotte · Chicago · Columbia · Dallas · Denver · Fort Lauderdale · Houston · Irvine · Kansas City · Las Vegas · Louisville
New Jersey · New Orleans · Orlando · Philadelphia · Phoenix · Portland ME · Portland OR · San Diego · San Francisco · Tampa

Introduction

- Healthcare Reform is complex...
 - 2 bills totaling just under 1,000 pages
 - Patient Protection and Affordable Care Act (signed into law on March 23, 2010)
 - Health Care and Education Reconciliation Act of 2010 (signed into law on March 30, 2010)
 - Expect significant future regulatory guidance
 - ~1,000 pages of statutes are just the beginning...
 - Many details need to be worked out and/or clarified

Fisher & Phillips LLP

ATTORNEYS AT LAW

Solutions at Work[®]

www.laborlawyers.com Phone (610) 230-2150

Introduction

- In addition to complexity...
 - Broad impact
 - Individuals
 - Insurance companies
 - Healthcare industry
 - Government
 - Employers (regardless of size)
 - Significantly expands Federal regulation of healthcare plans and insurance
 - Compare ERISA
 - Historic State regulation of insurance

Fisher & Phillips LLP

ATTORNEYS AT LAW

Solutions at Work[®]

www.laborlawyers.com Phone (610) 230-2150

Introduction

- Adding to the complexity...
 - A multitude of effective dates
 - Different types of effective dates
 - Many of the more significant provisions are not effective until 2014
 - Some provisions are effective now or in the near term
 - Other provisions are not effective until as late as 2018
 - Continued uncertainty
 - Outcome of future regulatory guidance
 - Possibility of future legislative changes

Fisher & Phillips LLP

ATTORNEYS AT LAW

Solutions at Work®

www.laborlawyers.com Phone (610) 230-2150

Introduction

- Focus of this presentation is:
 - Healthcare Reform’s impact on employers
 - Provisions with near-term effective dates
 - Near- and longer-term planning issues
- Order of the presentation will be:
 - Overview of Healthcare Reform “basics”
 - Discussion of provisions with near-term effective dates
 - Overview of employer “play or pay” mandate (effective in 2014)
 - Overview of provisions with other effective dates
 - Discussion of what employers should do now

Fisher & Phillips LLP

ATTORNEYS AT LAW

Solutions at Work®

www.laborlawyers.com Phone (610) 230-2150

Healthcare Reform “Basics”

- Four “pillars” of Healthcare Reform
 - Individual coverage mandate
 - Employer “play or pay” mandate
 - Insurance reforms
 - Coverage mandates
 - Cost controls
 - Creation of “insurance exchanges”
 - Financing
 - Subsidies for lower-income individuals and small employers
 - New taxes

Fisher & Phillips LLP

ATTORNEYS AT LAW

Solutions at Work®

www.laborlawyers.com Phone (610) 230-2150

Healthcare Reform “Basics”

- Concept of “plan year”
 - Basis for some of Healthcare Reform’s effective dates
 - For example, several provisions become effective for plan years beginning on or after September 23, 2010 (6 months after the March 23, 2010 enactment date)
 - Fiscal / tax year for a group health plan
 - Check summary plan description and Forms 5500
 - Effect of insurance renewal dates and open enrollment dates

Fisher & Phillips LLP

ATTORNEYS AT LAW

Solutions at Work®

www.laborlawyers.com Phone (610) 230-2150

Healthcare Reform “Basics”

- Concept of a “grandfathered plan”
 - Some new requirements do not apply to grandfathered plans
 - Generally defined as a group health plan in existence on the March 23, 2010 enactment date
 - Renewals, adding family members and adding new participants do not affect grandfathered status
 - Collectively bargained plans remain grandfathered until last CBA relating to coverage terminates

Fisher & Phillips LLP

ATTORNEYS AT LAW

Solutions at Work®

www.laborlawyers.com Phone (610) 230-2150

Healthcare Reform “Basics”

