eActionAlert

The Landmark Health Care Reform Bill – March 24, 2010

On March 23, 2010, President Obama signed into law the bill (HR3590) originally passed by the Senate on December 24, 2009 and approved by the House on March 21, 2010. Later that Sunday night the House also passed the reconciliation bill (HR4872). That bill (HR4872) has now moved to the Senate for the "reconciliation" process. It must receive 51 "yes" votes in the Senate to pass. Although passage is not certain, it is expected. Once that is done, the implementation process will begin; a process that will take several years.

As to the financial impact of this legislation, it really depends on what information you read and who it's coming from. Candidly, we're just not certain! The law makes huge promises each of which has a price tag attached. The cost will be significant and the funding will have to come from "somewhere". Taxes will have to increase for sure; we're just not certain at this point in time exactly *where* those taxes will be levied as the years go by. We know what new taxes were included in the legislation, and we will outline those soon in a follow-up to this Alert.

The implementation process will be eventful. Already, the Attorneys General of several states have filed lawsuits to block the legislation claiming the provision requiring most Americans to have health insurance or pay a penalty is unconstitutional. If nothing else, these suits will keep the Health Care Reform issue fresh in the minds of voters until the November elections. It will be an interesting election for Congressional Democrats who voted for the legislation.

Here are some of the principal changes made by the Health Care Reform bill. We expect (but of course cannot guarantee) that these will survive the reconciliation process (a.k.a. the "Fix It Bill" the House passed March 21, 2010 right after passing the Senate Health Care bill verbatim). They all apply to self-insured plans unless noted otherwise.

The following changes become effective for PLAN YEARS beginning at least 6 months after enactment, that is, plan years beginning after September 23, 2010. Calendar year plans will not have to make the following changes before January 1, 2011. Fiscal year plans might have to change for some of these things as early as October 1, 2010 (technically the first fiscal year beginning after September 23, 2010):

- Annual and lifetime coverage limits are eliminated.
- The practice of "rescission" (usually meaning cancelling coverage after you become sick) is banned (except for fraud).
- New medical claim appeals procedures and rules are implemented. At this early stage, it is hard to see how the new requirements will dovetail with existing ERISA requirements. Perhaps the strangest requirement of all is that notices must be written and given in a "culturally and linguistically appropriate" manner.
- Free preventative care (and the term is defined) must be provided (no deductibles or co-payments).

- Coverage for unmarried dependent children must be allowed to continue until age 26 (even if not a student).
- Pre-existing condition exclusions for children are banned. For adults, group health plans must eliminate pre-existing condition exclusions in 2014. In the meantime, adults with pre-existing conditions who've been uninsured for at least six months can enroll in a temporary high-risk pool and receive subsidized premiums, starting three months after the bill's passage – June 23, 2010.
- Insured plans will be strictly prohibited from discriminating among full-time employees based on rates of compensation.

Here are some other noteworthy changes likely to survive reconciliation:

Small Business Tax Credits:
Beginning in calendar year 2010, the bill provides tax credits to help more small businesses provide their employees with health insurance. Businesses that begin offering employee health coverage will be eligible for tax credits of up to 35 percent of their total employee premium payments. Starting in 2014, the small business tax credits will cover 50 percent of premiums.

Closing the Medicare Part D "Donut Hole":
Starting this year, Medicare beneficiaries who fall into the costly Part D prescription drug Donut Hole will get a $250 rebate. In 2011, the bill imposes a 50-percent discount on brand-name drugs needed by seniors already in the Donut Hole. By 2020 the Donut Hole will be completely eliminated.

Help for the Uninsured:
The bill creates a temporary high-risk pool to provide access to health insurance for Americans who have been denied coverage because of a pre-existing condition. This benefit takes effect 90 days after final enactment of the bill - June 23, 2010.

Free Preventative Care Under Medicare:
Beginning January 1, 2011, co-payments for Medicare-covered preventative services will be eliminated. In addition, preventative services will be exempted from deductibles.

More Community Health Centers:
Beginning this year, the bill authorizes increased funding for Community Health Centers. It is estimated that the increased funding will allow the Health Centers to double the number of patients they can treat over the next 5 years.

Help for Early Retirees:
As part of their recession survival strategy, many businesses have been offering their employees early retirement. To assist them, the bill creates a temporary re-insurance program to help businesses offset the costs of health benefits for retirees between ages 55 and 64. This program will become effective 90 days after enactment of the bill and will last until the Health Insurance Exchange is operational.

More Doctors and Nurses:
Effective immediately, the bill authorizes funds for programs designed to increase the number of doctors, nurses, and public health professionals.

Insurance Companies Must Spend Minimum Amounts of Premiums on Medical Care:
Starting January 1, 2011, insurance companies serving individuals and small groups will be required to prove that they are spending 80 percent of their customers' premium payments on medical services, rather than on things like advertising and executive salaries. Insurers in the large group market will have to spend 85 percent on medical services. Companies that do not meet the standards will have to rebate their customers.

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