



March 22, 2010

EMPLOYEE BENEFITS LEGISLATION: THE STATE OF HEALTH CARE REFORM

by Jennifer Lunski, Esq.

Woodruff-Sawyer is pleased to present *Employee Benefits Legislation: The State of Health Care Reform*. The objective of this briefing is to provide you with a clear understanding of pending health care legislation, who it affects and how you, the employer, will be directly impacted.

On March 21, 2010, at 10:48 p.m., the House approved "The Patient Protection and Affordable Care Act Bill" (HR 3590). HR 3590 was drafted in such a way that once it is adopted by the House, the Senate bill would be considered passed. The President is expected to sign HR 3590 into law early this week. Additionally, the "Health Care and Education Reconciliation Act of 2010" (H.R. 4872) passed. HR 4872 must now pass the Senate, where reconciliation rules could delay passage. The Senate has assured the House that it plans to approve this bill, so we expect these bills to be the final word on health care (for the moment at least). If any provisions do change, we will monitor any new developments. In the interim, we are focused on keeping you and your health plans in compliance once President Obama signs this legislation into law this week.

In this issue, we are summarizing the provisions in the legislation that could potentially affect your employee benefit plans and the year they are scheduled to go into effect.

Effective 2010 (This impacts plan years beginning 6 months from the date President Obama signs the bill)

- **Reinsurance Programs for Early Retirees.** A temporary reinsurance program would be created for employers providing health insurance coverage to retirees over age 55 who are not entitled to Medicare. The government would reimburse employers 80% of retiree claims between \$15,000 and \$90,000.
- **Insurance Cancellation.** Insurers would be prohibited from cancelling coverage except in the event of fraud.
- **Pre-existing Condition Limits.** Group health plans and issuers in the individual and group markets would be prohibited from excluding coverage for pre-existing health conditions.
- **Lifetime Limits.** Individual and group health plans would be prohibited from placing lifetime limits on the dollar value of coverage.
- **Medical Loss Ratio Rate Reviews.** If minimum loss ratios are not met, the health insurance issuer must provide a rebate to enrollees. Minimum loss ratios are considered not met in large group plans when they spend less than 85% of premium revenue. Minimum loss ratios are considered not met in small group plans and individual market plans which spend less than 80% of premium revenue. Health plans would also be required to report the proportion of premium dollars that are spent on items other than medical care.
- **Dependent Coverage to Age 26.** Insurers that offer dependent coverage would be required to allow uninsured children to remain on their parent's health insurance up to 26 years of age (only those dependents who do not have access to employer provided coverage are eligible).



Effective 2011

- **Increased Tax on Health Savings Account (HSA) and Medical Savings Account (MSA).** The tax on distributions from a health savings account or an Archer MSA that are not used for qualified medical expenses would be increased to 20% (from 10% for HSAs and from 15% for Archer MSAs) of disbursed amount. Only prescribed drugs would be permitted to be reimbursable through a health savings account, Archer medical savings account, health reimbursement arrangement, or flexible spending arrangement for medical expenses.
- **Wellness Programs Grants.** Small employers that establish wellness programs would be eligible for grants for up to five years.
- **Value of Benefits.** Employers must disclose the value of the benefit provided for each employee's coverage on W-2s.

Effective 2013

- **FSA Medical Expense Contributions.** The amount of contributions to a flexible spending account for medical expenses would be limited to \$2,500, adjusted for inflation.
- **Comparative Research Initiatives.** A fee would be imposed on insurers and self-insured plans of \$2 per covered beneficiary to fund comparative research initiatives.
- **Medicare Tax Increase.** Imposes a 0.9% increase to the Medicare tax on wages for single taxpayers with income in excess of \$200,000 and couples filing jointly with incomes in excess of \$250,000. This Medicare tax (a total of 3.8%) will be applied to net investment income for individuals or couples meeting these thresholds.

Effective 2014

- **Wellness Programs.** Employers would be permitted to offer employees rewards of up to 30% of the cost of coverage for participating in wellness programs. The rewards can be taken from premium discounts, waivers of cost sharing requirements or benefits that would otherwise not be provided.
- **Automatic Enrollment into Health Insurance Plans.** Employers with more than 200 employees would be required to automatically enroll employees into health insurance plans offered by the employer. Employees may opt out of coverage.
- **Tax Penalties.** Generally, employers with more than 50 employees who do not offer coverage will face tax penalties from \$750 to \$2,000 per employee.
- **Mandated Appeals for Self-Insured Plans.** Self-insured plans will be required to implement new mandated appeals processes and to notify participants of these new rights.
- **Health Insurance Exchange for Small Employers and Individuals.** States will be required to create a Health Insurance Exchange, through which individuals and small employers could purchase "qualified health benefits plans" ("QHBP"). No new federal agency would be created under the bill to oversee this process. However, The Department of Health and Human Services would be charged with establishing and operating a state-based exchange in any state that failed to establish such an exchange on or before January 1, 2014. The exchanges initially would be limited to employers of fewer than 101 employees. In 2017, the states would have the option to reduce this to employers with less than 51 employees or expand its exchange to accommodate larger employers.
- **Family Coverage Extension.** Mandatory extension of family coverage to dependents up to 26 years of age.



Effective 2018

- **40% Excise Tax.** A 40% excise tax would be imposed on insurers of employer-sponsored health plans with aggregate values that exceed \$10,200 for individual coverage and \$27,500 for family coverage. Employers would be required to report the relevant amounts on W-2's. Voluntary benefits, such as dental and vision, are explicitly exempted from the tax if they are provided in a stand alone policy and are not part of the comprehensive medical benefits coverage.

Your Woodruff-Sawyer representatives continue to analyze the potential impacts of the legislation. We will be prepared to consult with you on benefit design changes that would best suit your business needs if and when the legislation is finalized. If you have any questions, please feel free to contact your Woodruff-Sawyer Account Executive.

The information provided in this Legislative Update should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only and you are urged to consult an attorney concerning your own situation and any specific legal questions you may have.

Woodruff-Sawyer is one of the largest independent insurance brokerage firms in the nation, and is an active partner of International Benefits Network and Assurex Global. For over 90 years, Woodruff-Sawyer has been partnering with clients to implement and manage cost-effective and innovative insurance, employee benefits and risk management solutions, both nationally and abroad. Headquartered in San Francisco, Woodruff-Sawyer has offices throughout California and in Portland, Oregon.

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About Jennifer

Jennifer is Vice President, Compliance Officer in the Benefits practice at Woodruff-Sawyer & Co. She consults directly with our Employee Benefits clients on all matters of compliance and leads both internal and external trainings. She has also conducted numerous trainings on ERISA, COBRA and HIPAA to Department of Labor employees, the Department of Justice and to employers that sponsor ERISA-covered plans. A published expert on ERISA, COBRA and HIPAA rules and regulations, Jennifer has investigated a broad spectrum of company employee benefit plans and has extensive experience negotiating with industry fiduciaries and service providers.

Before joining Woodruff-Sawyer, Jennifer was a Senior Investigator at the US Department of Labor (DOL), Employee Benefits Security Administration in San Francisco. Jennifer can be reached at 415.402.6577 or jlunski@wsandco.com.