



To: Clients and Interested Parties  
From: Andrew Shore, Jochum Shore & Trossevin PC  
Date: April 6, 2010

RE: Current Status of Health Care Reform Legislation – Impact on Employers

On March 23, the President signed into law the Patient Protection and Affordable Care Act which made massive changes to the public and private health systems. On March 30, he signed into law the Health Care and Education Affordability Reconciliation Act of 2010 which amended several sections of the Patient Protection and Affordable Care Act. The final law is reflected in the tables below. Note that numerous federal regulations will be written to provide further guidance on these issues.

The Insurance Market Reforms below are the main provisions that take effect prior to 2014.

**Insurance Market Reforms – New Health Plans**

The following new rules apply to all new health plans offered to groups and individuals effective six months after enactment of the law. If you alter the terms of your current plan you are creating a new plan.

- Provide dependent coverage for children up to age 26
- No lifetime limits on the dollar value of coverage
- No rescissions of health coverage except in the case of fraud
- Prohibition on pre-existing condition exclusions for children
- Provide first dollar coverage for preventative care
- Additional coverage and non-discrimination requirements

The following new rules apply to all new health plans offered to groups and individuals effective January 1, 2014

- No annual limits on the dollar value of coverage
- Prohibition on pre-existing condition exclusions for all individuals

### **Insurance Market Reforms – Existing Health Plans**

- The following rules apply to individual and group plans in existence prior to passage of the new law. Existing *group and individual* plans are grandfathered with regard to benefit standards but ARE required to, within 6 months of enactment of the law:
  - extend coverage to dependent children up to age 26
  - prohibit rescissions of coverage
  - eliminate waiting periods longer than 90 days
  - eliminate pre-existing conditions for children within 6 months of enactment
  - eliminate limits on lifetime benefits
- Existing *group only* plans must:
  - eliminate annual limits effective in 2014
  - may only have annual limits prior to 2014 subject to the Secretary of HHS's discretion
  - Eliminate pre-existing conditions for adults by 2014

### **Individual Mandate**

All citizens and legal immigrants will be required to have health insurance effective 2014.

- Failure to obtain insurance will result in a penalty equal to the greater of \$95 in 2014, \$325 in 2015 and \$695 in 2016 per person up to a maximum of 3 times that amount per household or 2.5% of household income amount
- Penalty amounts adjusted for inflation beyond 2016
- Individuals who fall between 133% and 400% of the federal poverty limit will be eligible to receive subsidies called “premium credits.”

### **Employer Mandate**

The employer mandate only applies to full-time employees. However, where employers are either required to offer insurance or pay a penalty for having employees who receive insurance subsidies, part-time employees are used to determine liability. A full-time employee is determined by dividing the aggregate number of hours of service of employees who are not full-time employees for the month by 120. That number is added to the number of full-time employees. If the number is greater than or equal to 50, a business is considered to be a “large employer.” For example, if your business employs 18 full-time employees and 50 part-time employees who work 20 hours a week (or 80 hours a month), you will be considered a "large employer". You don't have to provide coverage to your part-time employees, but, you'll be considered a “large” employer for the purpose of the mandates.

### **Employer Mandate – 51 or More Employees**

- If insurance is offered, must automatically enroll employees.
- Employees may opt out.
- Employers may still impose a waiting period on new hires, but it can't exceed 90 days

#### **Employer Mandate – 50 or Fewer Employees**

- No mandates/No penalties

#### **Employee Subsidies – Employer Penalties**

The new law provides subsidies to low income individuals and families who are not eligible for Medicare or Medicaid. These subsidies are called “premium credits.” Premium credits are determined by a formula that combines family income and the number of people in the household. *If you have more than 50 employees and have an employee who receives premium credits, regardless of whether you offer insurance, then you will pay a penalty to the Treasury to offset the government subsidy to that employee.* These penalties are effective January 1, 2014.

#### **More than 50 Employees and Offers Coverage**

- If the employer offers coverage and has an employee who receives a premium credit then the employer will pay the lesser of:
- \$3,000 for each employee receiving the premium credit or,
- \$2,000 for each full time employee in the company

#### **More than 50 Employees and Does Not Offer Coverage**

- If the employer does not offer coverage and has an employee who receives a premium credit, then the employer must pay \$2,000 per full time employee
- The employer may exclude the first 30 employees from this penalty

#### **Reinsurance Program**

- The government will reimburse 80% of retiree claims between \$15,000 and \$90,000 for employers who provide coverage to retirees over 55 but not eligible for Medicare
- The reimbursements must be used to lower enrollee costs in the employers health plan
- This program will run from 90 days after enactment until January 1, 2014

#### **Health Insurance Exchange**

One of the core elements of each proposal is the creation of state and multi-state purchasing cooperatives, also called “American Health Benefit Exchanges” (Exchange). In theory, these exchanges will allow individuals, small businesses, and eventually large

businesses, to pool together to buy insurance. Over time, it is expected that the aggregated purchasing power of people in the exchange will drive down insurance prices. The exchanges may be set up in one state or a state may enter into a compact with other states.

