



Client Alert

Health Care Reform Series 2010



Health Care Reform Has Arrived: “Benefits for Women and Responsibilities for Employers”

April 6, 2010

Understanding and interpreting the new sweeping healthcare reform changes is now a top priority for all employers. To help clients work through the myriad of issues and changes, the Proskauer Health Care Reform Task Force is publishing a series of targeted client alerts that will focus on key compliance requirements. This client alert focuses on benefits for women enacted as part of the Patient Protection and Affordable Care Act (H.R. 3590) (the Reform Act) as amended by the Health Care & Education Affordability Reconciliation Act of 2010 (H.R. 4872) (the Reconciliation Act).

Breastpumping Breaks and Private Areas Required

The Reform Act adds a new provision to the Fair Labor Standards Act (FLSA) that addresses the needs of working women who breastfeed their infant children. Effective immediately, employers covered by the FLSA must provide “reasonable” breaks to mothers to express milk for their infants who are up to one year old. The newly enacted section of the FLSA also mandates that employers provide a private location, other than a restroom, where mothers may express milk. This provision does not apply to employers with fewer than 50 employees if its requirements would “impose an undue hardship by causing the employer significant difficulty or expense.”

The Reform Act does not require that breaks for breastpumping be paid regardless of the time spent breastpumping. However, several states already mandate that breastpumping breaks be treated as compensable time and, under the newly enacted section of the FLSA in the Reform Act, employers must adhere to the standard that is more favorable to the employee. Thus, if the employer is located in a state that mandates paid breastpumping breaks, the employer will still need to satisfy this requirement.

Required Coverage of Preventive Care^[1]

Effective for the first plan year beginning on or after September 23, 2010 (January 1, 2011 for calendar-year plans), a group health plan must provide preventive health care and screenings without cost-sharing (i.e., no co-payments, deductibles or co-insurance). Many of these services specifically apply to women, including:

- Annual to biennial mammograms for all women starting at age 40;
- Cervical cancer screening (pap smears) at least every three years;
- Genetic counseling for certain women with increased risk of breast cancer;
- Promotion and support of breastfeeding; and
- Routine screening for osteoporosis in women age 65 and older.

In addition, to-be-issued governmental guidelines will establish additional preventive care and screenings for women that must be covered under group health plans. Employers should confirm with their insurers or third-party administrators/administrative services only providers that the required preventive services will be available without cost-sharing.

Direct Access to Obstetrical and Gynecological Care^[2]

Effective for the first plan year beginning on or after September 23, 2010 (January 1, 2011 for calendar-year plans), a group health plan may not require a female participant to obtain pre-authorization or a referral from the plan, primary caregiver, or any other individual prior to receiving obstetrical or gynecological care from a participating health care professional. The Reform Act does not, however, waive any exclusions of coverage under the terms of the group health plan with respect to obstetrical or gynecological care, nor does the Reform Act preclude a group health plan from requiring that the obstetrical or gynecological provider notify the participant's primary health care provider of treatment decisions.

Other Women's Health Issues Addressed

The Reform Act contains other provisions addressing women's health issues that do not apply to employer-sponsored plans. Examples of such provisions include:

- The inclusion of maternity coverage as an "essential benefit" in exchange-offered plans;
- The provision of federal funds to states to provide services to pregnant and parenting teens and women;
- The establishment of specific women's offices within the Department of Health and Human Services and the Centers for Disease Control and Prevention.

This *client alert* is meant to summarize and highlight the provisions of health care reform that affect women's health issues and impose new requirements on employers or their group health plans. We will provide more in-depth analysis of some of the issues highlighted above in future *client alerts* and will continue to update our clients on new developments in this rapidly changing area of the law.

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^[1] These requirements are generally not applicable to "grandfathered plans." For more information on grandfathered plans, please see our April 1, 2010 Client Alert entitled *Health Care Reform Has Arrived: "Grandfathered Plans."*

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