

**Important Preface**

The passage of the long-debated Health Care Reform package created many new challenges and opportunities for insured and self-funded employer health care plans, employee benefit consultants and individuals, especially executives. The time to start planning for these changes is now.

While this is not an examination of every detail in the Health Care Reform bill, the following charts will help you identify the changes of greatest importance to your business and develop a game plan for addressing them. *Note: Effective dates for union plans will not be earlier than the expiration of the bargaining agreement in effect on March 23, 2010.*

If you have any questions or need assistance managing these changes, contact your M&A health care benefits professional.

<b>PART I. 2010 HEALTH CARE REFORM – CHANGES AFFECTING EMPLOYERS</b>	
<b>The Changes</b>	<b>The Effects</b>
<p><b><u>2010 Tax Year:</u></b></p> <ul style="list-style-type: none"> <li>• Small business tax credit</li> </ul>	<ul style="list-style-type: none"> <li>▪ Employers with no more than 25 employees and average annual pay less than \$50,000 get an annual tax credit for 35% of employer contribution (25% for small non-profits). Minimum employer health plan contribution requirements apply. Maximum credits apply to employers with no more than 10 employees.</li> </ul>
<p><b><u>Effective Date Unclear (no date in law):</u></b></p> <ul style="list-style-type: none"> <li>▪ Automatic enrollment for employers with 200 or more full-time employees</li> </ul>	<ul style="list-style-type: none"> <li>▪ Must automatically enroll new employees in lowest cost available plan/cost impact unclear but not likely large. Employees can opt out if they wish.</li> </ul>
<p><b><u>Plan Year Beginning After 9/22/2010:</u></b></p> <ul style="list-style-type: none"> <li>▪ Lifetime Limits Eliminated</li> </ul>	<ul style="list-style-type: none"> <li>▪ Cost increases for largest claims and for stop-loss coverage premiums.</li> </ul>
<ul style="list-style-type: none"> <li>▪ Restrictions on Annual Limits (grandfathered plans may have limits on essential health benefits).</li> </ul>	<ul style="list-style-type: none"> <li>▪ Impact will not be fully known until the U.S. Department of Health &amp; Human Services issues mandated regulations. Cost impact will depend on existing annual limit levels.</li> </ul>

The Changes	The Effects
<ul style="list-style-type: none"> <li>▪ Dependent child coverage to the day before his/her 26<sup>th</sup> birthday if the plan offers dependent coverage. (Grandfathered plans only if other coverage not available)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Increased plan cost</li> </ul>
<ul style="list-style-type: none"> <li>▪ No rescission except for fraud or intentional misrepresentation</li> </ul>	<ul style="list-style-type: none"> <li>▪ No material cost impact</li> </ul>
<ul style="list-style-type: none"> <li>▪ New claims procedures and notices (not applicable to grandfathered plans)</li> </ul>	<ul style="list-style-type: none"> <li>▪ No material cost impact</li> </ul>
<ul style="list-style-type: none"> <li>▪ Free preventative care (not applicable to grandfathered plans)</li> </ul>	<ul style="list-style-type: none"> <li>▪ No material cost impact</li> </ul>
<ul style="list-style-type: none"> <li>▪ Pre-existing condition exclusions for children under age 19 barred</li> </ul>	<ul style="list-style-type: none"> <li>▪ No material cost impact</li> </ul>
<ul style="list-style-type: none"> <li>▪ Insured plans may not discriminate in favor of higher paid employees. Grandfathered plans are exempt.</li> </ul>	<ul style="list-style-type: none"> <li>▪ No mandated cost increase, but will be death knell for new fully-insured executive-only plans, particularly Medical Expense Reimbursement Plans (MERP).</li> </ul>
<p><b><u>2011 Tax Year:</u></b></p> <ul style="list-style-type: none"> <li>▪ Reporting health coverage cost on W-2s</li> </ul>	<ul style="list-style-type: none"> <li>▪ Some cost impact. In our opinion this may be a positive for some purposes as employees will learn how much employer really pays for their health care.</li> </ul>
<ul style="list-style-type: none"> <li>▪ HSA/MSA withdrawal penalties increased to 20% and 15%, respectively</li> </ul>	<ul style="list-style-type: none"> <li>▪ Will slightly discourage use of high-deductible health plans and HSA/MSA enrollment and hamper consumer driven cost control model somewhat but creates no added cost employers cannot control.</li> </ul>
<p><b><u>2013 Tax Year:</u></b></p> <ul style="list-style-type: none"> <li>▪ Eliminating deduction for Medicare Part D Subsidy</li> </ul>	<ul style="list-style-type: none"> <li>▪ Before 2013, employers who provide retiree health coverage which includes prescription drug coverage, are able to both exclude the subsidy from income and deduct its expenditure. This double deductibility ends and can have 2010 financial accounting impact.</li> </ul>
<ul style="list-style-type: none"> <li>▪ Health FSA contributions limited to \$2,500 per year</li> </ul>	<p>Limits an employer's ability to assist employees in paying for uncovered health care on a pre-tax basis, but not cost increase mandate. Lower limits lower an employer's payroll tax savings.</p>