- What changes may be made to a grandfathered plan without risking grandfathered status?
 - Statute only addresses:
 - Renewals, adding family members and adding new participants
 - Mid-CBA amendments to collectively bargained plans “solely to conform to” any new Healthcare Reform requirement
 - Until regulatory guidance is issued, any other change runs the risk of terminating grandfathered status

Fisher & Phillips LLP

ATTORNEYS AT LAW

Solutions at Work®

www.laborlawyers.com Phone (610) 230-2150

Healthcare Reform “Basics”

- Types of changes that could impact a plan’s grandfathered status:
 - Changes in benefits
 - Those necessary to comply with new Healthcare Reform requirements
 - Enhancements vs. reductions
 - Changes in eligibility requirements
 - Changes in costs
 - Employee share of premiums
 - Co-pays, deductibles, out-of-pocket maximums, etc.

Fisher & Phillips LLP

ATTORNEYS AT LAW

Solutions at Work®

www.laborlawyers.com Phone (610) 230-2150

Healthcare Reform “Basics”

- Types of changes that could impact a plan’s grandfathered status:
 - Employer changes
 - Mergers and acquisitions
 - Plant closures
 - Geographic locations
 - Uncertainty until regulatory guidance is issued...
 - Remember that maintaining grandfathered status is not required

Fisher & Phillips LLP

ATTORNEYS AT LAW

Solutions at Work®

www.laborlawyers.com Phone (610) 230-2150

Healthcare Reform

Provisions with Near-Term Effective Dates

- Tax Credits for Small Businesses
 - Effective in 2010 for both grandfathered and non-grandfathered plans
 - Available to employers with fewer than 25 FTEs and average annual wages of less than \$50,000 per FTE
 - Employer must subsidize at least 50% of employee-only coverage
 - Initial credit is up to 35% of employer premium costs, subject to certain caps
 - Potential credit increases to up to 50% of employer premium costs in 2014 (subject to certain caps)

Fisher & Phillips LLP

ATTORNEYS AT LAW

Solutions at Work[®]

www.laborlawyers.com Phone (610) 230-2150

Healthcare Reform

Provisions with Near-Term Effective Dates

- Temporary Reinsurance Program for Early Retirees
 - Program will become effective on June 1, 2010 for both grandfathered and non-grandfathered plans
 - Available to plans covering “early retirees” between ages 55 and 65
 - Reimbursements available for 80% of early retiree claims between \$15,000 and \$90,000
 - Reimbursements must be used to lower premium costs or other costs to plan participants
 - Employers must apply to participate in the program
 - Program will terminate on the earlier of January 1, 2014 or the exhaustion of \$5 billion in program funding

Fisher & Phillips LLP

ATTORNEYS AT LAW

Solutions at Work®

www.laborlawyers.com Phone (610) 230-2150

Healthcare Reform

Provisions with Near-Term Effective Dates

- New Coverage Mandates for All Plans (2011 Plan Year)
 - Apply to both grandfathered and non-grandfathered plans
 - Effective for “plan years” beginning on or after September 23, 2010 (6 months after the March 23, 2010 enactment date)
 - January 1, 2011 for calendar year plans
 - Sooner or later for others
 - These are the requirements that will have the most immediate impact on employers

Fisher & Phillips LLP

ATTORNEYS AT LAW

Solutions at Work®

www.laborlawyers.com Phone (610) 230-2150

Healthcare Reform

Provisions with Near-Term Effective Dates

- New Coverage Mandates for All Plans (2011 Plan Year)
 - *Extension of coverage to adult children under age 26*
 - Regardless of marital or student status
 - No requirement to cover children of dependent children (e.g., grandchildren)
 - Grandfathered plans may exclude adult children who are eligible to enroll in their own employer-sponsored coverage until 2014
 - Statute does not define “child” for this purpose
 - Recent regulatory guidance addresses:
 - Definition of “child”
 - Whether plans may charge different premiums for adult children dependents (no...)
 - Enrollment rights

