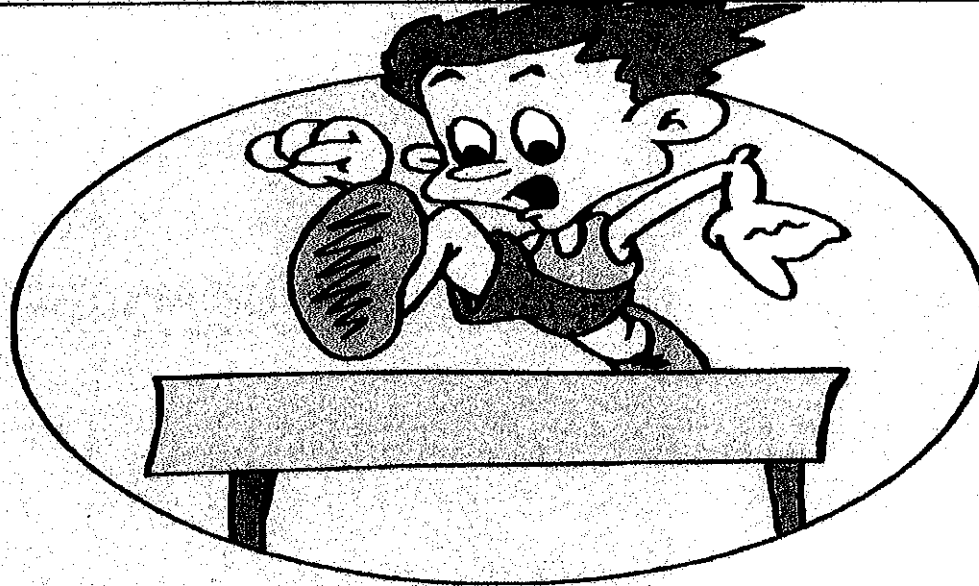


# DrummondWoodsum

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## The Hurdles of Health Care Reform and How Schools Can Clear Them



### KEY:

“EE” – Employee

“ER” – Employer

# Overview

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- Signed March 23, 2010
- Effective 7/1/11 (assuming 7/1-6/30) plan year:
  - i. Health Insurance Changes
  - ii. New Employer (“ER”) Obligations
- Other Reforms Effective Between 2011-2018
- Does not apply to stand alone dental and vision plans

# 2010

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## Breaks for Nursing Mothers:

**New Federal Law:** ERs must provide nursing mothers, up to 1 year after birth, a reasonable break to express breast milk. ERs must provide a private place, other than a bathroom. ERs with less than 50 EEs are exempted if complying would cause significant difficulty or expense. ER is not required to pay the EE for the break time.

**Maine and VT already has this law:** right exists for up to 3 years, no exemption for small ERs

**New Hampshire:** No law directly addressing this

**TIP:** Maine and VT comply with State law; NH comply with Federal law  
>Update employee handbooks?

# January 1, 2011

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**OTC Medication:** Effective 1/1/11 cannot reimburse EE's for over the counter medications through an FSA unless they obtain a prescription

- What is an FSA?
- What is a cafeteria plan?

TIP: Amend your FSA to reflect the change to OTC medications

# July 1, 2011

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- Health Insurance is required to change effective 7/1/11 (assuming health insurance plan year runs 7/1 – 6/30)
- Most of the burden falls on the insurance company, but ERs will have new responsibilities
- Some changes do not apply to “grandfathered health plans”

# July, 1 2011

## Non-Grandfathered Health Plans (Most Schools)

### 1) Effective 7/1/11, Health insurance is Required to Change:

- No lifetime limits
- No “restrictive” annual limits
- No cancellations of coverage (except fraud, nonpayment)
- Can’t exclude children under 19 based upon pre-existing conditions (2014 no such exclusions to any participant)
- \*\*\*Free access to preventative services (blood/cholesterol tests, many cancer screenings, routine vaccinations, routine child check-ups, certain counseling services)
- \*\*\*Allow individuals to choose pediatrician or OB/GYN as PCP
- \*\*\*Allow certain services w/o referrals

