An ALM Website

March 24, 2010

CORPORATE COUNSEL

Must-Know Facts About Health Reform

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A beaming President Obama on Tuesday signed a $938 billion health care overhaul that included the Senate's reform bill, the Patient Protection and Affordable Care Act, and a package of changes to the bill through a separate reconciliation bill.

The legislation requires most legal U.S. residents to obtain health insurance and provides government subsidies to help lower-income individuals do so through newly created state health insurance exchanges or marketplaces. It also imposes significant new responsibilities on employers nationwide and could, over time, fundamentally alter the nature of employer-sponsored health care and the workplace itself.

As employers look ahead to understand the implications of this sweeping legislation, there are several new responsibilities and requirements that they must be aware of.

The new "employer responsibility" requirements contained in the Senate and reconciliation legislation would penalize employers who fail to provide "affordable" or sufficient health insurance to their workers. While an employer is not required to provide or maintain health insurance, those with more than 50 employees would face a penalty to help defray the cost of health insurance if any employee receives government subsidies to purchase their own insurance through a health insurance exchange because the employer plan is deemed unaffordable, or if the employer does not offer coverage at all.

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Specifically, starting in 2014, the employer would pay $3,000 per full-time worker who obtains a tax credit up to a cap of $750 times the total number of full-time workers if the insurance it does provide is considered inadequate or too costly. If the large employer does not offer insurance at all, it would need to pay $2,000 per full-time worker if any employee obtains tax credits for the purchase of health care. The first 30 workers are exempted from the penalty payment calculation.

In addition to a penalty for not providing health insurance to workers, the bill requires employers to automatically enroll their employees in their health plans. The legislation also provides assistance for small employers providing health insurance to their workers in the form of a tax credit. Under the bill, the premium tax credit would be limited to firms employing fewer than 25 employees.

The new legislation allows certain low-income employees who do not qualify for a federal subsidy to opt out of employer-sponsored coverage. These employees would receive "free-choice vouchers" from their employers equal to the value of the benefits of the employer plan that could be used to join an exchange plan. The employees could cash in the amount of the voucher in excess of the cost of purchasing insurance through the exchange, which may prompt some workers to opt to forgo employer coverage.

Accordingly, employers who offer benefits to their workers face the prospect of new direct costs, in the form of either a penalty or a voucher, if the benefits are not deemed sufficient or certain employees decide to obtain coverage through the health insurance exchange.

Some employers could also see their health care costs increase as healthier lower-income workers leave employer-sponsored plans to obtain insurance through the exchange. When the state exchanges become operational in 2014, they would only be open to individuals and small employers with 100 or fewer employees, unless the state wants to limit this to firms of 50 or fewer workers. However, beginning in 2017, states have the option of expanding the exchange to larger employers.

The Senate bill includes "grandfathering" provisions that exempt group health plans in effect as of the date of enactment from many of the bill's new insurance market reforms. However, under the reconciliation bill certain of these insurance market reforms are made applicable to so-called "grandfathered" plan as well, including a prohibition of lifetime limits, a prohibition on rescissions, and a requirement to provide coverage for non-dependent children up to age 26.

Employers may revisit the attractiveness of providing health benefits to their workers, especially in light of the new restrictions and mandates and the trajectory health care costs may take. In other words, employers will have to determine if it would become more costly to provide employee health coverage or pay the penalty.

To help pay for the cost of expanding health care coverage, the health care legislation, as modified by the reconciliation bill, would, beginning in 2018, impose a 40 percent excise tax on employment-based health plans whose premiums exceed $10,200 for single coverage, $27,500 for a family plan, $11,850 for retirees and $30,950 for employees in high-risk professions.

The reconciliation bill would also exclude stand-alone dental and vision plans from the excise tax, and permit an employer to reduce the cost of the coverage when applying the tax if the employer's age and gender demographics are not representative of the age and gender demographics of a national risk pool. The dollar thresholds would be indexed to inflation. The Congressional Budget Office (CBO) has noted that most employers would probably respond to the tax by offering premiums at or below the threshold.

The bill also imposes a new premium tax on group health plans to fund comparative effectiveness research. The bill also contains annual fees on health insurers and medical device makers that are, according to the CBO, likely to be passed through to private payers. It is also important to note that the bill will end the tax deduction for employers who receive a federal subsidy for offering prescription drug coverage for retirees beginning in 2013, making the provision of these benefits more expensive.

For retirees, the bill creates a federal re-insurance program to provide reimbursement for employers that provide health insurance for retirees aged 55 to 64 and their families. The government would pay 80 percent of the cost of benefits provided per enrollee between $15,000 and $90,000. The employer would have to use funds to lower the cost of the plan and they could not be used for other purposes.

Employers who offer flexible spending accounts (FSAs) and workers who utilize them face new contribution limits under the new legislation. Those who have utilized FSAs to promote consumer-driven health care as a means of controlling rising health care costs will face caps on the salary amount that can be directed to FSAs. Beginning in 2013, salary reductions for FSAs will be limited to $2,500. This amount will be indexed for inflation beginning in 2012. However, if health costs continue to rise at a higher rate than inflation, the effective value of FSAs will diminish over time. The legislation does contain provisions designed to motivate the use of wellness programs by employers to improve the health and productivity of their workforce and control health care costs.

The ultimate question for employers is whether or not the current health care legislation will, in fact, bend the cost-curve or, in other words, reduce employers' ever-increasing health care costs. For employers grappling with the impact of rising health care costs in the competitive global economy, the answer is far from certain.

Employers face dramatic changes in the scope and content of employer-provided health insurance and uncertainty about whether these changes will, in fact, reduce the rising costs of providing such benefits. Given these dynamics, employers should consider the cumulative effect of new restrictions, mandates and the likely trajectory of health care costs in the wake of this sweeping legislation before evaluating the attractiveness of offering health care to their workers versus the costs of non-compliance.

Compliance with these new requirements, some of which may take effect immediately, begins with an awareness of how this complex legislation will impact employers and a review of necessary changes to employee benefit plans and practices. Moreover, the impact of health care legislation extends beyond employee benefits. It is likely to transform the nature of the workplace itself as employers reexamine both the compensation and composition of their workforce.

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