Fisher & Phillips LLP

ATTORNEYS AT LAW

Solutions at Work®

www.laborlawyers.com Phone (610) 230-2150

Healthcare Reform

Provisions with Near-Term Effective Dates

- New Coverage Mandates for All Plans (2011 Plan Year)
 - *Extension of coverage to adult children under age 26*
 - Statute makes related changes to definition of a tax dependent for group health plan purposes
 - This change is effective March 30, 2010
 - Recent IRS guidance confirms that any necessary cafeteria plan amendments for 2010 may be retroactively effective, provided that they are made no later than December 31, 2010
 - Some carriers and employers are considering implementing this change as soon as possible, rather than waiting until the effective date.
 - Not required to do so
 - New regulations suggest this will not impact grandfathered plan status
 - Whenever implemented, keep in mind that existing COBRA beneficiaries could become re-eligible for active plan coverage as an adult dependent

Fisher & Phillips LLP

ATTORNEYS AT LAW

Solutions at Work[®]

www.laborlawyers.com Phone (610) 230-2150

Healthcare Reform

Provisions with Near-Term Effective Dates

- New Coverage Mandates for All Plans (2011 Plan Year)
 - *No lifetime limits*
 - Statute refers to no lifetime limits on the “dollar value” of benefits

Fisher & Phillips LLP

ATTORNEYS AT LAW

Solutions at Work®

www.laborlawyers.com Phone (610) 230-2150

Healthcare Reform

Provisions with Near-Term Effective Dates

- New Coverage Mandates for All Plans (2011 Plan Year)
 - *Restrictions on annual limits*
 - Effective for plan years beginning on or after January 1, 2014, NO annual limits will be permitted
 - For plan years beginning prior to January 1, 2014, restricted annual limits will be permitted only as provided in regulatory guidance to be issued
 - Statute refers to no limits on the “dollar value” of benefits

Fisher & Phillips LLP

ATTORNEYS AT LAW

Solutions at Work®

www.laborlawyers.com Phone (610) 230-2150

Healthcare Reform

Provisions with Near-Term Effective Dates

- New Coverage Mandates for All Plans (2011 Plan Year)
 - *Pre-existing condition limitations may not apply to children under the age of 19*
 - Note that for plan years beginning on or after January 1, 2014, pre-existing condition limitations may not apply to any participant or beneficiary

Fisher & Phillips LLP

ATTORNEYS AT LAW

Solutions at Work®

www.laborlawyers.com Phone (610) 230-2150

Healthcare Reform

Provisions with Near-Term Effective Dates

- New Coverage Mandates for All Plans (2011 Plan Year)
 - *Limitations on rescinding coverage*
 - Coverage may only be rescinded as a result of fraud or intentional misrepresentation of a material fact
 - Rescission of coverage requires advance notice

Fisher & Phillips LLP

ATTORNEYS AT LAW

Solutions at Work®

www.laborlawyers.com Phone (610) 230-2150

Healthcare Reform

Provisions with Near-Term Effective Dates

- New Coverage Mandates for Non-Grandfathered Plans (2011 Plan Year)
 - Apply to non-grandfathered plans only
 - Effective for “plan years” beginning on or after September 23, 2010 (6 months after the March 23, 2010 enactment date)
 - January 1, 2011 for calendar year plans
 - Sooner or later for others
 - Additional requirements that will have the most immediate impact on employers

Fisher & Phillips LLP

ATTORNEYS AT LAW

Solutions at Work®

www.laborlawyers.com Phone (610) 230-2150

Healthcare Reform

Provisions with Near-Term Effective Dates

- New Coverage Mandates for Non-Grandfathered Plans (2011 Plan Year)
 - *Nondiscrimination requirements for insured group health plans*
 - Similar to existing rules for self-insured plans
 - Prohibit discrimination in favor of “highly-paid individuals” (generally, the highest-paid 25% of all employees, excluding certain categories of employees)
 - Could severely limit ability to provide different employer subsidies to different groups of employees

