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## Health Care Reform Now: First Things First

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By Kathryn Tyler

For Laurie Retzlaff, PHR, the health care reform law comes down to this: "Too much information." Since the historic Patient Protection and Affordable Care Act was signed into law in March, updates, analyses and commentaries on it have been torrential. "I'm a generalist," says Retzlaff, who works at the 70-employee State Bank Group headquartered in Wonder Lake, Ill. "Health care is only a small part of what I manage every day. I could have hired three people in the time it takes to evaluate this."

Like Retzlaff—president of her local Society for Human Resource Management chapter, Stateline SHRM—many HR professionals say they are swamped by the details and explanations of the new health care law and are focusing their attention on the provisions that take effect this year and next. Chief among them are:

- Adult children's eligibility for coverage on their parents' health plans.
- The end of lifetime limits on health benefits.
- Prohibition of coverage exclusions for pre-existing conditions.

Also drawing HR's attention are the recently issued interim final rules from three federal agencies on the types of changes that can be made in health plans without jeopardizing their "grandfathered" status under the law.

The latest federal guidance forces HR professionals to figure out how to proceed. The question is how to comply with the law's mandates without shifting costs in such a way that the plan could lose its grandfathered status. Eliminating all benefits for a particular condition, increasing deductibles by more than the rate of medical inflation plus 15 percentage points, or changing insurers are just three actions that can cause the loss of grandfathered status.

Maintaining that status can insulate a health plan from certain administrative requirements, nondiscrimination rules and cost-sharing restrictions.

All employer-sponsored health care plans must meet the provisions on adult-children eligibility, lifetime limits and pre-existing conditions, but there are limits on the degrees of costshifting permissible in grandfathered plans.

And, for some HR professionals, the underlying question is whether their organizations can afford to continue offering health care coverage at all.

Following are some of the more imminent concerns facing HR specialists. The descriptions of the first three provisions are followed by expectations of how those mandates will likely impact employers and the types of reactions they are generating among health insurance experts and HR professionals. All three take effect for employersponsored health plans with plan years beginning on or after Sept. 23.



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KEEP GRANDFATHER? OR LET HIM GO?

On June 17, the Obama administration released a long-awaited list of regulations for maintaining the "grandfathered" status of health plans—those that existed when the health care reform legislation was signed into law last March.

According to the regulations, a sponsor that wants to keep a plan grandfathered cannot:

- Cut or significantly reduce benefits.
- Raise co-insurance charges.
- Raise co-payment charges by more than \$5, adjusted annually for inflation.
- Raise deductibles significantly.
- Reduce employer contributions by more than 5 percentage points.
- Change insurance companies.

With its grandfathered status intact, an employer-sponsored health plan could sidestep certain requirements of the health care reform law. For example, an employer would not:

- Be prevented from having employees pay a share of the costs of preventive health programs.
- Have to establish external review procedures for the claims appeal process.
- Have to meet certain quality-of-care reporting requirements.

Grandfathered plans still could not exclude coverage of pre-existing conditions or set annual or lifetime coverage limits, however, and they still would have to grant coverage to participants' adult children until age 26. For more details, see the online version of this article for a link to the Federal Register passages explaining the rules on grandfathered plans.

"If you can keep grandfathered, you have a shorter compliance list; if you decide to give up, you'll have a longer to-do compliance list," says Chip Kerby, principal for Liberté Group LLC.

Anmarie Fini, senior vice president of the employer division of Benefitfocus, an online benefits management system headquartered in Charleston, S.C., says her clients express some concern about providing compliance reporting and having the ability to efficiently communicate changes to employees.

While keeping a plan's grandfathered status may save some compliance costs, relinquishing it could allow an organization more flexibility. For example, The Joint Commission, a nonprofit accreditation organization for health care providers, intends to double co-payments to \$40 if an employee chooses to see a specialist instead of a primary care physician. The aim is to discourage employees from using specialists for common ailments, such as seeing an otolaryngologist for a cold.

"We're throwing in the towel for being a grandfathered plan," complains Gregory Johnson, associate director of employee benefits for The Joint Commission. If you want to be a grandfathered plan, you can't make minor modifications to a plan every year. The formula for retaining grandfathered status is so restrictive, "We couldn't even change what employees pay for the plan." In spite of 6 percent to 12 percent annual inflation of health care costs, "this regulation says the company has to absorb that inflationary trend if we want to maintain grandfather status."

