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## Definition of "Plan Year" for Health Reform

Under the Patient Protection and Affordable Care Act (PPACA), an employer must identify the plan year for its group health plan to ensure timely compliance with the health care reform requirements, including making coverage available to employees' children until the age of 26. The new requirements apply as of the first plan year beginning on or after September 23, 2010. But how does a plan sponsor determine the plan year?

"Plan year" is not a defined term under PPACA. For any group health care plan subject to the Employee Retirement Income Security Act (ERISA), the plan year will generally be the same as the 12-month plan year for Form 5500 filing purposes, which is typically the enrollment year as disclosed in the plan's summary plan description (SPD). So for an ERISA plan, if a plan's renewal is March but the plan filing year is January, they likely have to start complying as of January 1, 2011.

But if the employer has not complied with the ERISA documentation, disclosure and reporting requirements, or if the employer is not subject to ERISA, additional analysis of the 12-month period over which the plan is administered and operated is needed to identify the plan year. That analysis should take place now, and not when a court or federal agency asks the question. There are potential penalties and court actions to consider and, therefore, to be sure, a plan sponsor may want to make the final determination with the advice of counsel. Conner Strong cannot make this determination for a plan sponsor.

If a plan is not required to file a Form 5500, such as for a state or local plan or a fully insured plan with fewer than 100 participants, or the plan is not required to have or has failed to prepare an SPD, the plan year generally will be the policy/renewal year, presuming that the plan is administered based on that policy/renewal year. So, if a policy renews on January 1 and any annual open enrollment changes take effect January 1, the plan year likely will be deemed to start January 1. But what is the plan year where the policy renews on July 1 and open enrollment changes become effective on January 1 of each year? The lack of an ERISA SPD/filing may leave the plan year determination unresolved. The employer may want the plan year to start on July 1 to delay the date the plan has to comply with the health care reform requirements. But if the plan is administered on a calendar-year basis, the agencies might reasonably argue that the plan year is the calendar year. See possible effective dates as noted in the chart below:

## Public Entity (non-ERISA) – Effective Date Chart

CARRIER RENEWAL	ANNUAL OPEN ENROLLMENT	HC REFORM TAKES EFFECT
January	January	January 2011
July	January	January 2011
January	July	July 2011
July	July	July 2011
August	January	January 2011
July	September	September 2011
February	July	July 2011

In any event, the employer will need to support its position that the group health plan timely complied with the health care reform requirements.

Employers should be coordinating with the insurers/carriers regarding implementation changes, including notifying the insurer if the employer's "plan year" for health reform implementation purposes is different from the renewal date. For many fully insured plans that are not subject to ERISA – such as a town or a school district – the group's insurer may be automatically assuming when health reform takes effect. As a result, groups should coordinate with the insurer regarding the group's health reform effective date. And in any case, the employer must identify the plan year for its group health plan (not the insurer) to ensure that the employer is timely complying with the health care reform requirements, including making coverage available to employees' children until the age of 26.

The sponsoring employer can face excise tax penalties if its health plan fails to meet the health reform requirements and these penalties can add up quickly. In addition, because plans have a legal requirement to comply with the coverage requirements under health reform, a plan beneficiary may have a legal claim to coverage even if the plan has not been revised to reflect the new legal requirements. Note too that in written FAQs and informal comments the federal agencies have said they will take an enforcement approach that stresses good-faith compliance efforts by employers and plans rather than one that focuses on imposing penalties. The agencies have also indicated they expect to finalize in 2011 the various sets of interim final health reform regulations issued this year. In the meantime, employers and plans can expect additional agency guidance in 2010 on various aspects of the law (although we have not seen the plan year issue addressed as part of any promised guidance).

Our goal is to assist our clients in understanding the complex reform regulations of the PPACA. To keep you up to date on the new rules, Conner Strong hosts educational webinars for employers.

**On December 1 you are invited to join us from 2pm - 3pm for *National Health Insurance Reform: Where Are We Now?*** Click [here](#) to register.

Employers are advised to continue to monitor health reform developments. Should you have questions about this or any aspect of federal health insurance reform, contact your Conner Strong account representative toll free at 1-877-861-3220. For a complete list of Legislative Updates issued by Conner Strong, visit our online [Resource Center](#).

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