**TIP:** Just be aware that health insurance policies must change

\*\*\*Does not apply to “grandfathered” health plans

# **July, 1 2011**

## **Non-Grandfathered Health Plans (Most Schools)**

### **2) ER Admin Responsibilities**

- **\*\*\*The Adult Children Rule**
- **\*\*\*Highly Compensated Employee Rule**

**\*\*\*different rule for grandfathered health plans  
(discussed later)**

**TIP: You need to know these new responsibilities**

# July 1, 2011

## Non-Grandfathered Health Plans

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### Major ER Responsibility #1: Adult Children

- Rule: Beginning 7/1/11, if you offer dependent coverage, must offer to cover adult children until age 26, even if other coverage available
  - Irrelevant whether child lives w/ parents, is a dependent on parents' tax return, or is a student
  - You cannot require parents to pay more for adult children than minor children
  - You do not have to cover spouse/adult child's children
  - At age 26, health plan has 2 choices:
    - 1) End adult child's coverage, OR
    - 2) Continue coverage but taxable benefit the following Jan. 1

• TIPS: .....

# July 1, 2011

## Non-Grandfathered Health Plans

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### Major ER Responsibility #1: Adult Children (Continued)

- **TIP #1:** Include adult child DOL model notice ([www.dol.gov](http://www.dol.gov)) w/ open enrollment by June 1, 2011
- **TIP #2:**

Example: My EE's child turns 26 on October 1, 2011, what happens?

Answer: There are two possibilities:

- (1) Health plan will require dropping coverage at age 26; or
- (2) Health plan will allow coverage to continue, but EE  
taxed on child's health benefit beginning January 1, 2012

# July 1, 2011

## Non-Grandfathered Health Plans

Major Responsibility #2: highly compensated employees ("HCE")

Enforcement Suspended Pending Additional Regulations!

- Original Rule: HCE's cannot be charged less for health insurance than other full-time employees (if you give health insurance benefit to a Superintendent, you must also give it to all other full-time EE's)
- IE: School cannot pay 100% for Superintendent, but 80% for staff
- HCE: among the highest paid 25% of EE's of the particular school
  - Superintendents, Business Managers, Special Ed Directors, Principal, Vice Principal
- Effective Date: Nobody knows (*Enforcement Suspended*)

School Psychst  
OT's?  
Vandriess  
30hrs  
rules?

# 2011

## Non-Grandfathered Health Plans

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### Major Responsibility #2: HCE (Continued)

- **TIP #1:** Enforcement suspended pending federal regulations. *Unlikely* schools will have to comply during 7/1/11 – 6/30/12 school year
  
- **TIP #2:** This rule *may* go away or may be limited. IRS is considering:
  - i) Exempting health insurance;
  - ii) Changing definition HCE to \$110,000
  - iii) Exempting HCE's who pay income tax no health insurance
  
- **TIP #3:** If the rule applies to schools, school has 2 choices:
  - (1) Increase non-HCE health benefit to match HCE health benefit, or
  - (2) Decrease HCE health benefit to match non-HCE health benefit  
>make up for lost health benefit w/ salary or 403(b)?

# 2011

## Non-Grandfathered Health Plans

### Major Responsibility #2: HCE (Continued)

**Example:** Historically School District X pays for 100% of Superintendent's health insurance cost, 85% of Business Manager, 50% full-time support staff

**Original Highly Compensated Rule:** HCE cannot be charged less for health insurance than other full-time EE's

**Original Rule Means You have 2 Choices:**

- i) Lower Superintendent and Business Manager to 50%, or
- ii) Raise full-time support staff to at least what Superintendent, Business Manager and other HCE's get

**Exception for ERs w/ no more than 50 EE's?**

# 2011

## **Grandfathered Health Plans**

**Significance: Some of the new rules do not apply**

**What is a GF Plan? Basically, health plan which:**

- (a) In effect on March 23, 2010 (date laws passed); and
- (b) **\*\***Is not amended or modified, in the future, in way which causes it to lose GF status.

