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Legislative Alert

The Health Care Reform Bill has passed

What's next for employers

On Sunday evening, March 21, 2010, the House of Representatives gave final approval to the Senate health care overhaul bill – the "Patient Protection and Affordable Care Act", H.R. 3590. The bill is designed to expand insurance coverage to nearly 95 percent of Americans by the end of its implementation in 2019.

Background

House leaders were effective in overcoming the opposition to the Senate bill with a late-night 219-212 vote. The vote sent the bill, already passed by the Senate, to President Obama, who signed the bill into law on Tuesday, March 23, 2010.

The overhaul will extend health coverage to 32 million Americans; expand the government Medicaid program for individuals who cannot afford health coverage; impose new taxes on insurance companies, medical device makers, pharmaceutical companies and individuals making $200,000 or more a year (couples making $250,000 or more a year); and bar insurance practices such as limiting or denying coverage to people with pre-existing medical conditions.

Shortly after the vote to accept the Senate bill, House Democratic leaders also approved a "package of changes" to the Senate bill, the "Health Care and Education Reconciliation Act of 2010 (H.R. 4872), which the Senate will begin to consider this week. It is expected that the Senate will accept the changes submitted by the House using a process called reconciliation, which requires only a simple majority of 51 votes instead of a "filibuster proof" super-majority of 60 votes.

The following is a summary of the key changes in the Senate bill, as modified by the House reconciliation bill. The summary identifies some of the changes to the Senate bill and the impact to employer group plans starting in 2010 through 2018. A more detailed analysis of the combined Senate bill and House reconciliation bills will be forthcoming. To access a full summary of the Senate bill, refer to our January 2010 Legislative Update.

What can employers expect?

The extension of benefits offered under the Senate bill and House reconciliation bill will largely become effective in 2014. However, some provisions will go into effect earlier, for employer plans. Except as otherwise noted, the provisions described below will become **effective for employer plans with plan years beginning six months after the date of enactment** (or effective January 1, 2011, for calendar plan years).

- **Elimination of lifetime benefit maximums.** Group plans will be required to eliminate lifetime benefit maximums. Restrictive annual limits also will begin to be phased out. The Secretary of Health and Human Services will issue

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a determination on what constitutes "restrictive" annual limits.

- **Coverage for adult children.** Group health plans would be required to extend coverage to adult children up to the age of 26 if the children do not have access to group coverage. Note that this coverage will be excludable from federal income taxes. It will not supersede any state health insurance mandate applicable to insured policies that extend coverage to even older adult dependents.
- **Prevents insurers from rescinding coverage.** An insurance company would be prohibited from rescinding coverage to an individual enrolled in a plan except in cases involving fraud or misrepresentation.
- **Elimination of pre-existing condition exclusions for children with illnesses.** Group plans would be prohibited from imposing exclusion provisions because of a child's illness. Note: The elimination of pre-existing condition exclusions as applied to adults is **not effective until 2014.** Adults with pre-existing conditions who have been uninsured for at least six months would be eligible to enroll in a temporary high-risk pool and receive subsidized premiums, starting three months after the enactment of the bill.
- **Small business tax credits.** Small businesses employing fewer than 25 employees with average wages of up to $50,000 may be eligible for a new tax credit that would subsidize up to 35 percent of the cost of a group health insurance plan. This 35 percent tax credit would be available starting in 2010 and could increase to up to 50 percent by 2014.
- **Implementation of retiree reinsurance program.** The bill implements a temporary reinsurance program for employers who offer early retiree coverage (for persons ages 55 through 64 who are not eligible for Medicare). The program will reimburse employers or insurers for 80 percent of retiree claims between $15,000 and $90,000. Payments from the reinsurance program would be used to lower the costs for enrollees in the employer plan. This provision would be effective 90 days after enactment of the bill through January 1, 2014.

