

How Will Healthcare Reform Impact Employers?

After a year of rancorous debate the *Patient Protection and Affordable Care Act* has been signed into law. At this time, the Senate has yet to act on a smaller “Reconciliation Bill” which will make some minor changes to the Act. That is expected to pass. Additionally, a few attorneys general intend to challenge the law. Most observers believe that those efforts will be unsuccessful. So, while there is still a little uncertainty, it looks like we have new health care reform. How will this impact the workplace and what should employers expect? The changes will take place over the next few years. Some become effective in late 2010 (essentially 2011) and others as late as 2014. Additionally, as is typically the case with such law, much of the legislation will need further clarification through regulations, administrative rulings or more law. So, while the picture is not entirely clear, it is important for employers and individuals to begin reviewing the changes. The law will impact just about everyone, in some way.

NOTE: These comments are summarized, quite general, and only address a few key areas. You’ll want to review other sources for the details and for any changes that come out of the Reconciliation Bill. Stay tuned, there will be lots more to come.

Interim Provisions. Generally, these begin 6 months after enactment (e.g., for plan years beginning on or after 9/23/10. For calendar year plans these would start on 1/1/11.

1. **Lifetime and Annual Limits**

- In 2010 no lifetime plan limits may be imposed. Plans may implement restricted annual limits (for nonessential benefits) as determined by Health and Human Services.
- In 2014, no annual limits may be imposed.

2. **Children up to 26**

- In 2010, children up to age 26 may be carried on their parents’ insurance.

3. **Preexisting Conditions**

- In 2010 children cannot be excluded from coverage because of preexisting conditions.
- In 2014 preexisting condition exclusions may not be imposed on anyone.

5. **Rescission**

- In 2010 coverage can’t be cancelled because an individual gets sick. Cancellation is permitted because of fraud or a material misrepresentation.

6. **Preventative and Emergency Care**

- In 2010 certain preventative care must be provided without requiring participants to share in the costs. Also, additional co-pays can’t be required for an emergency visit because the hospital isn’t part of a plan’s network.

7. **Nondiscrimination**

- In 2010, nondiscrimination rules have been expanded, so plans may not favor highly compensated employees.

8. **Standard Benefits Summaries and Explanations. Effective Appeals Process**
 - In 2010, Health and Human Services will develop uniform standards regarding benefits summaries and explanations. A more extensive appeals process will also be required.
9. **Flexible Spending Accounts**
 - Beginning in 2011 (2013 in the Reconciliation bill) the maximum contribution to a medical flexible spending account will be \$2500. Additionally, over-the-counter drugs will no longer be reimbursed.
10. **Tax Withholding and Reporting on W-2s**
 - Beginning in 2011, the aggregate cost of employer provided coverage must be reported on W-2s. Effective 2013, the Medicare portion of FICA will increase to 2.35% (from 1.45%) for individuals making more than \$200,000 and couples earning \$250,000. Additionally, under the Reconciliation bill, a 3.8% Medicare tax will be imposed on “unearned income” (basically investment income) of wealthier Americans.
11. **Tax Credits for Small Employers**
 - Beginning in 2010, certain organizations with 25 or fewer employees are eligible for health insurance tax credits.

Beginning in 2014

1. **Employer Pay or Play**
 - Technically employers aren't required to provide health coverage to employees. However, in 2014, employers with more than 50 employees must offer coverage or pay a penalty. The rules surrounding this are complicated and will require considerable study.
2. **Small Employers & Exchanges**
 - Beginning in 2014 each state must create “Shop Exchanges” to help small employers (100 or fewer employees) buy coverage. After 2017 large groups (over 100) could purchase coverage through exchanges.
3. **Individual Requirement and Penalty**
 - Beginning in 2014, nearly all Americans and legal residents must have at least minimal coverage or pay a penalty. There are a few exceptions. States must create an Exchange to help individuals buy coverage (This could be combined with the small employer exchange.) Tax credits will be provided to those with incomes between 100% and 400% of the federal poverty level. Employers may have to give vouchers to lower wage employees for whom employer coverage is deemed unaffordable.
4. **Cadillac Tax**
 - Beginning in 2013 (or 2018 in the Reconciliation bill) employers must pay a 40% tax on expensive plans. (Under the Reconciliation plan, the excess above \$10,200 on an individual plan and \$27,500 on family plans)

5. Waiting Periods

- Beginning in 2014 eligibility waiting periods cannot be greater than 90 days. Large employers may be assessed fees if their waiting periods go beyond 30 days.

6. Out-of-Pocket Costs

- In 2014 the new law starts determining maximum out-of-pocket costs

7. Automatic Enrollment

- Beginning in 2014, employers of 200 or more employees must automatically enroll their employees into group plans. Employees can then opt out. Additionally, employers will be required to provide their employees with various notice requirements in 2013, in preparation for the 2014 employer and individual mandates.

Other Items of Interest

1. Long Term Care

- A new national insurance program will be created to help adults who need long term care. Initial premiums are estimated at \$65/month and there would be a 5 year vesting period.

2. Medicare

- In 2010 a \$250 rebate will be given to seniors who reach the prescription “donut hole.” The “hole” is phased out completely by 2020 and seniors will just have a 25% coinsurance payment. Medicare Advantage programs (the optional Part C, not the traditional Medicare programs) will see funding cuts.

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