# 2011

## Grandfathered Health Plans

- The following rules do **NOT** apply to grandfathered health plans:
  - No discrimination in favor of HCE
  - Special rule for adult children: only if not eligible under another ER's plan.
  - Cover 100% of the cost of certain preventative care (screenings/immunization)
  - Allow individuals to choose pediatrician or OB/GYN as PCP
  - Allow certain services w/o referrals
  - Appeals Process
  - Other Reporting Requirements in 2012, 2014 and beyond

# 2011

## Grandfathered Health Plans

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### Grandfathered Plans Still Need to Comply w/:

- No lifetime limits
- No “restrictive” annual limits
- No cancellations of coverage (except fraud, nonpayment)
- Can’t exclude children under 19 based upon pre-existing conditions (2014 no such exclusions to any participant)
- Adult Children until age 26 *only if not eligible under another ER’s plan*

➤ **Note:** *Much fewer requirements (Cost Savings?)*

# 2011

## Grandfathered Health Plans

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**How does a school determine if its health plan is grandfathered?**

- Each school will have to examine it's particular health plans
- Special rules for EE's covered under a collective bargaining agreement
- Call your health insurance issuer
- Be very careful when changing terms of health plan .....

# 2011

## Grandfathered Health Plans

### To Maintain Grandfathered Status, for 7/1/11 Plan You Cannot:

*\*\*Decrease Employer Contribution Rate by more than 5%;*

Ex: if paying 70% of cost of family plan in 2010, must pay at least 65% in

•*Elimination of benefits for necessary element to diagnose or treat a condition;*

Ex: if the treatment depression is drugs and counseling. For new health plan year, health plan eliminates benefit for counseling.

•*Any Increase in EE Co-insurance %;*

Ex: In 2010-2011, EE's were required to pay 20% co-insurance for inpatient surgery, but new plan calls for 21% EE contribution

# 2011

## Grandfathered Health Plans

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### To Maintain Grandfathered Status, for 7/1/11 Plan You Cannot:

- *Certain Increases in Co-Pays*: increase exceeding greater of (1) \$5 or (2) 15% plus “medical inflation”
- *Certain Increase in Deductibles or Out-of-Pocket Limits*: deductible/out of pocket maximum as of March 23, 2010 is increased by more than “medical inflation” plus 15%
- *Certain Changes to Overall Annual Limits of Benefits*: This rule is very technical but GF can be blow if either: (1) plan never had an annual limit on coverage benefits, but now imposes one or (2) plan had an annual limit on coverage benefits and plan now lowers these annual limits.

*Note: Special rule for EEs covered under a CBA*

# 2010 and 2011 RECAP

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- 1) New Nursing Mother's Rule
- 2) Health Insurance Changes:
- 3) New Adult Children Rule (Use DOL model notice for open enrollment)
- 4) HCE – Temporarily Suspended
- 5) Is your health plan grandfathered?

# 2012

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1) New Form 1099 Reporting Requirements

**Repealed!!!**

# 2012

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## 2) Form W-2: Must report the cost of health insurance coverage

- Rule does not mean the cost of health insurance is taxable (just reporting)
- Amount reported includes employee and employer share of the cost
- Amount reported does not include contributions to an FSA
- Reporting is optional for 2011 W-2

# 2012

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## 3) Reporting Requirements:

- **Quality of Care Reports** to HHS (unless you are grandfathered)
- **Summary of Benefits:** to EE's based on HHS standards by March 23, 2012.
- **TIP:** Insurance Providers should take care of this