Future provisions that will impact employers

- **Changes to health FSA, HRA, and HSA rules.** The definition of qualified medical expenses will be standardized for health flexible spending accounts (FSAs), health reimbursement arrangements (HRAs), and health savings accounts (HSAs). In addition, only prescribed drugs will be qualified medical expenses. The excise tax for distributions of non-qualified medical expenses from HSAs and medical savings accounts (MSAs) increases from 10 percent and 15 percent, respectively, to 20 percent. These changes will be **effective in 2011**. A cap on maximum contributions to a health FSA will be set at $2,500 per year, **effective in 2013**.
- **Access to health insurance exchanges.** Health insurance exchanges, administered by state governmental agencies or non-profit organizations, will be opened through which individuals and small businesses with up to 100 employees can purchased qualified health insurance coverage, **effective in 2014**. States will be permitted, but not required, to allow businesses with more than 100 employees to purchase coverage through exchanges **effective in 2017**.
- **Elimination of pre-existing condition exclusions.** Group health plans would be prohibited from imposing pre-existing condition exclusions. This provision would become **effective in 2014**.
- **Penalty for not offering employee coverage.** Employers who employ at least 50 employees will be charged a $2,000 per employee per year penalty. The penalty excludes the first 30 employees of the employer. For example, an employer who employs 50 employees would be subject to a $40,000 penalty per year (50 employees – 30 employees = 20 employees; 20 employees x $2,000 = $40,000). This penalty would be **effective in 2014**.
- **Penalty for offering "unaffordable" employee coverage.** Employers with more than 50 employees who offer coverage that is "unaffordable" (premiums for coverage elected by the employee, exceed 9.5 percent of the family income) will be charged $3,000 per full time employee who enrolls in an "exchange" plan and receives a government subsidy. This penalty would be **effective in 2014**.
- **Vouchers for employees eligible for "unaffordable plans."** Employees with incomes less than 400 percent of the federal poverty level (FPL) who are exempt from enrolling in their employer plan due to its high cost will be allowed to enroll in a insurance exchange. In order to avoid the $3,000 tax per employee, an employer can offer an employee a voucher equivalent to the employer's contribution toward health care coverage under their group health plan. The employee would use the voucher to purchase coverage from the exchange, and excess funds would be paid out to

the employee in the form of cash. **This provision would become effective in 2014**.

- **Elimination of excessive waiting periods.** Employers may no longer impose a waiting period for eligibility for benefits of more than 90 days. This provision would become **effective in 2014**.
- **Automatic enrollment of employees.** Effective in 2014, employers with 200 or more employees are required to automatically enroll employees in their group health plans, unless the employee is already enrolled in another plan or is eligible for the cost exemption.
- **Excise tax on "Cadillac" plans.** Insurers and self-insured plans will be charged a 40 percent tax on health insurance premiums in excess of $10,200 for individual coverage and $27,500 for family coverage (higher thresholds for plans covering retirees and certain high-risk industries). The tax excludes dental and vision premiums from the calculations. This new tax would become **effective for all plans in 2018**.

What can individuals expect?

- **Individual mandate.** Americans would be required to have insurance by 2014 or pay a penalty. The penalty would start at $95, or up to one percent of income, whichever is greater, and rise to $695, or 2.5 percent of income, by 2016. The maximum penalty imposed on a family would not exceed $2,085 per year.
- **Tax on high income individuals.** Effective 2013, individuals earning more than $200,000 a year and couples earning more than $250,000 per year would pay a higher Medicare payroll tax of 2.35 percent on earnings, up from the current 1.45 percent. An additional 3.8 percent tax would be applied on unearned income such as dividends and interest for individuals over the income threshold.
- **Credit for Part D seniors.** Seniors covered by Medicare Part D may be eligible for a $250 payment if their prescription coverage reaches the gap, known as the "doughnut hole." Seniors would be eligible for this payment this year.

What can the health care industry expect?

The House bill has proposed a number of adjustments to the Senate bill in regard to industry related fees.

- **Pharmaceutical companies.** Beginning in 2011, pharmaceutical providers will be charged an annual operating fee of roughly $2.7 billion dollars.
- **Medical device manufacturers.** Beginning in 2013, an annual fee of roughly $2 billion dollars will be assessed.
- **Insurance providers.** Beginning in 2014, insurance providers will be charged an annual operating fee of roughly $6 billion dollars. The tax on third party administrators has been removed.

These new fees would be allocated across the industry according to market share with carve-outs for the smallest industry members.

Next steps

President Obama has signed the Senate bill, and the Senate will begin to review the House reconciliation package immediately. The Senate is hopeful that this review will be complete prior to the Congress recess, which is scheduled to begin March 29, 2010.

We will continue to monitor the developments of the Senate review of the House reconciliation package, and provide updates accordingly. A more in-depth analysis of the combined bills will be forthcoming as details unfold. Be sure to contact your Wells Fargo Insurance Services representative for further clarification and the latest updates.

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