Healthcare Reform Update

On March 21, 2010, the House of Representatives passed (219-212) the Patient Protection & Affordable Care Act (H.R. 3590). It is also referred to as the Senate bill, as the same bill was passed the Senate in late December. With the House approval and Presidential signature last Tuesday, it became law on March 23, 2010.

In addition to passing the Senate bill, the House passed the Health Care & Education Reconciliation Bill of 2010 (H.R. 4872). This measure will amend the law President Obama signed March 23rd, now that it too has been passed in the Senate. The Senate passed the reconciliation bill 56-43 Thursday afternoon, and the House added its final approval on the “fixes” a few hours later (220-207), which now clears the way for President Obama to sign the second of two bills. With the Reconciliation bill completed, the two bills now constitute the final health care reform package.

This memorandum outlines the major provisions of the law President Obama has signed and provides an overview of the changes that will occur with final enactment of the Reconciliation bill.

The New Law: The Basics

The new law will require most people to carry health insurance or pay a fine starting in 2014. It offers tax credits to help low-income individuals buy coverage and extends Medicaid to those earning up to 133 percent of the federal poverty level.

The individual penalty for failure to purchase insurance would start at $95, or up to 1.0 percent of income, whichever is greater, and rise to $695, or 2.5 percent of income, by 2016; families have a penalty limit of $2,085. Low-income individuals will receive assistance, either Medcaid or a government subsidy.[1] The measure includes certain “grandfathered” provisions that allow individuals to keep their current health coverage.

The law will create state-based and state-operated insurance “Exchanges” that people without health insurance and employers can go to for insurance that is provided by participating private insurers. The exchanges will have to meet certain “Qualified Health Benefit Plan” criteria, and operate under new regulations prohibiting practices such as discrimination based on pre-existing conditions. The law will not require employers to provide health insurance coverage, but it does impose certain tax penalties on any employers that have over 50 employees and that do not provide a minimum level of health insurance coverage.

[1] Premium subsidies will be available for individuals and families with incomes between 133 percent and 400 percent of the poverty level, or $14,404 to $43,320 for individuals and $29,326 to $88,200 for a family of four.

Congress did not include the "Public Option," a government-run health insurance plan, but instead they adopted a "Multi-State Option." The federal government's Office of Personnel Management (OPM), which administers health plans for government workers, will be required to contract with health insurance carriers to offer at least two multi-state qualified health plans through each state Exchange, one of which must be run by a non-profit entity.

Many individuals will get purchasing help from the government through sliding-scale tax credits that would cover much of the cost of premiums. Small businesses would get tax credits to help them provide insurance for workers.

The bill generates revenue in part through a Medicare payroll tax on unearned income and a tax on high-cost (so-called "Cadillac") plans. Pharmaceutical companies, medical device makers and insurance companies also are taxed to help pay for financial aid to those who cannot afford insurance or do not have insurance through work. The bill also fully closes the Medicare Part D prescription drug coverage gap known as the "doughnut hole" by the end of the decade.

The New Law: Employers

Insurers will face new regulations that will affect employer-sponsored group plans. Insurers cannot deny coverage based on pre-existing conditions or drop coverage after a person becomes sick. Insurers will be limited in the amount they can vary premiums based on age or health status. And insurers will be required to spend a minimum amount of people's premiums on actual medical care.

The law prohibits health plans from rescinding coverage from enrollees once they have been covered. Qualified health plans must sell insurance to anyone who wishes to purchase it, including those with preexisting medical conditions. Premiums may vary only on the basis of family size, geography, age, and tobacco use. Dependent children can remain on their parents' health insurance plans until age 26. All existing insurance plans will be barred from imposing lifetime caps on coverage. Finally, insurers may no longer cancel insurance retroactively for reasons other than outright fraud.

Other Provisions Include

Employer Mandates: Companies with more than 50 employees that do not offer affordable insurance would have to pay a $750 fine for every person they employ if at least one worker receives coverage through the exchange.[2] Construction industry employers with 5-50 full-time employees and whose annual payroll is in excess of $250,000 will be subject to a penalty of $750 per employee if they fail to offer health care to their employees. The penalty would be based on the number of full-time employees, which the legislation defines as an employee who works on average at least 30 hours per week. Many questions remain unanswered. For instance, it remains unclear whether employers that own multiple dealerships will be considered one employer, or if the requirements will be imposed on individual dealerships. This will be resolved during the rulemaking process over the coming years.

[2] More specifically, employers with more than 50 employees must offer coverage to their employees. Employers that *do not offer* coverage and have at least one full-time employee (defined as one working 30 or more hours/week) who receives a premium tax credit will be assessed a fee of $750 per full-time employee. Employers that *offer* coverage but have at least one full-time employee receiving a premium tax credit will pay the lesser of $3,000 for each employee receiving a premium credit or $750 for each full-time employee. For employers that impose a waiting period before employees can enroll in coverage, the law would require payment of $400 for any fulltime employee in a 30-60 day waiting period and $600 for any employee in a 60-90 day waiting period.

