



## WEEKLY UPDATE ON HEALTH CARE REFORM

**MONDAY MARCH 22, 2010**

Just before midnight last night, the House of Representatives passed its revised version (the "reconciliation bill") of the Senate health care reform bill passed in late December 2009, and set the stage for dramatic changes to the current American health care system.

The bill now goes to the Senate, which plans to debate the House's changes as early as tomorrow. Assuming some procedural hurdles are avoided and the bill gets to the Senate floor, two paths follow from there: if the Senate passes the House reconciliation bill with no changes, the entire package goes to the president for signature. If, however, the Senate makes any changes, the bill must go back to the House again for approval.

The final step is for President Obama to sign the bill, which is expected very soon after passage by Congress.

In terms of substance, the changes in the reconciliation bill compared to the Senate bill mostly affect the Medicare and Medicaid programs, but there are a few of note for employers:

- **Employer Mandate.** The revised bill increases the per-employee penalty for not offering coverage from \$750 to \$2,000 per employee. And there are two new twists: (1) the first 30 employees for any employer are exempt from the penalty; and (2) if you are a larger employer that offers coverage and has an employee instead buy subsidized coverage through an exchange, the penalty is now \$3,000 for each such employee.
- **"Cadillac Plan" Tax.** Implementation is now delayed until 2018; the thresholds (under which no tax is paid) are increased to \$10,200 for individuals and \$27,500 for families (\$11,850 and \$30,950 for retirees and high risk profession employees). Dental and stand-alone vision are no longer included in the Cadillac-plan tax equation.
- **Market reforms.** Certain reforms would now apply to all existing health plans immediately, including grandfathered group plans (prohibition on lifetime limits; prohibition on rescissions; limitations on excessive waiting periods; and the non-dependent coverage to the age of 26). For the dependent coverage requirement in the group plan context, prior to 2014 a group plan must offer this only for dependents who do not have access to employer-provided coverage. For group health plans (including self-insured plans), pre-existing condition exclusions would take effect in 2014; and the proposed legislation restricts annual coverage limits six months after enactment and bars them starting in 2014.
- **Individual Mandates.** The numbers are adjusted so lower income individuals pay less across the board if they fail to secure coverage (from \$495 to \$325 in 2015, for example) and higher income individuals will pay more (from 1 to 2 percent of their adjusted gross income in 2015, for example).
- **Medicare Tax.** There is a new 3.8 percent "Medicare" tax that would be imposed on the investment income of individuals with adjusted gross income of more than \$200,000 and couples of more than \$250,000.
- **Rate Regulation.** It does not appear that any new insurance rate regulation provisions are included in the package, as had been proposed by the White House in February.



Some other key provisions of the bill impacting employers are:

- Health Account Changes. Beginning in 2011, over-the-counter medicines are no longer considered eligible expenses and a 20 percent penalty applies for non-qualified HSA distributions; in 2013, FSA maximum election is reduced to \$2,500.
- Disability/Long-Term Care Benefit. The new voluntary benefit begins in 2012.
- Retiree Health Provisions. The government reinsurance program begins in 2011 for early retiree "high" claimants, the Medicare Part D (Drug) benefit "donut hole" design is progressively eliminated over the next 10 years, and the Part D Retiree Drug subsidy becomes taxable in 2013.
- Wellness. The HIPAA-allowed incentive provisions are increased to 30 percent of employee medical premiums beginning in 2011.