Fisher & Phillips LLP

ATTORNEYS AT LAW

Solutions at Work®

www.laborlawyers.com Phone (610) 230-2150

Healthcare Reform

Provisions with Near-Term Effective Dates

- New Coverage Mandates for Non-Grandfathered Plans (2011 Plan Year)
 - *Requirement to have an external appeal process for denied claims*
 - Goes beyond existing ERISA requirements

Fisher & Phillips LLP

ATTORNEYS AT LAW

Solutions at Work®

www.laborlawyers.com Phone (610) 230-2150

Healthcare Reform

Provisions with Near-Term Effective Dates

- New Coverage Mandates for Non-Grandfathered Plans (2011 Plan Year)
 - *100% coverage of preventative care*
 - No cost sharing for immunizations and other preventative care designated by the government, such as screenings for particular conditions

Fisher & Phillips LLP

ATTORNEYS AT LAW

Solutions at Work®

www.laborlawyers.com Phone (610) 230-2150

Healthcare Reform

Provisions with Near-Term Effective Dates

- New Coverage Mandates for Non-Grandfathered Plans (2011 Plan Year)
 - *Greater access to emergency services*
 - No prior authorizations required for emergency services
 - Cost sharing for coverage from an out-of-network provider must be equivalent to coverage from an in-network provider

Fisher & Phillips LLP

ATTORNEYS AT LAW

Solutions at Work®

www.laborlawyers.com Phone (610) 230-2150

Healthcare Reform

Provisions with Near-Term Effective Dates

- New Coverage Mandates for Non-Grandfathered Plans (2011 Plan Year)
 - *Greater freedom in designating a primary care provider and using the services of pediatricians and OB / GYNs*
 - Participants may choose any participating primary care provider
 - Participants may designate a participating pediatrician as the primary care provider for a child
 - No primary care provider or other prior authorizations may be required for the services of a participating OB / GYN

Fisher & Phillips LLP

ATTORNEYS AT LAW

Solutions at Work[®]

www.laborlawyers.com Phone (610) 230-2150

Healthcare Reform

Provisions with Near-Term Effective Dates

- No More Reimbursements for Most Over-the-Counter Drugs under FSAs, HSAs and HRAs
 - Effective January 1, 2011 for both grandfathered and non-grandfathered plans
 - Reimbursements may only be made for:
 - Prescribed drugs or medicines
 - Insulin

Fisher & Phillips LLP

ATTORNEYS AT LAW

Solutions at Work[®]

www.laborlawyers.com Phone (610) 230-2150

Healthcare Reform

Provisions with Near-Term Effective Dates

- Reporting Cost of Employer-Sponsored Group Health Plan Coverage on Forms W-2
 - Effective January 1, 2011 for both grandfathered and non-grandfathered plans
 - Reporting the “aggregate cost” of coverage using rules similar to the rules for calculating the principal amount of COBRA premiums
 - Applies to 2011 Forms W-2 distributed in 2012

Fisher & Phillips LLP

ATTORNEYS AT LAW

Solutions at Work®

www.laborlawyers.com Phone (610) 230-2150

Healthcare Reform

Overview of Employer “Play or Pay” Mandate

- Effective January 1, 2014
- Applies to “large employers”
 - 50 or more “full-time” employees (including FTEs)
 - “Full-time” means 30 or more hours per week
- In order to “play” and avoid the possibility of “paying,” an employer must provide adequate group health plan coverage to all full-time employees
 - Plan provides minimum essential benefits
 - Plan covers at least 60% of the cost of benefits
 - Employee premium cost does not exceed 9.5% of income

