



## What FSA and HRA Plan Sponsors Need To Know About Healthcare Reform in 2013

When President Obama signed H.R. 3590, the *Patient Protection and Affordable Care Act* and the *Healthcare and Education Reconciliation Act of 2010* (PPACA) into law a timeline was created for implementing changes beyond 2018. Many of those changes will not take effect until after the election in November 2012. The changes which are of immediate concern to FSA and HRA plans are as follows.

**Summary of Benefits and Coverage** – All group health plans (including FSAs and HRAs) must provide a Summary of Benefits and Coverage (SBC) for open enrollment periods that begin on or after Sept. 23, 2012. PPACA requires a uniform glossary of health insurance and medical terms to help consumers compare and understand their health benefits. An employer conducting online enrollment may distribute the SBC electronically. The required information and glossary are included in the Summary Plan Document (SPD) of your FSA or HRA plan. Every eligible employee who has not already received the SPD, whether or not they elect participation, must be provided a copy of the SPD for your plan(s).

**60-Day Prior Notice of Plan Changes** – Health plans must provide notice to participants of any material modifications to a group health plan (including FSAs and HRAs) no later than 60 days prior to the effective date of the change. This rule takes effect as of the first plan year beginning after March 23<sup>rd</sup>, 2012.

**\$2,500 Health FSA Cap in 2013** – Starting January 1, 2013 contributions to a health care FSA are limited to \$2,500 per year and adjusted for inflation in subsequent years. Cafeteria plans must be amended to reflect the \$2,500 limit, although plan sponsors may retroactively amend the plan documents provided the amendment is adopted on or before Dec. 31, 2014.

- The \$2,500 cap only applies to FSAs. Dependent Care elections and employer contributions to HRAs were not impacted by this change.
- The \$2,500 cap applies on a per-employee basis. If an employee and his or her spouse are both eligible to make contributions to a health FSA, each may elect contributions up to the \$2,500 limit, even if both participate in the same plan sponsored by the same employer.
- Health care FSAs are subject to the annual “use it or lose it” rule, meaning any amounts not spent during the plan year are forfeited. Under cafeteria plan rules, plan sponsors may include a 2 ½ month “grace period” following the end of the

plan year, where employees may use amounts remaining from the previous plan year to pay for expenses incurred during the grace period. Any unused amounts that are carried over to the grace period will not count against the next year's \$2,500 cap

- If employees are accidentally permitted to contribute more than \$2,500 for a given year, the employer may correct the error and preserve the plan's status as a cafeteria plan. To do so, the employer must simply pay the excess contributions to the employee as taxable wages and report the wages for income tax withholding and employment tax purposes for the employee's taxable year in which the correction is made. This correction method is not available for willful or intentional over-contributions or for cafeteria plans under audit.
- The PPACA ties the FSA cap to the Consumer Price Index. The cap will be adjusted for inflation annually by the IRS. Wertz & Associates will notify you as changes to the cap are announced by the IRS.

**Availability of benefits to adult children** - The PPACA specifies that group health plan benefits (including FSAs and HRAs) must be made available to children of employees who have not reached 27 by the end of the employee's taxable year.

- Employers must provide a written notice of the availability of health plan benefits to adult children of employees no later than the first day of the plan year.
- The notice may be given to the employee on behalf of the child or provided in enrollment materials. Wertz & Associates has incorporated the required notice into your Flexible Benefit Plan – Election Form.
- Adult children must be given 30 days from the date of the notice to elect enrollment in the plan.
- The FSA requirements of residency support and other tests for dependents do not apply to an adult child who has not reached age 27.
- The adult child must be afforded the opportunity to enroll in the employee's health plan benefits even if the adult child is himself employed and is eligible for health plan benefits through his own employer.
- Employers may rely on information provided by the employee as to the child's date of birth. The IRS is not requiring employers to verify the child's birthdate.
- A full copy of the *Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Dependent Coverage of Children to Age 26 Under PPACA* issued by the Department of Labor is available on the DOL's website at <http://webapps.dol.gov/FederalRegister/PdfDisplay.aspx?DocId=23865>.