



## PRESIDENT OBAMA SIGNS HEALTHCARE REFORM INTO LAW (H.R. 3590) HEALTHCARE REFORM IN AMERICA – Part I

March 2010

*ON TUESDAY MARCH 23, 2010 PRESIDENT OBAMA SIGNED THE PATIENT PROTECTION AND AFFORDABLE CARE ACT (THE ACT), A SWEEPING PIECE OF LEGISLATION THAT WILL RESHAPE THE DESIGN AND DELIVERY OF HEALTHCARE IN AMERICA FOR MOST U.S. CITIZENS AND LEGAL RESIDENTS. WE WILL KEEP YOU APPRISED OF THE NEWLY ENACTED HEALTHCARE REFORM LEGISLATION DEVELOPMENTS AS THEY CONTINUE TO UNFOLD IN OUR SPECIAL INSIGHTS NEWSLETTER SERIES ENTITLED HEALTHCARE REFORM IN AMERICA.*

It should be noted that we expect the original law, as enacted, to be modified through the budget reconciliation process which begins in the Senate this week. Court challenges to various aspects of the law as well as the issuance of guidance and regulations could also modify (or clarify) current provisions.

Many of the tax and revenue-raising provisions are scheduled to begin as early as January 1, 2011. The Reconciliation bill, if passed, would delay (and restructure) many of these taxes until 2012 and 2013. Substantial benefit changes, such as the establishment of Exchanges to purchase coverage, creation of premium and coverage subsidy credits, as well as the employer and individual mandates do not take effect until 2014. We will briefly summarize these issues and provide a more comprehensive analysis in future *Insights*.

This first special *Insights* edition will focus primarily on those provisions that impact employer-sponsored plans and are scheduled to take effect within the next twelve months.

### PREMIUM SUBSIDIES FOR SMALL BUSINESS

The Act provides a phased-in tax credit for small employers with no more than 25 employees and annual average wages of less than \$40,000 who offer coverage to their employees as follows:

**Phase I** would become effective for the 2010 tax year and provide a tax credit up to 35% of the employer's contribution toward employees' healthcare coverage **if the employer contributes at least 50% of the total cost or 50% of a benchmark premium.**

Employers with 10 or fewer employees and average annual wages of less than \$25,000 would be eligible for a full 35% tax credit.

The Phase I subsidy continues through 2013, at which time Phase II will begin which provides tax credits for a period of two years to small businesses that purchase coverage through the Exchange.

Implementation details are not available, as yet.

### NEW HEALTH PLAN REQUIREMENTS

The following summarizes some of the changes that could impact group health plans over the next 12 months. It is unclear whether the changes must take place on the effective date noted in the law or as of the first plan year on or after the effective date. Further guidance, definitions and implementing regulations for each mandate will be necessary. New plan requirements include:

#### Within the first six months of enactment

- Effective 90 days after enactment (June 23, 2010), a temporary reinsurance program will be established to reimburse qualifying employers or insurers 80% of claims between \$15,000 and \$90,000 for retirees over the age of 55 who are not eligible for Medicare. The program has been allotted \$5 billion and is scheduled to run through January 1, 2014.

Payments from this program are intended to lower plan costs by reducing premiums, retiree contributions, copayments, deductibles and other

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out-of-pocket expenses.

- ◆ Annual benefit limits will be subject to guidelines established by The Secretary of Health and Human Services and ultimately will be prohibited beginning January 1, 2014.
- ◆ Certain insurance market reforms which focus on the oversight of premium increases and review how premium dollars are being spent will begin to take effect.
- ◆ Certain government responsibilities that focus on consumer protections are also contained in the legislation. For example, the law requires a website be created as of July 1, 2010 to help individuals identify health coverage options that may be available. Sixty days after enactment (May 23, 2010) a standard coverage option website format is supposed to be developed for ease of benefit comparison.

