

IHA Policy Brief

Employer-Related Issues Under Health Care Reform: January 1 brought about a few new changes under health care reform that employers should be aware of.

Background: Hospitals find themselves in a unique situation when considering the impact health care reform will have on them. Not only will hospitals be required to meet new regulations concerning how health care is delivered in the U.S., but as large employers, hospitals, like other businesses, provide health insurance benefits, pay wages and provide many other employee related benefits that are also now under increased regulation under the new law. Hospitals will be faced with new regulations and standards concerning health insurance, health related employee benefits and tax issues.

Below are some changes that employers should be aware of in 2011 to ensure compliance with the new law including changes to flexible benefit plans, W-2 reporting requirements and others.

Though the lion-share of employer-focused reforms do not go into effect until 2014, such as the employer-sponsored health insurance coverage mandate and penalties, it is important for hospitals to stay up-to-date on the near-term reform requirements that will become effective in the meantime.

Issues:

Tax Changes:

- **Reporting the cost of employer sponsored health insurance coverage of form W-2.** For the 2011 tax year (W-2 forms issued in January 2012), employers will be required to report the aggregate cost of employer-sponsored health insurance coverage on an employee's W-2. Hospitals are urged to begin addressing this issue as soon as possible, as the actual valuation and calculation of health insurance benefits may require outside expert advice.

Plans for which coverage costs must be reported under the new requirement include:

- Medical plans.
- Prescription drug plans.
- Executive physicals.

- On-site clinics if they provide more than de minimus care.
- Medicare supplemental policies.
- Employee assistance programs.
- Health FSAs, HSAs or Archer MSA's are **not to be included** in the calculation.

According to the law the aggregate value of the coverage will be determined under rules similar to the rules used to calculate the COBRA premium for the coverage.

The requirement does not use the calculation to tax the health insurance benefit, but rather Congressional intent was to allow the IRS to track data related to the cost of employer-sponsored health plans as well as to educate employees on the cost of health insurance.

The draft W-2 is available from the [IRS website](#).

Flexible Benefit Changes:

- **Health Savings Account Reimbursements for Over-the-Counter Drugs:**
Reimbursements under a health flexible spending account, health savings account (HSA), health reimbursement account or archer medical savings account for expenses for medicine or drugs will be limited to drugs for which a physician writes a prescription or insulin even if purchased without a prescription, or other health care expenses such as medical devices, eye glasses, contact lenses, co-pays and deductibles.

The new standard applies only to purchases made on or after January 1, 2011, so claims for medicines or drugs purchased without a prescription in 2010 can still be reimbursed in 2011, if allowed by the employer's plan.

- **HSA Penalty Taxes:** The tax for HSA distributions not used for qualified medical expenses increases from 10 percent to 20 percent.

Break Time for Nursing Mothers under the FLSA:

- Employers are required to provide "reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child's birth each time such employee has need to express the milk." Further, employers must provide "a place, other than a bathroom, that is shielded from view and free from intrusion from co-workers and the public, which may be used by an employee to express breast milk." A bathroom, even if private, is not a permissible location under the Act.

The location must be a functional space for expressing breast milk. If the space is not dedicated to the nursing mother it must be available when needed in order to meet the

statutory requirement. A space temporarily created or converted into or made available for the nursing mother for use is sufficient provide that the space is shielded, private and free from intrusion.

- **Time and location** – Employers are required to provide a reasonable amount of break time as frequently as needed.
- **Coverage and Compensation** – Only employees who are not exempt from the FLSAs overtime pay requirement are entitled to breaks to express milk. While employers are not required to provide breaks to nursing mothers who are exempt from the overtime pay requirements they may be obligated to provide breaks under state law.

Employers with fewer than 50 employees are not subject to the FLSA break time requirement if compliance with the provision would impose undue hardship determined by looking at the difficulty or expense of compliance.

Employers are not required under the FLSA to compensate nursing mothers for breaks taken for the purpose of expressing me. However, where employers already provide compensated breaks, an employee who uses that break time to express milk must be compensated in the same way that other employees are compensated for breaks. See the U.S. [Department of Labor](#) website.