



How The Health Care Reform Law Impacts Employers

March 23, 2010

Declared virtually dead a month ago, the House approved on March 21 (by a 219 to 212 vote) the Patient Protection and Affordable Care Act, H.R. 3590 or the “Senate Bill.” The 2,409-page Senate Bill passed in the Senate on December 24, 2009. The Senate Bill was signed into law by President Barack Obama on March 23. It already is subject to numerous states’ legal challenges, including one brought by twelve State Attorneys General alleging the law is unconstitutional.

The House also passed on March 21 the Health Care and Education Reconciliation Act of 2010, H.R. 4872 or the “Reconciliation Bill.” This Bill makes several changes to the Senate Bill. The Reconciliation Bill now heads to the Senate for debate and is expected, at this point anyway, to pass in the Senate. (It might not pass intact, however, if certain provisions are found to violate the “Byrd rule,” which restrict reconciliation bill provisions to only those that impact revenue and spending or if the Senate approves any amendments to it.)

This alert summarizes some of the important consequences for employers and their group health plans — generally, whether self-funded or insured — under the new law, *assuming the Senate passes the Reconciliation Bill unchanged* and President Obama signs it. If the Reconciliation Bill does not become law (or is changed in certain ways), effective dates and certain other provisions will be affected.

Temporary Reinsurance Program for Retiree Coverage

Effective 90 days after enactment, the new law temporarily will reimburse employers for 80% of the cost of retiree health benefits in excess of \$15,000 (up to \$90,000) provided to retirees between the ages of 55 and 64. This “reinsurance program” lasts until 2014. (There has been enough support for a provision – included in the House’s abandoned health care reform bill – that would prevent employers from curtailing or eliminating retiree health coverage that Congress may revisit this issue. See [Health Reform Bill Passed by House Restricts Employer Curtailment, Termination of Retiree Benefit.](#))

Small Employer Subsidies

Beginning this year, employers with no more than 25 employees and less than \$50,000 in average wages are eligible for a tax credit for employer-provided health coverage. Through 2013, the tax credit is up to 35% of the employer’s contribution if the employer contributes at least 50% of the premium. After 2013, available for two years, there will be a tax credit of up to 50% of an eligible small employer’s contribution for health coverage purchased through the Exchange.

Coverage Mandates

Effective six months after the new law is enacted, health plans must treat children up to age 26 as eligible dependents. Also effective six months after enactment, health plans may not impose pre-existing condition exclusions on children, and may not impose lifetime limits on the dollar value of coverage.

Beginning January 1, 2014, health plans may not impose *annual* limits on the dollar value of coverage. Also, beginning 2014, the new law starts setting maximum out-of-pocket costs for participants. Health plans – other than grandfathered

existing health plans – must meet certain minimum benefit standards. (Details regarding minimum coverage standards will be discussed in a subsequent article.)

Nondiscrimination Requirements for Insured Plans

Effective for plan years beginning on the date that is six months after enactment of the new law, *insured* group health plans may not discriminate in favor of highly compensated employees. (Self-funded plans already are subject to nondiscrimination rule under the Internal Revenue Code.)

Special Rule for Employers that are Health Insurance Issuers

Effective for amounts paid in tax years after 2012 with respect to services performed after 2009, the deductibility of executive compensation for health insurance companies is limited to \$500,000.

Tax Withholding and Reporting

Effective January 1, 2013, the Medicare portion of the FICA tax increases to 2.35% (from 1.45%) for earnings over \$200,000 for individuals (the threshold is \$250,000 for couples). Beginning with 2011, employers must report the value of each employee's employer-provided health coverage.

Flexible Spending, Health Savings, and Health Reimbursement Arrangement Changes

Beginning with 2011, the new law prohibits tax-free reimbursements (e.g., from health flexible spending accounts, health reimbursement accounts, and health savings accounts) for over-the-counter-drugs. Effective January 1, 2013, it caps annual pre-tax contributions to health flexible spending accounts at \$2,500, subject to inflation adjustments. The Reconciliation Bill delays the effective date to 2013.

Employer “Pay-or-Play” Mandate

Beginning January 1, 2014, the following “pay-or-play” mandates apply: Employers with more than 50 employees will be required to offer health care coverage to employees or pay a penalty. The penalty for failure to provide coverage – applicable if at least one full-time employee receives government-subsidized Exchange coverage – is \$2,000 per full-time employee in excess of 30 employees. (The “Exchange” is a state-based program through which individuals can buy health coverage that includes subsidies for those with income that is 133%-400% of the [federal poverty level](#).) The Reconciliation Bill provides for the 30-employee threshold; the Senate Bill does not – it imposes a \$750 per full-time employee penalty.

A “full-time” employee is one who works on average at least 30 hours per week.

Even if the employer *does* offer coverage, the employer still must pay an annual penalty if at least one full-time employee receives the government-subsidized coverage. In general, eligibility for the government-subsidized coverage depends on availability and affordability of employer coverage: If employer coverage “with an actuarial value of at least 60%” is unavailable or if an employee's cost for employer coverage exceeds 9.5% of household income, a full-time employee would be eligible for the government-subsidized coverage. The penalty in this case is equal to the lesser of: (a) \$3,000 multiplied by the number of full-time employees who receive the premium tax credit, and (b) \$750 multiplied by the number of the employer's full-time employees.

In addition, employers must provide a “free choice voucher” to each employee who: (a) has income below 400% of the federal poverty level, (b) would otherwise have to pay more than 8% of the premium for employer coverage, and (c) enrolls in a plan in the Exchange.

Waiting Period Prohibition

Beginning January 1, 2014, waiting periods for health plan eligibility cannot exceed 90 days. The Reconciliation Bill eliminates the penalties imposed under the Senate Bill for waiting periods between 30 and 90 days.

Automatic Enrollment in Employer Plan and Individual Mandate

Beginning in 2013, or possibly earlier (the effective date is not actually clear), an employer with more than 200 employees must automatically enroll its employees in the employer's group health plan. An employee thereafter may "opt-out" of the employer's group health plan coverage and either obtain other coverage or pay the individual penalty.

Beginning with 2014, virtually everyone must have at least a minimum level of coverage or pay an individual tax penalty for failing to do so. The penalty will be phased in over three years, beginning with 2014 and, in 2016, will be the greater of \$695 per individual per year, up to a maximum of \$2,085 per family per year, or 2.5% of household income.

Cadillac Coverage Excise Tax

Beginning with 2018, employers must pay a 40% excise tax on single coverage, to the extent the value is in excess of \$10,200, and family coverage with a value in excess of \$27,500 (with higher thresholds for certain "high-risk" occupations). The Reconciliation Bill amends the Senate Bill by postponing the effective date from 2013 to 2018 and increasing the dollar thresholds from \$8,500 and \$23,000, respectively.

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The Employee Benefits practice group has followed state and federal health care reform initiatives closely and regularly advises employers regarding fast-developing legislation in this area. The group will prepare additional articles once the Reconciliation Bill becomes law (assuming it does) and as the details of the new health care reform law are finalized and clarified through regulations and other guidance. The firm's Government Relations practice group continues to advocate on behalf of employers in connection with health care reform and other legislative initiatives. Employers should review current health plan features and costs, follow the health care reform legislative developments, continue to lobby legislators, and prepare to implement changes to comply with anticipated health care reform legislation.



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