

MEMORANDUM 2010-8

Health Reform Implementation: Two New Laws (Almost)

March 23, 2010

Late Sunday, the U.S. House of Representatives passed two bills: [H.R. 3590](#) (the Reform Bill), as previously passed by the U.S. Senate on December 24, 2009, which is now law with the President's signature this morning, and [H.R. 4872](#) (the Reconciliation Bill) containing significant changes to the Senate bill. The Reconciliation Bill now goes across the Capitol to the U.S. Senate which must now vote on its passage before it becomes law. At present, its passage (although not assured) is projected to occur by the end of March.

Lawsuit Filed

This morning immediately following President Obama's signing ceremony, the Florida Attorney General (and gubernatorial candidate), along with twelve other states attorney generals, filed a lawsuit in federal court in Florida arguing that the new law is unconstitutional. The federal government cannot require individuals to obtain health insurance coverage. Additionally, implementation of the Bill will cause substantial harm and a financial burden to the states. Other states are considering their own lawsuits on the same constitutional grounds.

The purpose of this Memorandum, in the meantime, is to highlight those health reform provisions that will take effect at the end of 2010 and into 2011 which may affect the cost of group health benefits upon implementation. We will publish a more comprehensive analysis of these two pieces of Health Reform legislation once the Reconciliation Bill becomes law.

Immediate Changes

Although we will not see the full effect of Health Reform legislation for some time, employers/Plan Sponsors will see changes impacting health plan costs by late 2010 and into 2011:

- 1. Extension of Health Care Coverage for Dependents to Age 26.** Dependents who do not have access to another employer-sponsored health plan may remain on their parents' group plan to age 26 as long as they are dependent upon the employee for support. This extension will take effect six months after the enactment of the Reconciliation Bill.
- 2. Medicare Part-D Rebate.** The Reconciliation Bill also will provide a \$250 rebate to all Medicare Part-D enrollees who enter the Medicare Part-D donut hole (no coverage provision) in 2010. It's expected that the donut hole provision will cease to exist by 2020. Employers who provide Part-D drug benefits will be effected to some degree.
- 3. Medicare Advantage Plans.** The Reconciliation Bill also calls for a freeze in Medicare Advantage payments beginning in 2011. It is possible that Medicare Advantage plans may have fewer benefits to offer in 2011 or require higher premiums in anticipation of the 2011 freeze on government subsidies.

- 4. Insured Plan Minimum Loss Ratios.** Beginning in 2011, insurers must operate with minimum loss ratios as defined by a formula to be developed by the National Association of Insurance Commissioners. This means that paid claims plus IBNR must constitute 85% of total premiums collected for large group products (on a pooled basis) and 80% for individuals and small group plans (groups of 100 and below). Employers facing renewals in 2011, will experience a significant market impact. The Senate Reform Bill also gives the Secretary of health and Human Services (HHS) the authority to monitor health care premiums and their loss ratios. The Reconciliation Bill augments this provision to require Medicare Advantage plans to maintain an 85% minimum loss ratio or lose their certification.
- 5. Small Business Assistance.** Beginning in 2010, the Reform Bill itself contains a tax credit provision for qualified small employer contributions to purchase coverage for employees. The credit would apply to employers with fewer than 25 employees and average annual wage of less than \$40,000. The credit would be 50% of premiums for up to two years if the employer contributes 50% of the total premium cost. The Reconciliation Bill makes no change to this provision.
- 6. Temporary Reinsurance Program.** Within 90 days of enactment of the Reform Bill, any individual who has been uninsured for at least six months and has a qualifying pre-existing medical condition can obtain coverage through a high risk pool by paying the appropriate premium. DHHS is charged with implementing this High Risk Pool.
- 7. Flexible Spending Accounts.** The Reconciliation Bill would postpone the effective date of the \$2,500 individual annual maximum benefit to January 1, 2013.
- 8. Cadillac Tax.** The Reconciliation Bill also delays the effective date for the implementation of the tax on "Cadillac" plans until January 1, 2018.
- 9. Other Changes.** Market reforms, including limitations on rate setting by age, family composition, life time and annual plan dollar limits will not apply to grandfathered plans pursuant to the Reconciliation Bill. We will discuss these matters in detail in our next update on Health Reform.

In Summary

Although there are some immediate effects of the Health Reform legislation, the major changes take effect on January 1, 2014, including the state-sponsored exchanges (available to individuals and groups under 100 lives), implementation of a voucher system for low-paid workers, and numerous tax provisions. Some of the tax provisions take effect prior to 2014. We will discuss those in detail in our next update on Health Reform.

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