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Prepare for More Changes: The End of the HCTC and HIPAA Certificates

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April 21, 2013 — The health reform law is so broad and sweeping that, more than three years after its enactment, its effects continue to arise in seemingly unrelated aspects of employer-sponsored health benefits. Two of those aspects have come to light recently: (1) the Health Coverage Tax Credit, which has been inextricably linked to COBRA coverage since its enactment in 2002 and will expire at the end of 2013 as a result of reform; and (2) the proposed elimination of the requirement that health plans and health insurance issuers provide HIPAA certificates of creditable coverage, effective as of Dec. 31, 2014.

HCTC

The HCTC is a federal tax credit, originally enacted as part of the Trade Act of 2002 and modified multiple times, that allows eligible individuals to offset the cost of qualified health coverage, including COBRA coverage. In general, the Trade Act provides benefits for workers displaced by the impact of foreign trade and individuals who are between ages 55 and 64 and: (1) are receiving a pension benefit paid in whole or in part by the Pension Benefit Guaranty Corporation; or (2) received a lump sum benefit from the PBGC in connection with a plan otherwise taken over by the PBGC.

One of the significant Trade Act benefits is the HCTC, which was originally intended to subsidize 65 percent of the cost of COBRA coverage and other qualified health insurance. This 65-percent tax credit was raised to 80 percent for months after May 1, 2009, and before Feb. 13, 2011. For months beginning on or after Feb. 13, 2011, and before Jan. 1, 2014, the tax credit is 72.5 percent.

The HCTC will expire on Jan. 1, 2014, when the state-based health insurance marketplaces (“exchanges”), as mandated by reform, become operational. At the same time, the associated premium tax credits and/or reductions in the cost-sharing amount under exchange-based health plans become available to eligible individuals who purchase those plans. Thus, in effect, the federally funded HCTC is being replaced with more widely available, federally funded premium tax credits and cost-sharing reductions.

HIPAA Certificate of Creditable Coverage

The CCC is a certificate provided by health plans and health insurance issuers to individuals who lose coverage under the plans or policies to prove that they had health coverage during a certain period. Individuals use the CCC to demonstrate to a new health plan or health insurance policy that they had prior creditable health coverage. This helps them avoid the application of any pre-existing condition exclusions. The requirement to provide the CCC originated with HIPAA, which was the first federal law to limit the use of pre-existing condition exclusions by health plans and health insurance policies.

Health reform expanded upon HIPAA's pre-existing condition limitations by prohibiting the imposition of pre-existing condition exclusions for children under age 19 for plan and policy years beginning on or after Sept. 23, 2010. Furthermore, as of Jan. 1, 2014, health reform will prohibit the imposition of pre-existing condition exclusions for all individuals, regardless of age.

Consequently, as of Jan. 1, 2014, the purpose of and need for the CCC will no longer exist. Although the law requiring the provision of CCCs continues to exist, proposed regulations issued in March 2013 indicate that this requirement will be eliminated as of Dec. 31, 2014. The delayed date presumably addresses the fact that some non-calendar year plans will continue to impose pre-existing conditions for some portion of 2014.

Related Impacts on Health Plan Administration

Viewed at one level, the elimination of the HCTC and CCC requirements might suggest that plan administration will be easier — there will be many fewer items to administer. Although that might be true in the future, some immediate additional administrative issues should be considered by plan administrators.

1. **COBRA notices (initial notices and election notices) and other participant communications need to be modified.** Many of these communications refer to the HCTC credit, for example. They also might refer to other aspects of the HCTC program. Once these rules expire, the documents explaining them should be modified. Similarly, summary plan descriptions, certificates of insurance, and any other plan documentation should be amended. Furthermore, references to any delivery of CCCs should be eliminated once that requirement expires.
2. **COBRA administrative procedures must be reviewed to cease to take the program into account**. Plan administrators may want to consider contacting any COBRA qualified beneficiaries who are receiving the HCTC in late 2013 to remind them that, as of Jan. 1, 2014, they must pay the entire COBRA premium to retain COBRA coverage. Also, as part of the HCTC provisions, certain participants were allowed to keep their COBRA coverage in effect longer than the normal COBRA period. That extended coverage expires Jan. 1, 2014, and affected qualified beneficiaries should be notified of that expiration.

The effect of health reform on employer-sponsored health coverage is unprecedented. As with any change of law, and especially with a law as complex and far-reaching as the reform law, health plan sponsors and administrators should consult with experienced employee benefits counsel to ensure their health plans continue to comply with all legal requirements.

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