Johnson equates the grandfather regulations to a "gift, but there's nothing in the box. You get excited because you think there's some relief, but when you open the box, there's nothing of value in it. Grandfather status is not obtainable. It's unrealistic."

David Guilmette, president of the national segment of CIGNA, a health services company in

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Hartford, Conn., says: "For the typical large employer, there's not a lot to be gained by maintaining grandfather status compared to what they're giving up. They have to manage costs effectively, and they want to have all of the tools available to them to manage their programs as effectively as they can."

Johnson expects most companies that try to maintain grandfather status will do so for only about a year before becoming resigned to giving it up. Kerby agrees: "Companies can live with one year of having a restricted ability to change costsharing, but they're not going to live with that forever."

—Kathryn Tyler

### Covering Adult Children

This law requires employers to make coverage available for all children until they turn 26—regardless of marital, student or tax-dependent status—if the child is not eligible to enroll in his or her employer's group health plan. The employer can—but is not required to—let an adult child remain covered until the end of the calendar year when he or she turns 26, and the benefit during that period will not be taxable to the employee. Beginning in 2014, even an adult child who has access to coverage through his or her employer will be eligible for coverage through a parent's plan.

This provision's impact on an employer depends on the employer's current plan design. For plans covering dependents to age 19, the impact may be substantial—an increase of up to 4 percent of total plan costs. The impact should be minimal, however, for employers whose plans offer employee-only coverage or already cover dependents into their early 20s, especially since young adults generally are healthy and make little use of insurance coverage.

In a survey of more than 1,000 employers last May, the nonprofit International Foundation of Employee Benefit Plans (IFEFP), based in Brookfield, Wis., found that three-fourths of employers identified the adult-children provision as the health care reform law's principal driver of cost increases.

For the typical employer, there will be an increase of 0.5 percent to 2 percent, says Tom Lerche, health care leader with Aon Corp., a risk management and insurance consulting company headquartered in Chicago. "If you have coverage until 19, the increase will be 1 percent to 4 percent, but if you have coverage up to age 24, it will increase 0 to 0.5 percent."

Joseph McGinty, vice president of employee benefits consulting for The Graham Company, an insurance brokerage in Philadelphia, says: "We have seen only one insurer increase rates for extending coverage to age 26 for any currently covered dependents." He says the increase was 1.5 percent, adding: "This cost increase cannot be directly charged to the dependent, but was an add-on to the premium for the entire group. Some of our clients are considering increasing the cost-sharing for family coverage, or offering up to five enrollment tiers so the employee has a financial incentive to move under-age-26 dependents onto other coverage."

While young adults tend to be among the healthier individuals in the population, Sarah Bassler Millar, partner in the employee benefits and executive compensation group of the Chicago-based law firm Drinker Biddle and Reath LLP, says, "There's some concern about adverse selection; only the adult dependents that are unhealthy are going to enroll."

Moreover, because the new provision requires plans to offer coverage for children up to age 26 regardless of marital status, daughters would be covered for pregnancies, which could become costly should there be complications. "The plan would be responsible for the pregnancy and delivery, but not for the new grandchild of the employee," explains David Guilmette, president of the national segment for CIGNA, a health services company in Hartford, Conn.

In the IFEFP survey, Health Care Reform: What Employers Are Considering, 5 percent of employers said their plans meet the new legal requirements, 20 percent said they are taking immediate action to change eligibility requirements, 67 percent said they will wait until 2011 to change eligibility requirements and the remaining

8 percent said they were undecided how to proceed.

Intel Corp., a technology company in Folsome, Calif., with 43,000 U.S. employees, immediately changed its eligibility requirements to reflect the law. "Intel helps its employees' dependents by keeping them from being uninsured for the remainder of the year," says Corrie Zenzola, global health and risk benefits design manager.

The State Bank Group also complied immediately, and the impact appears to be minimal. The company pays 90 percent of the premium—but only for employees; dependents who opt for coverage pay the full premium. "Our group health policy had provisions allowing full-time students to stay on their parents' policies up to age 25," Retzlaff says. "Our current carrier complied with the new provision allowing adult children on the parents' policies shortly after the law was signed. Under our current costsharing model, additional premiums relating to dependent coverage are paid by the employee; therefore, we have not seen parents taking advantage of being able to add their adult children onto the group plan."

