



# SELF-INSURED PLANS AND ERISA

## Are ERISA self-insured plans subject to the PPACA?

The Affordable Care Act (ACA) includes numerous reforms affecting the health coverage that employers provide to their employees. Many of these reforms apply to all group health plans, regardless of their method of funding. Plans that have grandfathered status under ACA, however, are not required to comply with select health care reform requirements. In addition, self-insured plans are exempt from certain ACA requirements.

A self-insured plan is a health plan where the employer assumes the financial risk of providing health care benefits to its employees. Employers may decide to self-insure their health plans for a number of reasons, such as avoiding state insurance taxes and state benefit mandates, retaining more control over plan design and controlling reserves. There may also be disadvantages associated with self-insuring, such as a greater assumption of risk and increased administrative obligations.

This Commercial Insurance Legislative Brief summarizes how the health care reform law applies to self-insured plans.

### **REFORMS THAT APPLY TO SELF-INSURED PLANS**

As noted above, many of ACA's reforms affect all group health plans, regardless of whether they are fully insured or self-insured. For example, among many other reforms, self-insured and fully insured plans must comply with the following ACA provisions:

- Dependent coverage for adult children up to age 26;
- Coverage of preventive health services without cost-sharing (grandfathered plans are exempt);
- No rescissions of coverage, except in the case of fraud or intentional misrepresentation of material fact;
- No lifetime limits on essential health benefits and annual limits are restricted until 2014 (in 2014, all annual limits are prohibited); and
- Improved internal claims and appeals process and minimum requirements for external review (grandfathered plans are exempt).

In addition, both self-insured and fully insured plans are subject to ACA's requirement to provide participants and beneficiaries with the uniform summary of benefits and coverage. Sponsors of self-insured and fully insured plans alike must also comply with ACA's requirement to report the aggregate cost of employer-sponsored group health plan coverage on their employees' Forms W-2.



## **REFORMS THAT DO NOT APPLY TO SELF-INSURED PLANS**

### **Essential Health Benefits Package**

Beginning in 2014, non-grandfathered insurance plans in the individual and small group markets must offer a comprehensive package of items and services, known as essential health benefits. This requirement applies to plans offered inside and outside of the state insurance exchanges (Exchanges). ACA identified in broad terms 10 benefit categories that must be included as essential health benefits. Within these broad categories, the individual states have flexibility to select their own benchmarks for defining essential health benefits.

Self-insured group health plans, health insurance coverage offered in the large group market and grandfathered plans are not required to cover essential health benefits.

### **Medical Loss Ratio Rules**

The medical loss ratio (MLR) rules became effective on Jan. 1, 2011. These rules require health insurance issuers to spend 80 to 85 percent of their premium dollars on medical care and health care quality improvement, rather than administrative costs. Issuers that do not meet these requirements must provide rebates to consumers beginning in 2012. The MLR rules do not apply to self-insured plans.

### **Small Employer Tax Credit**

Beginning with 2010 tax years, ACA created a tax credit for eligible small employers that provide health care coverage to their employees. In order to be eligible for the health care tax credit, an employer must:

- Have fewer than 25 full-time equivalent employees (FTEs);
- Pay average annual wages of less than \$50,000 per FTE; and
- Pay at least half of employee health insurance premiums (based on single coverage).

For tax years 2010 through 2013, the maximum health care tax credit is 35 percent of premiums for small business employers and 25 percent of premiums for small tax-exempt employers. An enhanced version of the credit will be effective in 2014.

The tax credit is only available for the purchase of health insurance coverage, and so it does not apply to self-insured coverage.

### **Review of Premium Increases**

ACA required the Department of Health and Human Services (HHS) to establish a process for the annual review of unreasonable increases in premiums for health insurance coverage.

HHS's process provides that effective Sept. 1, 2011, issuers seeking rate increases of 10 percent or more for non-grandfathered plans in the individual and small group markets must publicly disclose the proposed increases, along with justification for the increases. Starting Sept. 1, 2012, the 10 percent threshold will be replaced with a state specific threshold to reflect insurance and health care cost trends particular to that state. The increases will be reviewed by either state or federal experts to determine whether they are unreasonable.



This review process for rate increases applies to issuers in the small group and individual markets. However, it does not apply to grandfathered health plan coverage or to excepted benefits (for example, liability insurance, workers' compensation insurance, limited scope dental or vision benefits, long-term care or nursing home benefits and hospital indemnity insurance). It also does not apply to self-insured plans.

### **Annual Insurance Fee**

ACA's revenue raising provisions require certain health insurance providers to pay an annual fee beginning in 2014. Issuers with net premiums in a calendar year of \$25 million or less are exempt from the fee. Employers that self-insure their employees' health coverage are also exempt from the fee.

### **Methods to Allocate Insurance Risk**

ACA includes reforms related to the allocation of insurance risk through reinsurance, risk corridors and risk adjustment. The purpose of these reforms, which become effective in 2014, is to protect against risk selection and market uncertainty as insurance changes and the Exchanges are implemented.

Self-insured plans are not subject to some of these provisions, such as the risk adjustment charges that states may impose on non-grandfathered plans in the individual and small group market. However, under ACA, each state must establish a transitional reinsurance program to help stabilize premiums for coverage in the individual market during the first three years of Exchange operation (2014-2016). Administrators of self-insured plans will be required to contribute to this program.

### **Insurance Market Reforms**

Effective for 2014, health insurance issuers must comply with a new set of market reforms. Market reforms that are inapplicable to self-insured arrangements include:

- **Guaranteed Issue and Renewability** - Health insurance issuers offering coverage in the individual or group market in a state must accept every employer and individual in the state that applies for coverage and must renew or continue to enforce the coverage at the option of the plan sponsor or the individual.
- **Insurance Premium Restrictions** - Health insurance issuers will not be permitted to charge higher rates due to health status, gender or other factors. Premiums will be able to vary based only on age (no more than 3:1), geography, family size and tobacco use.