Fisher & Phillips LLP

ATTORNEYS AT LAW

Solutions at Work®

www.laborlawyers.com Phone (610) 230-2150

Healthcare Reform

Overview of Employer “Play or Pay” Mandate

- If an employer fails to “play” by providing NO coverage at all AND at least one full-time employee receives Federal premium assistance for purchasing coverage through an insurance exchange, then the employer will “pay” \$2,000 per full-time employee, excluding the first 30 full-time employees.
 - An employee may qualify for Federal premium assistance if his or her income is less than 400% of the Federal poverty level (currently \$88,200 for a family of 4)

Fisher & Phillips LLP

ATTORNEYS AT LAW

Solutions at Work®

www.laborlawyers.com Phone (610) 230-2150

Healthcare Reform

Overview of Employer “Play or Pay” Mandate

- If an employer fails to “play” by providing inadequate coverage AND at least one full-time employee receives Federal premium assistance for purchasing coverage through an insurance exchange, then the employer will “pay” the lesser of (i) \$3,000 per full-time employee receiving assistance OR (ii) \$2,000 per full-time employee, excluding the first 30 full-time employees.
 - An employee may qualify for Federal premium assistance if his or her income is less than 400% of the Federal poverty level (currently \$88,200 for a family of 4)

Fisher & Phillips LLP

ATTORNEYS AT LAW

Solutions at Work®

www.laborlawyers.com Phone (610) 230-2150

Healthcare Reform

Provisions of Interest with Other Effective Dates

- Automatic Enrollment for Employees of Large Employers
 - Technically, statutory effective date is immediate. However, statutory language indicates that actual effective date will be dictated by future regulations.
 - Applies to employers with more than 200 full-time employees
 - Similar to existing concept for 401(k) plans

Fisher & Phillips LLP

ATTORNEYS AT LAW

Solutions at Work®

www.laborlawyers.com Phone (610) 230-2150

Healthcare Reform

Provisions of Interest with Other Effective Dates

- Plans Must Provide Uniform Explanation of Coverage
 - Deadline is no later than March 23, 2012 (24 months after March 23, 2010 enactment date)
 - Applies to both grandfathered and non-grandfathered plans
 - Standards will be developed in regulations to be issued no later than March 23, 2011 (12 months after March 23, 2010 enactment date)
 - Any “material” change in a plan not reflected in the most recent uniform explanation of coverage must be communicated at least 60 days IN ADVANCE of the effective date of the change
 - Compare existing SMM and SPD requirements

Fisher & Phillips LLP

ATTORNEYS AT LAW

Solutions at Work®

www.laborlawyers.com Phone (610) 230-2150

Healthcare Reform

Provisions of Interest with Other Effective Dates

- Healthcare FSA Contributions Limited to \$2,500
 - Effective date is January 1, 2013
 - Applies to salary deduction contributions only
 - Limit will be indexed for inflation

Fisher & Phillips LLP

ATTORNEYS AT LAW

Solutions at Work[®]

www.laborlawyers.com Phone (610) 230-2150

Healthcare Reform

Provisions of Interest with Other Effective Dates

- Miscellaneous New Coverage Mandates Effective on January 1, 2014
 - Coverage of minimum essential benefits
 - Cost sharing limits
 - No pre-existing condition limitations for anyone
 - No eligibility waiting periods in excess of 90 days
 - Employer reporting requirements relating to the provision of minimum essential benefits
 - “Free choice” vouchers
 - Wellness discounts of up to 30% may be offered

Fisher & Phillips LLP

ATTORNEYS AT LAW

Solutions at Work[®]

www.laborlawyers.com Phone (610) 230-2150

Healthcare Reform

Provisions of Interest with Other Effective Dates

- “Cadillac Plan” Tax
 - Effective date is January 1, 2018
 - 40% excise tax imposed for employer-provided coverage valued in excess of \$10,200 for single coverage or \$27,500 for family coverage
 - Values will be indexed for inflation
 - Certain exceptions apply
 - Will this generate tax revenue?
 - Will high-cost groups (due to experience and/or geography) be disadvantaged?
 - Perhaps more to come on this provision...