- Requires states to establish an Exchange by 2014 that facilitates the purchase of qualified health plans
- The Department of Health and Human Services (HHS) will establish standards for the Exchange, qualified health plans, reinsurance and risk adjustment by 2014.
- HHS will also set criteria for marketing requirements, a rating system for health plans, a template for an internet portal and decide the annual enrollment period.
- Prior to 2016, the Exchange will be available only to individuals and businesses with fewer than 100 employees (States can limit this to 50 or fewer employees)
- Beginning in 2016, states will be allowed to form multi-state exchanges
- Plans will be subject to the benefits requirements of the purchasers state
- After 2017, states may allow large employers to participate in the Exchange.

### **Health Plans in the Exchange/New Health Plans Outside the Exchange**

Health plans operating in the Exchange will be required to offer certain benefits as determined and updated by the Secretary of Health and Human Services. New health plans offered outside the exchange must also comply with these new benefit levels.

- Bronze Plan: Is the minimum creditable coverage and must provide essential health benefits and must cover 60% of the benefit costs of the plan
- Silver Plan: Must cover 70% of the costs of the plan
- Gold Plan: Must cover 80% of the costs of the plan
- Platinum Plan: Must cover 90% of the costs of the plan
- Catastrophic: Only available to individuals under 30 or those exempt from other mandates. Only available in the individual market.
- Out-of-pocket limit for all plans tied to health savings accounts currently: \$5,950/individuals and \$11,900/families
- Lower out-of-pocket limits for those up to 400% of the federal poverty limit

### **Long Term Care Insurance**

Both proposals create a new, voluntary, federal long-term care insurance program.

- Program will offer at least \$50 per day in non-medical, long-term cash benefits
- Employers are required to automatically enroll employees and begin payroll deductions
- Employees may opt out
- 5 years before an employee can vest in the program

### **Tax Provisions**

- Tax credits only for businesses that have 25 or fewer employees and have an average annual wage of \$50,000 or less
- Over-the-counter drugs, not prescribed by a doctor, are no longer allowable purchases from an HSA, HRA or FSA effective January 1, 2011
- The tax on non-qualified withdrawals from an HSA is increased to 20% effective January 1, 2011
- Limit contributions to an FSA to \$2,500, indexed for inflation, effective January 1, 2013
- Increase the Medicare Part A wage tax from 1.45% to 2.35% for joint filers earning over \$250,000 (\$200,000 for individuals) effective January 1, 2013. Not indexed for inflation.
- Impose a 3.8% tax on unearned or passive income on joint filers earning over \$250,000 (\$200,00 for individuals) effective January 1, 2013)
- Eliminate the tax deduction for employers who receive Medicare Part D retiree drug subsidy payments effective January 1, 2013
- Effective in 2012, impose \$3-\$4 billion in new fees on the pharmaceutical industry
- Effective in 2014 impose \$8 billion in new fees on health insurers. Fees increase to \$14 billion in 2018 and indexed for inflation beyond.
- Impose a 2.9% excise tax on medical devices. Excludes routine devices like hearing aids and eyeglasses
- Limit the deduction of health insurance employee compensation to \$500,000 effective January 1, 2009
- Impose a 10% tax on indoor tanning services effective January 1, 2010

### **Tax on “High Value” Group Health Insurance Plans**

A nondeductible 40% excise tax will be imposed on the excess benefit of so-called “high value” group health plans. The tax will be apportioned to each coverage provider. If the employer purchases insurance, then the insurer is liable for the tax. The plan administrator is liable for a self-insured plan. The high value thresholds will be adjusted annually by the Urban Consumer Price Index plus 1%.

- High value plan is one in excess of \$27,500 for families and \$10,200 for individuals effective January 1, 2018
- For union members, retirees over 55 but not eligible for Medicare and those in high risk professions, a high value plan is one in excess of \$30,950 for families and \$11,850 for individuals effective January 1, 2018

### **New Employer/Business Reporting Requirements**

To generate revenue to offset the cost of the health reform legislation, the bills impose a variety of new penalties for failure to file certain reports.

- Codify the Economic Substance Doctrine which imposes a penalty on two party transactions that are done only for tax avoidance. A penalty in the amount of 40% of the attempted avoidance is imposed or 20% if the transaction was disclosed but disallowed.
- W-2 statements must include the aggregate cost of employer sponsored health benefits effective January 1, 2011
- Expands 1099 reporting to include payments made to corporations (excluding 501(a) corporations)
- Expands 1099 reporting to also include gross proceeds paid in consideration for property or services
- Employers who must provide at least the minimum allowable coverage must make additional reporting's about their employees
- Large employers must certify that they're offering their employees at least the minimum allowable coverage

### **Wellness Programs and Incentives for Businesses**

The new law creates new federal programs to study and design preventative and wellness programs. In Medicare, the government will now offer incentives for beneficiaries who develop, implement and maintain a wellness program. Now employers will be able to offer incentives to employees who enter and maintain wellness programs.

- Effective January 1, 2014, employers may reduce premiums up to 30% for employees who participate in employer sponsored wellness programs.
- These programs may be expanded to 50% of the cost of premiums subject to pending federal regulations
- Employers must offer alternative standards to employees whom it is unreasonably difficult or inadvisable to meet the standard.

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