

TREATMENT OF CERTAIN TYPES OF HEALTH COVERAGE UNDER SELECT PROVISIONS OF THE PATIENT PROTECTION AND AFFORDABLE CARE ACT¹

		Type of Coverage												
		Major Medical	Section 125 Health FSA	HRA	HSA	LTC	Dental or Vision	Specified Disease or Hosp/Fixed Indemnity	Medicare Supp	On-Site Medical Clinic	Accident, AD&D, Disability, Etc.	Mini-Med	Medicare Advantage	Reinsurance
PPACA Provision	If employer-sponsored, does the coverage count for purposes of the 40% high-cost excise tax? <div>(See PPACA § 9001)</div>	YES	YES, to extent of employee salary reduction contributions	YES	YES, to extent of employer contributions ²	NO	NO, but only if stand-alone coverage	NO, but only if HIPAA-excepted coverage and paid with after-tax premiums	YES	YES	NO, but only if HIPAA-excepted	YES ³		NO
	If employer-sponsored, must the coverage be valued for purposes of the new Form W-2 reporting requirement? <div>(See PPACA § 9002)</div>		NO		NO, but existing law requires reporting of employer contributions									
	Is the coverage subject to the individual and group market reforms (including adult child coverage, MLR rules, restrictions on lifetime and annual limits, and rescissions)? <div>(See PPACA § 1001)</div>		NO, to extent HIPAA-excepted	YES, with ltd. exception from annual/lifetime limits	NO ⁴	NO, but only if HIPAA-excepted								
	If insurance, is it subject to the new nondiscrimination rules? <div>(See PPACA § 1001(5))</div>		N/A, because not usually provided as insurance											
	Does providing the insurance subject the issuer to a \$2 per participant fee for patient-centered outcomes research trust fund? <div>(See PPACA § 6301)</div>								NO, except possibly pre-2013 ⁵					
	Could providing the insurance subject the issuer to limits on executive compensation? <div>(See PPACA § 9014)</div>		Likely NO											
	Could providing the insurance subject the issuer to the health insurer annual fee? <div>(See PPACA § 9010)</div>				NO	YES	NO, but only if HIPAA-excepted	YES, unless Medigap	YES	NO, but only if HIPAA-excepted	YES ⁶			

1 H.R. 3590, the Patient Protection and Affordable Care Act (PPACA) (Pub. L. No. 111-148), as amended by H.R. 4872, the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

2 This includes direct employer contributions and amounts salary reduced by an employee through a cafeteria plan.

3 Mini-medical plans do not enjoy their own express HIPAA exception. However, to the extent a mini-medical plan is able to fit within one of the express exceptions (such as fixed indemnity insurance), it would be treated as all other HIPAA-excepted coverage.

4 HSAs generally do not constitute employee welfare benefit plans and, thus, generally would not be subject to the insurance reforms.

5 PPACA § 9014 (regarding the new executive compensation limits) uses one definition of “health insurance provider” for tax years 2010, 2011 and 2012 and a different definition for tax years after 2012. For an insurer that does not sell major medical insurance (and thus would not be a “health insurance provider” in tax years after 2012), but does sell other types of health insurance, including dental, vision, specified disease or illness, hospital or fixed indemnity, Medicare supplemental, and mini-medical, regardless of whether such coverage is HIPAA-excepted, it is possible that the statute could be read to limit certain deferred compensation payable in or after 2013 for services performed in 2010, 2011, and 2012. There appears to be a reasonable reading of the statute that selling certain LTC does not subject an insurer to the new executive compensation limits.

6 Only for the reinsurance of health insurance (but specifically excluding (i) reinsurance of LTC, (ii) Medicare supplemental, and (iii) HIPAA-excepted accident, disability, specified disease or illness and hospital/fixed indemnity insurance).