Fisher & Phillips LLP

ATTORNEYS AT LAW

Solutions at Work[®]

www.laborlawyers.com Phone (610) 230-2150

Healthcare Reform

Provisions of Interest with Other Effective Dates

- Other Miscellaneous Tax Provisions
 - Effective January 1, 2013, an additional 0.9% Medicare tax on wages exceeding \$200,000 for individuals and \$250,000 for joint filers.
 - Effective January 1, 2013, a new 3.8% Medicare tax on investment income exceeding \$200,000 for individuals and \$250,000 for joint filers.
 - Effective January 1, 2013, elimination of certain deductions for employers who receive Medicare Part D subsidies for providing qualifying prescription drug coverage to retirees.
 - Effective January 1, 2011, the excise tax for unqualified distributions from an HSA is increased to 20%.
 - Others, including FSA changes already discussed.

Fisher & Phillips LLP

ATTORNEYS AT LAW

Solutions at Work[®]

www.laborlawyers.com Phone (610) 230-2150

Healthcare Reform

What Employers Should Do Now

- In the near term...
 - Determine plan year and related effective date for near-term new coverage mandates
 - Evaluate importance of grandfathered plan status and take steps to preserve status, if applicable
 - Minimize changes
 - Keep an eye out for further guidance
 - Amend cafeteria and/or healthcare FSA documents for coverage of new adult tax dependents and 2011 limits on over-the-counter drug reimbursements

Fisher & Phillips LLP

ATTORNEYS AT LAW

Solutions at Work®

www.laborlawyers.com Phone (610) 230-2150

Healthcare Reform

What Employers Should Do Now

- In the near term...
 - Determine whether any existing taxable coverage of employee dependents should be nontaxable on and after March 30, 2010 as a result of the new exclusion for adult tax dependents
 - Amend plan communication materials to account for near-term changes, particularly the coverage of adult dependents.
 - Be prepared to answer employee questions regarding near-term changes, particularly the coverage of adult dependents.
 - Prepare payroll system to capture 2011 data necessary to report the cost of group health plan coverage on Forms W-2.

Fisher & Phillips LLP

ATTORNEYS AT LAW

Solutions at Work®

www.laborlawyers.com Phone (610) 230-2150

Healthcare Reform

What Employers Should Do Now

- In the near term...
 - *Self-Insured Plans:*
 - Review plan documents for amendments required by near-term changes
 - Evaluate continued utility of maintaining a self-insured plan
 - *Collectively-Bargained Plans:*
 - Determine effective date for near-term new coverage mandates by reviewing applicable CBAs
 - Evaluate whether mid-CBA plan amendments are required or permitted by applicable CBAs
 - Evaluate whether new Healthcare Reform requirements (including longer-term requirements) may affect healthcare costs to an extent that would impact future bargaining strategies

Fisher & Phillips LLP

ATTORNEYS AT LAW

Solutions at Work[®]

www.laborlawyers.com Phone (610) 230-2150

Healthcare Reform

What Employers Should Do Now

- In the longer term...
 - Keep an eye out for periodic future regulatory guidance
 - Evaluate whether the employer “play or pay” mandate will apply
 - If the employer “play or pay” mandates will apply, evaluate the projected impact on employee healthcare costs
 - Be prepared for ongoing changes and uncertainty
 - Be prepared for higher employee healthcare costs
 - Be prepared for more employer administrative burdens relating to group health plans

Fisher & Phillips LLP

ATTORNEYS AT LAW

Solutions at Work®

www.laborlawyers.com Phone (610) 230-2150

Healthcare Reform What Employers Need to Know

William Wright

(610) 230-2180

wwright@laborlawyers.com

www.laborlawyers.com