Even before the federal health care reform law was signed, some states had enacted legislation establishing adult children's eligibility for coverage on their parents' policies, so employers in those states had already adjusted to it.

"In Illinois, we've already reacted to state mandates to cover dependents up to age 26, which was effective Jan. 1," says Gregory Johnson, associate director of employee benefits for The Joint Commission, a nonprofit accreditation organization for health care providers. "I don't see that as having much impact—less than 1 percent of total claims," he says.

For the 1,100-employee commission, headquartered in Oakbrook Terrace, Ill., this meant adding 20 employee dependents this year.

In opening their health plans to employees' under-26-year-old children earlier than the new federal law requires, Intel and the State Bank Group appear to be the exceptions. "Most employers are not interested in implementing voluntarily; they are implementing it when it becomes effective," says David Mustone, partner and employee benefits attorney with Hunton and Williams, an international law firm in Richmond, Va.

Other considerations involve questions of whether employers will bring their dental and vision eligibility requirements into line with medical plan eligibility requirements, and whether some may drop dependent coverage altogether.

On adjusting dental and vision coverage requirements, the answer seems to be yes.

"Employers are going to match the requirements of their medical plans," says Sally M. Natchek, senior director of research for the IFEBP. She cites the communication challenges of having to spell out differing eligibility rules for employees.

Advocate Health Care, a faithbased, not-for-profit health system in Oak Brook, Ill., has already aligned its medical, dental and vision eligibility requirements. Thus, the organization has eliminated the need to do "robust" verification of employees' dependents who are under 26, says Kimberly Dwyer, director of benefits.

On dropping dependent coverage, the answer appears to be no. Or, at least not yet.

However, some employers are considering shifting costs to employees. "If it gets too expensive for an employer to cover the cost of dependents, employers will have no choice but to eliminate their contributions," says Chantelle L. O'Toole, principal at CLO Employee Benefits, an employee benefit design company in New York City.

"One percent doesn't sound like a lot, but if the total plan costs are \$200 million, it's not insignificant if it goes up by \$2 million," says Chip Kerby, principal for Liberté Group LLC, an employee benefits law firm in Washington, D.C.

While some employers may decide to charge employees more for coverage and possibly give up their plans' grandfathered status, Kerby continues, "nobody I'm talking to is considering eliminating dependent coverage. That would be wildly unpopular from an employee relations standpoint."

#### **Uncapping Lifetime Benefits**

The ban on setting lifetime limits on health care begins with the start of the next plan year on or after Sept. 23, and beginning in 2014, health plans cannot impose annual limits, either.

The main concern is how the ban may cause premiums to rise. Angie Strunk, vice president of Sheakley HR Solutions, an HR outsourcing firm in Cincinnati, says: "Health insurance companies will not be able to limit their exposure. Therefore, they will be forced to assume the worst-case scenario in terms of claims costs

and will have to pass those additional expenses on to companies and their employees in the form of higher insurance premiums.”

The impact would likely be felt most by large companies that self-insure and would now have to purchase stoploss insurance to fund unusually large claims. Warns Kerby: “Most people are covered under self-insured plans. If you’ve been self-insured and you didn’t have stop-loss insurance before, you will need to evaluate whether or not you need it.”

Most large health plans already have high lifetime maximums—\$1 million to \$5 million—and employees’ claims rarely exceed those limits. McGinty has seen only one health plan participant ever “hit a lifetime maximum.” He estimates that the ban will increase employers’ costs by “less than 2 percent.”

Heather Wyatt, senior benefits administrator for Cardiac Science Corp. in Bothell, Wash., says the company has a \$5 million lifetime limit, and the effect of uncapping it “will likely be minimal since our current limit was already on the high end.” Her company markets noninvasive heart disease management products.

### Ending Exclusions

Although most of the ban on excluding health coverage for new plan participants who have pre-existing health conditions doesn’t take effect until 2014, part of the ban—the portion of the law pertaining to participants under 19 years of age—applies Sept. 23.

Moreover, the law prohibits exclusion of coverage for a pre-existing condition and exclusion of a plan participant for such a reason.

