



## Health Reform Update: Recent Changes and Challenges to PPACA

### Overview

On April 14, 2011, the President signed the Comprehensive 1099 Taxpayer Protection Act, followed by the Continuing Appropriations Act, which was signed into law the next day. Of note to employers and other sponsors of group health plans, these Acts repealed two key provisions of the Affordable Care Act, the expanded Form 1099 reporting requirement and the free choice voucher program.

### Repeal Of Expanded Form 1099 Reporting Requirement

The expanded Form 1099 reporting requirement was seemingly unrelated to health reform; however, it was included as part of the Affordable Care Act to raise approximately \$20 billion in tax revenue to offset part of the cost of health reform.

Prior to its repeal, the provision would have been effective January 1, 2012, and required employers to issue a Form 1099 to any vendor from whom the employer purchased \$600 or more of goods or services in a calendar year. A similar rule already applies to employers who make payments in excess of \$600 to any individual in a calendar year (*i.e., an independent contractor*), which remains unchanged. Small employers had voiced concerns that the expanded Form 1099 requirement would add significantly to the cost of tax reporting.

The Comprehensive 1099 Taxpayer Protection Act includes a provision to offset the loss of tax revenue due to the repeal of the Form 1099 requirement. Individuals who receive a federal premium subsidy (*generally those whose household income is less than 400% of the federal poverty level*) will be required to return part of the subsidy if their income exceeds certain levels. Repayments are based on a sliding scale, with those earning in excess of 400% required to repay the entire subsidy amount. These changes are a considerable increase from those initially established under the Affordable Care Act.

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#### SNAPSHOT:

Recent legislation has repealed two key PPACA provisions:  
1) expanded 1099 reporting requirement;  
and  
2) free choice vouchers.

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## REPEAL OF THE FREE CHOICE VOUCHER

Prior to its repeal, the free choice voucher provision would have required employers to offer certain employees a free choice voucher to opt out of the employer's health plan and enroll in coverage through an exchange. To be eligible for a voucher, an employee's premium contributions had to be between 8% and 9.8%<sup>i</sup> of household income, which could not exceed 400% of the federal poverty level. The voucher would have equaled the employer's contribution to the plan for which the employer pays the largest portion of the cost of the plan. Employees eligible for vouchers would have been able to use the voucher to obtain health coverage through an exchange and keep any remaining voucher amount as taxable income.

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### The Flipside:

Repealing free choice vouchers means employers no longer have an option for avoiding a nondeductible penalty if they fail to offer affordable coverage.

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Employers expressed concern that younger, healthier employees who fit the voucher's parameters would purchase coverage in an exchange in order to keep the remainder of the voucher. This would not only be an additional cost to the employer, but could increase adverse selection in the employer's group health plan.

Although repeal of the free choice voucher may seem like a victory for employers, it removes an employer's ability to avoid a nondeductible penalty under the Affordable Care Act (*for failure to offer affordable coverage*) by providing a free choice voucher, which would have been deductible by the employer.

*This notice is provided as information only and should not be considered a legal opinion. If you have questions, contact Seacrest Partners at 912-544-1900.*

Produced in conjunction with Proskauer Rose law firm.

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<sup>i</sup> This likely should have been 9.5 percent, which is the level at which an individual generally becomes eligible for federal premium assistance instead of a free choice voucher.