## 4) Automatic Enrollment:

- **Effective date:** has not yet been released (expected 2014)???
- **Rule:** ER's w/ 200 or more full-time EEs and offers one or more health plans
  - EE can then opt-out

# 2012

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## 5) *Voluntary Federally Administered Long-Term Care Program* (“CLASS Act”)

- i) ER's are not required to offer enrollment to EE's (it's optional)
- ii) Regulations are due from HHS by October of 2012

# 2013

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1) **FSA:** \$2,500 cap on salary reduction contributions to a health FSA

➤ **Tip:** In 2013 you will need to amend your cafeteria plan to reflect the change

2) **Notice:** Notify all employees of existence of State Exchanges by March 1, 2013

# 2014

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## Employer Provisions

**Exchanges**: ER w/ up to 100 EEs will be able to purchase health insurance through a state exchange.

**Free Choice Vouchers**: REPEALED!

**Federal Subsidy**: to qualifying individuals to purchase insurance on the Exchange

**Employer “Pay or Play” Penalties**: for qualifying employers (50 or more FTE)

- Penalty #1: ER fails to offer health insurance
- Penalty #2: ER offers unaffordable (exceeds 9.5% family income) or low value (60% of covered costs).

**ER Reporting**: must file return with IRS showing: (i) whether ER offers health insurance and (ii) total number and names of FTE's receiving health insurance coverage.

# 2014

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## Penalty #1

**Question #1** : What is penalty if I *don't offer any health insurance* (e.g. Penalty #1)?

**Answer:** \$2,000 fee per FTE per year, over 30 FTEs.

IE: 100 FTE's then penalty is \$140,000 (or 70 FTE x \$2,000)

# 2014

## Penalty #2

**Question #2:** What is the penalty if I offer health insurance, but it is either “unaffordable” (exceeds 9.5% family income) OR low value (does not cover 60% of covered costs) (Penalty #2).

Amount: Penalty is the lesser of:

- \$2,000 for per FTE, over 30 FTEs, or
- \$3,000 penalty for each *EE* who: (i) purchases insurance on the exchange and (ii) receives a government subsidy

**TIP :** ER will be notified if EE receiving subsidy

**Tip:** Many EE’s will not qualify as both *purchasing insurance on the exchange* and *receiving governmental subsidy*, so amount of penalty may be relatively low .....

# 2014

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## Tip on Penalty #2: No penalties for following

- i) EEs who choose not to purchase insurance;
  - ii) EEs who choose to purchase the employer-provided coverage, or any other coverage *besides the exchange*;
  - iii) EEs who do not purchase insurance on the exchange because they have coverage from a spouse's policy or parent's policy;
  - iv) EEs who do not purchase insurance on the exchange because they are covered by Medicare or Medicaid;
  - v) EEs who cannot afford insurance on the exchange, even with the government subsidy;
- employees whose family income exceeds four times the poverty level (approximately \$43,000 for a single employee and approximately \$88,000 for a family of four); and
- employees for whom the employer premium is less than 9.5% of income.

# LATER YEARS

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**2017 - State Exchanges:** States *may* allow large ERs (more than 100 EEs) to enter State Exchanges.

**2018 - Tax on Cadillac Health Plans:** 40% non-deductible Excise Tax for very expensive health insurance plans (tax on excess of cost over: \$10,200 individuals; \$27,500 families plus inflation).

- i) Tax is on insurer (unless self-funded plan)
- ii) Insurance company probably passes along to EE with higher premiums.

# TAKE AWAY POINTS

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- 1) Major Health reforms become effective 7/1/2011
- 3) Many changes to benefits required under health insurance
- 3) Major Employer Requirements effective 7/1/2011:
  - Adult Children (are you grandfathered)
  - HCE Employees (are you grandfathered)
- 4) 2013 - \$2500 cap on FSA contributions
- 5) 2014 – “Play or Pay” Penalties
  - No insurance at all (potentially large penalty)
  - “Unaffordable insurance) potentially smaller penalty

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