This provision is not expected to have a large impact because most employers, especially large organizations, had already eliminated exclusions for pre-existing conditions from their health coverage. For smaller employers that still have pre-existing condition clauses, it likely won’t have a strong immediate impact because few are hiring now as a result of the recession.

“Several of our clients have pre-existing condition limitations for new enrollees,” McGinty says, “but seven out of 10 of these enrollees overcome the preexisting condition limitation by showing ... proof of credible coverage from a previous health insurance policy.”

The particulars of such proof, including the requirements of creditable coverage, are provided under the Health Insurance Portability and Accountability Act (HIPAA). For details on pre-existing conditions, see “Eliminating Coverage Barriers” in the June HR Magazine.

Like many companies, The Joint Commission eliminated such exclusions after HIPAA took effect, “so those provisions won’t present a problem to us,” says Johnson. “We’ve never had an issue of hiring somebody who didn’t already have coverage. We decided we could eliminate all of that paper chase.”

### Forgo Coverage Altogether?

Beginning in 2014, employers with 50 or more full-time employees, including full-time-equivalent employees, who do not offer health care coverage and who have at least one employee receiving a tax credit for health coverage premiums, will have to pay a \$2,000 penalty per year for each full-time employee. The first 30 employees are excluded from the headcount.

Moreover, employers that have more than 50 employees and do offer health care benefits can be subject to penalties under certain circumstances. If an employer offering coverage has at least one full-time employee receiving a premium tax credit, the employer is subject to being assessed \$3,000 for each employee receiving the credit, or \$2,000 for each employee—whichever amount is lower; the first 30 employees are excluded from the calculation.

The impact of these provisions is still largely unknown, experts say; it will likely depend on the details of the penalties and the success of the insurance exchanges. These exchanges, by a federal government definition, will constitute an “insurance marketplace where individuals and small businesses can buy affordable and qualified health benefit plans.”

The provision for assessments in some circumstances on employers that do offer health coverage is most likely to affect those in industries that have small profit margins, can control their number of full-time employees, and currently offer little, if any, health coverage. Examples include retailing, restaurants and nonunionized hospitality. The provision may also discourage smaller employers from growing—to keep their employee base under the 50-employee threshold.

According to the IFEBP survey, 87 percent of employers will continue to offer health care benefits. “This change isn’t enough to put most medium and large employers over the edge,” predicts benefits attorney Mustone. He adds that employers that drop health coverage would be under pressure from employees to

increase taxable compensation so they could purchase individual coverage. Moreover, he says, most employers are reluctant to abandon their employees to the exchanges.

CIGNA's Guilmette agrees. "There's a significant tax component for both the employer and employee. The employee is left to pay on an after-tax basis. In 2014, for a family plan, that could be north of \$20,000 annually. In a tight labor market, that may be OK, but in a competitive labor market, it could become a different question."

Health care benefits continue to be a strong employment tool. There is not enough information yet to make an informed decision on whether dropping coverage would be an option, says Retzlaff of the State Bank Group. "Paying the penalty would reduce future costs for health care coverage by well over half. But this is not simply a matter of dollars to us. We recognize the impact these decisions have on the staff. Health care benefits are part of our overall benefits package, which impacts recruitment, retention and employee morale. When you remove one component, adjustments must be made to compensate for the loss."

### Running the Numbers

Although most employers are not yet saying they expect to drop coverage, the financial incentive to do so appears strong, particularly since coverage generally costs employers much more than the \$2,000 per employee penalty. In addition, health care costs have been increasing at about 7 percent per year, Lerche notes, and the costs of compliance with the health care reform law during the next three years could boost the rate of increase by 2 to 5 percentage points.

Thus, some employers are considering dropping coverage. "We have not made a definitive decision, but it is something we keep talking about," says Wyatt of Cardiac Science. "It would get us 'out of the insurance business' to drop coverage and not have the outlying concern about what would happen if we don't end up meeting all of the criteria if we do offer coverage."

### GIVE UP THE 'CADILLAC' PLAN?

Although HR professionals are mainly focused on facets of the health care reform law requiring immediate compliance, a few provisions effective in 2014 and 2018 are already causing concern. Among them are penalties for having "Cadillac" plans and for offering unaffordable coverage.

