

Summary of Health Care Reform

On March 21, 2010, the House of Representatives passed the Patient Protection and Affordable Care Act ("Act"). The President signed the Act into law on March 23, 2010. Immediately after the signing, attorneys general in 13 states joined in filing an action in federal court challenging the constitutionality of the legislation. The attorney general of Virginia filed a second lawsuit. These are the first of many lawsuits likely to be filed.

At the same time that it passed the Act, the House also passed the Health Care and Education Affordability Reconciliation Act ("Reconciliation") which makes several changes to the Act. The Senate approved the Reconciliation on March 25, 2010 with several minor revisions, which sent it back to the House for reapproval due to removal of two minor provisions. The House passed the revised version of the Reconciliation on the same date.

The Act, as revised by Reconciliation, generally will not immediately impact employer-sponsored plans, but some provisions of the Act and Reconciliation become effective relatively soon, others much later. Below are highlights of some of the major provisions.

Act Provisions Likely to Impact Plans Relatively Soon

Key provisions of the Act that take effect in the near future, generally the first plan year beginning six months after enactment (i.e., January 2011 for calendar year plans), unless noted otherwise, include:

1. Required coverage of adult children up to age 26 (subject to certain exceptions for grandfathered plans).
2. Prohibition of lifetime limits on benefits and certain annual limits on benefits.
3. Elimination of the ability of insurance companies to deny coverage for children with pre-existing conditions.
4. Opportunity for individuals with a medical condition that has left them uninsurable to enroll in a new federally subsidized insurance program that is to be established within 90 days.
5. Requirement for drug manufacturers to provide a 50% discount (increased up to 75% over time) to Medicare Part D beneficiaries beginning in 2011 for brand-name drugs and biologics purchased during the "doughnut hole."
6. Provides a \$250 rebate to all Medicare Part D beneficiaries that enter the "doughnut hole" in 2010.

7. Small business tax credit with a sliding scale of up to 35 percent of the cost of premiums for businesses with fewer than 25 employees and with average annual wages of less than \$50,000.
8. Required reports by insurers to show how much they spend on medical care versus administrative costs, a step that later will be followed by tighter government review of premium increases.
9. No reimbursement from FSAs, HSAs, and HRAs for over-the-counter drug expenses unless the expense is for insulin or the drug is obtained with a prescription (beginning in 2011).
10. Increase to 20% in 2011 (from current 10%) of the excise tax on withdrawals from HSAs prior to age 65 not used for health care expenses.
11. Elimination of the ability of insurance companies to cancel coverage except in cases of fraud.

Act Provisions to be Become Effective Later

Key provisions of the Act (subject to any changes by Reconciliation) that generally take effect for plan years beginning in 2014, include:

1. Imposing an annual “play or pay” penalty equal to \$750 per full-time employee for employers who do not provide minimum essential health care coverage to full-time employees and have at least one employee receive premium assistance. Reconciliation increases penalty to \$2,000 per employee.
2. Prohibition of waiting periods over 90 days.
3. Prohibition of pre-existing condition exclusions.
4. Limit contributions to an FSA to \$2,500 per year, increased annually for cost of living adjustments (effective in 2013).
5. Prohibition of annual benefit limits on essential benefits.
6. Excise tax of 40% would apply to the excess benefit of “Cadillac plans” beginning in 2018.
7. Tax credits designed to ensure that qualified individuals would not spend more than a specific percentage of their income on medical insurance (based on the relationship of their income to the federal poverty level).
8. Additional Medicare payroll tax of 0.9% on earned income in excess of \$200,000 for individuals and \$250,000 for families, and 3.8% on investment income (interest, dividends, rents, capital gains, etc.) for individuals with adjusted gross income above \$200,000 and joint filers with adjusted gross income above \$250,000.

Conclusion

While the Act and Reconciliation contain many provisions that will impact employers' plans, most are not effective immediately. The legislative process will likely bring more changes and refinements in the days ahead. The courts will also weigh in. We will continue to keep you informed on a timely basis with a focus on reducing uncertainties and addressing questions about how these major pieces of legislation will affect you, your business and your employees.