Dependent Coverage Increase to Age 26: Mandatory coverage for dependents up to age 26 is effective for plan years beginning 6 months after the date of enactment. The dependents covered must be unmarried to be eligible for this coverage. Because the date of enactment is March 23, 2010, that provision would be effective for plan years beginning on or after September 23, 2010, unless the plan is a grandfathered plan. If the Reconciliation bill passes, group health plans, including the grandfathered plans, would need to cover dependent children, regardless of marital status, but only if they are not eligible for other employer-sponsored coverage, effective for plan years beginning on or after September 23, 2010, through December 31, 2013. Beginning with plan years beginning on or after January 1, 2014, group health plans would be required to cover dependent children regardless of marital status and through age 26 regardless of whether they are eligible for employer-sponsored coverage.

Small Business Exemption/Credit: Companies with fewer than 50 workers generally will not face any penalties if they don't offer health insurance. Companies can qualify for tax credits to help buy insurance if they have 25 or fewer employees and a workforce with an average wage of up to $40,000. Tax credits of up to 35% of the cost of premiums will be available this year and the credits will grow to 50% in 2014. Larger credits are available for the smallest firms with low-wage workers; the subsidies shrink as companies' workforces and average wages rise.

Voucher: Workers who qualify for an "affordability exemption" due to low income but do not qualify for tax credits can take their employer contribution in lieu of coverage through the employer's group plan and join an exchange plan.[3]

Revenue Generating Provisions: The bill includes the following:

- *Excise Tax on "Cadillac Plans":* A 40% excise tax would be imposed on insurers of employer-sponsored health plans with aggregate values that exceed $8,500 for individual coverage and $23,000 for family coverage, indexed to the consumer price index for urban consumers (CPI-U) plus one percentage point.[4]
- *Taxes on High Income Individuals:* Two new taxes will be imposed on single taxpayers with income in excess of $200,000 and couples filing jointly with incomes in excess of $250,000: (1) a 0.5% increase in FICA payroll taxes; and (2) a 0.9% increase to the Medicare tax on wages.
- *Treatment of HSAs and MSAs:* The tax on distributions from a health savings account or an Archer Medical Savings Account that are not used for qualified medical expenses would be increased to 20% of the disbursed amount.
- *FSA Contributions:* The amount of contributions to a flexible spending account (FSA) for medical expenses would be limited to $2,500 per year, adjusted for inflation.
- *New Taxes and Fees for Various Sectors of the Health Care Industry:* $2.3 billion annual fee on the pharmaceutical manufacturing sector; $2 billion annual fee on the medical device manufacturing sector; an annual fee imposed on all health insurers based on their market share; and a 10% sales-type tax on indoor tanning services.
- *Taxation of Retiree Drug Subsidies:* Eliminates the deduction for the subsidy for employers who maintain prescription drug plans for their Medicare Part D eligible retirees.

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[3] Employees qualify if their required contribution under the employer's plan would be between 8 and 9.8 percent of their income, and the employee does not make more than 400% above the federal poverty level. The vouchers are excluded from taxation to the extent they are used to purchase health coverage through an exchange and must be equal to the contribution that the employer would have made to its own plan on behalf of the employee. The voucher must be used to purchase coverage through the exchange but any excess funds are paid to the employee.

[4] The Reconciliation bill would alter all of these numbers, as discussed below.

Reconciliation Measure

The Health Care & Education Reconciliation Bill of 2010, H.R. 4872 (“Reconciliation bill”) is intended to amend the new law by “correcting” several provisions. The measure maintains the individual mandate, fees on employers who do not provide coverage, and state-based Exchanges. However, it includes an increase in tax subsidies for low- and moderate-income individuals to purchase insurance and increases the penalties on large employers that do not provide health insurance. The measure will delay implementation of the taxes on various health care industry players, and will change the fee on medical device manufacturers to an excise tax. The measure also includes language from a student loan overhaul bill, H.R. 3221, which was included to attract votes and help meet budget requirements for the reconciliation process.

The Reconciliation bill makes three changes to the penalties imposed on employers. First, in contrast to the new law, the measure will increase the applicable payment amount for firms with more than 50 employees that do not offer any coverage from $750 to $2,000 per employee. Second, the Reconciliation measure modifies the calculation tax on large employers who do not offer coverage. Employers with 50 or more workers can subtract out the first 30 workers from the payment calculation (e.g., a firm with 51 workers that does not offer coverage will pay an amount equal to 51 minus 30, or 21 times the applicable per employee payment amount). Third, larger employers that offer coverage and have at least one employee buy subsidized coverage through an exchange will face a penalty of $3000 for each such employee. The measure will also eliminate the assessment for workers in a waiting period, while maintaining the 90-day limit on the length of any waiting period beginning in 2014.

Finally, the Reconciliation bill will add a third new tax that will be imposed on single taxpayers with income in excess of $200,000 and couples filing jointly with incomes in excess of $250,000 – a 3.8% Medicare tax on “unearned” income (passive investment income – interest and dividends).

We know that you have questions about how this new law will affect your current plan and what you need to do to comply with the new law. We are here to answer your questions and to help you prepare to meet the new requirements. We are only at the beginning of the process, and we will strive to provide you the most up-to-date and timely information as the process moves forward.

Please contact your GBS Representative with questions regarding your plan or plans.