In 2018, insurance companies and plan administrators will pay a 40 percent excise tax on the value of group health coverage that exceeds \$10,200 for single aggregate coverage and \$27,500 for family coverage. The threshold amounts may be adjusted.

"A Cadillac plan, as the government defines it, is the average cost of the plan for the employee, but it has nothing to do with the plan design or the dynamics of the group you're covering," says Gregory Johnson, associate director of employee benefits for The Joint Commission, a nonprofit accreditation organization for health care providers. He says a "rich" plan can cost little to an employer if its employee group is young and healthy. However, an average plan can be labeled a Cadillac plan if the employee group covered is mature and uses lots of health benefits.

Johnson notes that the commission's business requires employees with a lot of experience auditing medical facilities. "With age come higher claim costs because of higher utilization. If your employees tend to be high utilizers, your costs tend to be higher, and that 'average' plan is suddenly a 'Cadillac' plan."

He concludes: "We're not going to drop health care. We will change the plan—increase the employee deductible, reduce the benefits—because we'll have to lower the cost of it to fall under the Cadillac limit."

Johnson isn't alone. Forty-eight percent

or employers plan to redesign their health plans to avoid triggering the Cadillac tax, according to a May survey by the International Foundation of Employee Benefit Plans.

Benefit Plans. Another concern for employers is the \$3,000 employer penalty for “unaffordable” coverage effective in 2014. This penalty is based on whether any full-time employee of a company offering health coverage “obtains coverage through an exchange and receives a premium credit,” according to a Congressional Research Service summary of potential employer penalties.

An employer will be considered out of compliance with the health care reform law’s requirements, and thus subject to a penalty, the research service writes, if, “in addition to meeting the other eligibility criteria for credits, the employee’s required contribution for self-only coverage exceeds 9.5 percent of the employee’s household income or if the plan offered by the employer pays for less than 60 percent of covered expenses.”

David Mustone, partner and employee benefits attorney with Hunton and Williams, says: “In low-margin businesses with low-paid workforces, this will be a real problem. Providing coverage and the penalty on top of it where it’s unaffordable could be a real bite.”

—Kathryn Tyler

M. Christine Whipple, executive director of the Pittsburgh Business Group on Health, a nonprofit employer-led coalition, notes that several members have indicated their companies are evaluating the costs of dropping coverage. “The cost savings to paying the penalty is substantial.” “I have a few clients simply ‘doing the math,’” admits David McKnight at Creative Plan Design LTD, an employee benefits company in Southampton, N.Y. “Many companies will look at the cost of insuring an employee and compare the cost of the penalty.”

Most business leaders look at benefits from a cost standpoint, he continues. If the burden is too great, they will pass on providing coverage. In the economic downturn, leaders at more companies are starting to question the costs of providing benefits. Additionally, many “are fed up with” the increased Internal Revenue Service and U.S. Department of Labor requirements placed on business owners. When faced with increased costs and liability, “the business owner is simply abandoning employee benefits altogether,” he insists.

Kerby says the new provision takes an “unknown”—how much health care will cost in a given year—and creates a “known”—a \$2,000 penalty per full-time employee. “This becomes a predictable expense, as opposed to an unpredictable one. For the first time, companies can calculate their penalty based on headcount. If you’re in a business where you can regulate the number of [full-time employees], you can control your penalty. For instance, mall retailers can promise clerks only 28 hours a week of work.”

Kerby continues: “Look at troubled industries like steel, coal, auto, auto suppliers, airlines. If even one of them makes the decision to shut down the plan, pay the penalty, and encourage employees to use the exchanges, the others will follow.”

#### **Decisions Ahead**

Most employers in stable industries and with high percentages of white-collar or union workers say they intend to keep coverage. “Providing health care is one of our big draws for recruitment and retention,” says Johnson. Instead, he says, in 2018, plans will be cut back to avoid the penalty on high-value plans, known as “Cadillac” plans.

“Many clients are considering this option,” affirms Strunk of

Many clients are considering this option, claims Robert C. Sheakley HR Solutions.

It may come down to this: Will employers have to choose between meeting employees' expectations for increasingly costly health coverage and staying in business?

It's a question HR professionals will likely have to deal with in the years ahead as the effects of provisions of the health care reform law unfold.

*The author, a former HR generalist and trainer, is a freelance writer in Wixom, Mich.*

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