The Changes	The Effects
<ul style="list-style-type: none"> <li>▪ \$500,000 employer deduction cap on salaries paid by insurance companies</li> </ul>	<ul style="list-style-type: none"> <li>▪ Significantly raises after-tax cost of their highest-paid personnel.</li> </ul>
<p><b><u>Plan Years Beginning After December 31, 2013</u></b></p> <ul style="list-style-type: none"> <li>▪ Annual limits eliminated for group health plans and all health insurance (including grandfathered plans)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Cost impact will depend on existing annual limit levels.</li> </ul>
<p><b><u>Effective January 1, 2014:</u></b></p> <ul style="list-style-type: none"> <li>▪ “Employer Responsibility” Requirement</li> </ul>	<ul style="list-style-type: none"> <li>▪ Employers with 50 or more employees who do not offer minimum acceptable coverage to their employees must pay \$2,000 annually for each full-time (30 hours/week) employee over the first 30 employees, as long as at least one employee receives a subsidy or health care tax credit.</li> <li>▪ Waiting periods over 90 days prohibited.</li> <li>▪ Employers who offer coverage but whose employees receive subsidies or tax credits must pay \$3,000 for each worker receiving a subsidy but not more than \$2,000 times the number of full-time employees.</li> <li>▪ Potential significant cost increase to employers who provide coverage but have significant employee cost sharing, and employers who do not offer acceptable coverage levels.</li> </ul>
<ul style="list-style-type: none"> <li>▪ Employee wellness incentive program</li> </ul>	<ul style="list-style-type: none"> <li>▪ Will permit employers to use rewards and penalties of up to 30% of the cost of coverage and, as a result, may reduce plan costs. Unclear if it applies to grandfathered plans.</li> </ul>
<p><b><u>Some Time in 2017 to be Determined:</u></b></p> <ul style="list-style-type: none"> <li>▪ Employers must notify employees of right to join an Exchange</li> </ul>	<ul style="list-style-type: none"> <li>▪ Unknown cost impact but material decrease is possible.</li> </ul>
<p><b><u>2018 Tax Year:</u></b></p> <ul style="list-style-type: none"> <li>▪ “Cadillac Plan” Tax</li> </ul>	<ul style="list-style-type: none"> <li>▪ 40% tax imposed on plan costs to the extent it exceeds \$10,200 per person for self-only coverage and \$27,500 for family coverage.</li> <li>▪ Will drive up costs greatly for employers who offer significantly generous health coverage.</li> </ul>

## PART II. 2010 HEALTH CARE REFORM - CHANGES AFFECTING **EXECUTIVES**

The Changes	The Effects
<p><b><u>2013 Tax Year:</u></b></p> <ul style="list-style-type: none"> <li>• Medicare tax increased by .9% on income over \$200,000 (\$250,000 married joint).</li> </ul>	<ul style="list-style-type: none"> <li>• Significant tax increase on higher-income earners.</li> </ul>
<ul style="list-style-type: none"> <li>• 3.8% additional tax on net investment income for taxpayers (including trusts and estates) in excess of \$200,000 (\$250,000 married joint).</li> </ul>	<ul style="list-style-type: none"> <li>• Significant tax increase on higher-income earners and wealthy individuals, estates and trusts; adverse impact to wealth accumulation and estate planning.</li> </ul>
<ul style="list-style-type: none"> <li>• \$500,000 employer deduction cap on salaries paid by insurance companies.</li> </ul>	<ul style="list-style-type: none"> <li>• Will discourage high compensation levels in the insurance industry.</li> </ul>
<ul style="list-style-type: none"> <li>• Deductible medical expense threshold was raised from 7.5% to 10%. (Individuals over age 65 stay at 7.5% threshold through 2016).</li> </ul>	<ul style="list-style-type: none"> <li>• Tax increase on high-earners for large, uncovered medical expenses.</li> </ul>
<ul style="list-style-type: none"> <li>• Health FSA contributions limited to \$2,500 per year.</li> </ul>	<ul style="list-style-type: none"> <li>• Tax increase on those who make large pre-tax FSA contributions; limits amounts employer may provide; more out of pockets paid with after-tax income.</li> </ul>

The **true** meaning of many provisions of the Health Care Reform Act will only be known in the months and years ahead. As we always have, we will keep you informed about these and any other developments that have the potential of affecting you, your business or your employees.

*Wayne W. Wisong, J.D., LL.M.*  
*Senior Director, ERISA Compliance &*  
*In House Legal Counsel*  
*Mahoney&Associates*

*M&A is an employee benefit consulting and management firm and, as such, we do not practice law.*