## **Effective six months after enactment (September 23, 2010)**

- ◆ “Qualified health plans” will be required to provide preventive services without cost-sharing. The preventive services would be those services rated A or B by the U.S. Preventive Services Task Force which includes recommended immunizations for children, preventive care for infants, children and adolescents, and additional preventive care and screenings for women. It appears this requirement applies to group health plans, as well.
- ◆ Unmarried dependent children can continue coverage under a parent’s group health plan up to age 26. Insured plans in states with more generous provisions that allow dependents to remain on a parent’s plan beyond the federal requirement will continue to apply.
- ◆ Lifetime limits on coverage will be prohibited.
- ◆ Pre-existing condition limitations for “children” will be eliminated.

## **Beginning January 1, 2011**

- ◆ The healthcare flexible spending account salary reduction amount will be limited to \$2,500 (adjusted annually for cost-of-living). The Reconciliation bill delays implementation until January 1, 2013.
- ◆ Over-the-counter medication will no longer be allowed to be reimbursed through healthcare savings arrangements such as FSAs, HSAs, and HRAs.
- ◆ The 10% tax on HSA distributions not used for qualified medical expenses will increase to 20%.

- ◆ New reporting and W-2 requirements will be imposed on employers and plan sponsors.
- ◆ Employers would be required to establish a voluntary long-term care insurance program which would be financed through payroll deduction. Employers would automatically enroll employees into the CLASS program; however, an employee would have the ability to opt-out. The CLASS benefit would pay approximately \$50 per day for certain services. The cost of the program is currently estimated to be \$65 per month and employees would have to participate in the program for a minimum of 5 years in order to qualify for future benefits. We will provide more details about the CLASS program mandate in a future *Insights Healthcare Reform in America*.

## **Within twelve months of enactment (March 23, 2011)**

- ◆ The government will develop uniform standards for insurers to use when providing information about benefits and coverage. Insurers must comply with the new benefit and coverage formats no later than two years after enactment, March 23, 2012.

## **MAJOR REVENUE PROVISIONS BEGIN JANUARY 1, 2011**

The following are slated to begin January 1, 2011 unless overridden by the Reconciliation bill being considered in the Senate.

- ◆ Impose a tax on insurers of group health plans with aggregate values in excess of \$8,500 for individual coverage and \$23,000 for family coverage (“Cadillac Tax”).
- ◆ Introduce taxes on various healthcare sectors including pharmaceutical manufacturers, medical device manufacturers and the insurance industry.

## **MAJOR BENEFIT PROVISIONS BEGIN JANUARY 1, 2014**

The following briefly summarizes the major benefit provisions of the Act which become effective January 1, 2014. Much more information about these key elements will be provided in the future.

- ◆ Most U.S. citizens and legal residents will be required to have health insurance or pay a penalty. Lower income individuals will be eligible for premium and cost-sharing subsidies to help fund the cost of coverage and further limit out-of-pocket expenses.
- ◆ State-based Exchanges will be established where individuals and small employers (up to 100 employees) will be able to shop and purchase

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qualified health coverage. Each state may allow employers with 100 or more employees to shop for coverage on the Exchange beginning in 2017.

- ◆ Employers with 50 or more employees will generally be required to offer coverage or pay a penalty. Vouchers to assist low income individuals whose share of employer-provided coverage exceeds certain threshold requirements would have to be made available to help these employees purchase insurance through the Exchange.
- ◆ Four benefit categories (*Bronze, Silver, Gold, and Platinum*) ranging from minimum required coverage to more comprehensive and expensive coverage will be established and available on the Exchange. A separate catastrophic plan for those under age 30 will also be created.
- ◆ Employers with 200 or more employees would have to automatically enroll employees into one of the health plans being offered.

## IMPLEMENTING THE LAW

The Patient Protection and Affordable Care Act is still in its infancy. Right now we can only report on our understanding of the content of the legislation; how the law will actually work, including how the individual and employer responsibilities will be implemented and enforced will require further guidance from the regulatory agencies slated to oversee the legislation.

## ADDITIONAL INFORMATION

For specific questions concerning information contained in this *Insights*, please contact your Chernoff Diamond consultant.

Information contained in this *Insights* is not intended to render tax or legal advice. Employers should consult with qualified legal and/or tax counsel for guidance in respect of matters of law, tax and related regulation.

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