Overview

Last week, President Obama signed into law H.R. 3590 – the Patient Protection and Affordable Care Act. H.R. 3590 is the Senate’s creation addressing healthcare reform and was originally passed by the Senate on December 24th. The House passed this bill on Sunday, March 20th and the President subsequently signed it into law. The House has also passed HR 4872 – The Health Care and Education Reconciliation Act of 2010 that amended HR 3590 and the Senate voted to approve this reconciliation legislation on Thursday. President Obama is expected to sign this into law as well in the next few days.

Many states are challenging the legislation as unconstitutional (PA among them) and other legislation is being introduced that would repeal some or all of the law. Without debating the politics of any of this, we felt that it would be helpful to provide an overview of what has been passed thus far. Obviously, the details of the law are still being defined and/or clarified and, as it is with any legislation, there will be many consequences (both good and bad) that will only be understood in the future.

The $940 billion reform legislation will impact all employers and individuals in some way and is intended to expand or improve access to healthcare, reduce healthcare costs, and improve individual health and health outcomes. The reform is quite broad and contains insurance market reforms, employer mandates, individual mandates, expanded employer and individual taxes, new regulatory entities, Medicaid expansion, and additional reporting and compliance requirements. This summary provides highlights of the legislation and an implementation timeline. Although many of the provisions of the law do not go into effect until 2014, some are required on the first plan year following six months after enactment (10.1.10). We will continue to update you with relevant details as we are committed to keeping you current with information relative to your insurance and employee benefit programs.

Time Line

Changes beginning in 2010 (plan year renewing on or after October 1, 2010)

- Insurance Market Reforms
  - Federal review of community rating standards for insurers
  - Removal of lifetime benefit limits on “essential” benefits
  - Requires coverage of dependents until age 26 for all plans
  - Mandates minimum loss ratio requirements for insurers
  - Disallows insurers from canceling or rescinding coverage (excepting fraud)
  - Eliminates pre-existing condition exclusion for children age 19 and under
  - Mandates coverage for certain preventive services at no cost sharing
- Creation of a national temporary high-risk pool that will provide health coverage to individuals with pre-existing medical conditions and no access to group coverage.
- Small Business Tax Credit will be available to small employers with 25 or fewer employees and average annual wages of less than $50,000 if they purchase health insurance for employees.
Healthcare Reform

Changes beginning in 2011

- Health plan W-2 reporting requires employers to report the aggregate value of medical, dental, vision and “supplemental” insurance. Required for 2011 W-2’s provided by employers in 2012.
- Over-the-counter medications are no longer eligible for Flexible Spending Accounts (FSA) or Health Savings Accounts (HSA).
- Increases tax penalty for non-qualified distributions from Health Savings Accounts.
- Medicare Advantage (MA) payments to insurers are frozen at 2010 levels and MA carriers are to be held to Federal loss and expense standards.
- Establishes a voluntary Long-Term Care insurance program that automatically enrolls all working adults and requires payroll contributions to the program unless the employee opts out.

Changes beginning in 2013

- FSA contributions limited to $2,500 per year.
- Employer Retiree Drug Subsidy (RDS) refund created through Medicare Part D is eliminated.
- Employers are required to notify employees that they may be eligible for participation in a state-based health insurance “exchange”.
- Individuals with incomes exceeding $200,000 ($250,000 joint) will pay a 3.8% Medicare surtax on investment and other passive income. These same individuals are required to pay .9% Medicare tax on all income (earned and unearned) above this threshold.

Changes beginning in 2014

- Pre-existing condition exclusions eliminated from all insured plans for all individuals.
- Federal community rating standards for insurers are imposed that will eliminate an insurer’s ability to apply group experience to rating as well as many other changes.
- States are required to create “Health Insurance Exchanges” administered by a governmental agency or other non-profit organization. These exchanges would offer coverage to individuals and small employers (under 100 employees or 50 as determined by state).
- Fines for employers with more than 50 employees if they do not provide coverage to their employees. For those that do provide coverage, the coverage must meet a minimum federal standards test to avoid a penalty as well.
- Individuals must obtain coverage or face a federal penalty of up to 2.5% of income. The penalty is phased in through 2016.
- Federal tax credits will be provided to individuals with incomes below 400% of the Federal poverty level to subsidize this individual coverage.
- The small business tax credit implemented in 2010 will be increased in 2014.
- Medicaid eligibility is expanded.
- Employers with more than 200 employees will be required to “auto-enroll” all new employees into any employer sponsored health insurance plans. Employees would also be notified of their options in opting out of the employer based coverage as well.
- Prohibition of eligibility waiting periods of longer than 90 days is enforced.
- Health insurers are assessed a non-deductible annual fee based on market share.
Healthcare Reform

Additional Considerations

- Beginning in 2018 a “Cadillac Tax” will be imposed on “high value” health plans for the value of the employer provided health coverage that exceeds a statutory threshold.
- Wellness Incentives will be expanded to allow the employer (and insurer we believe) to apply a greater cost differential to employees who participate in an employer sponsored wellness program versus those who do not. Employers may also be eligible for wellness subsidies based on their company size and the wellness programs that are offered.
- “Grandfathered Plans” – those in place as of the enactment of the law – would be allowed to continue however they will be subjected to some of the benefit mandates imposed by the legislation and will ultimately be limited or excluded from making any benefit changes to their plans.
- The definition of “employee” seems to relate mostly to “full-time” employees and it is unclear at this time what impact this legislation will have to the employer’s obligation to part-time and historically benefit ineligible employees. Full-time is defined as 30 hours of service per week.
- Many of the insurance underwriting reforms and mandates may make self-insurance (or some level of self-insurance) more appealing to groups of all sizes. The legislation also empowers and requires that the Secretary of Health and Human Services assess annually the repercussions of these underwriting reforms and their impact on “adverse selection” and self insurance in general.

Summary

Many people have asked if this legislation is the beginning of the end of the Employee Benefit Services Division of EHD. It is not. The role of the insurance broker, insurance agent, and employee benefit consultant will continue to evolve. We are committed to helping our clients understand and address the changes brought about by Healthcare Reform. These changes will not only impact health insurance itself, but corporate and individual taxation, disclosure and reporting requirements, plan designs and funding opportunities, overall employee compensation, employee health, and the dynamic of the employer/employee relationship as it relates to Healthcare. We are committed to serving you and your employees; and whether your coverage is employer based, individual, insured, self-funded, exchange based, or governmental, we will work to promote better health and productivity through all that we do. We will continue to apprise you of developments related to this legislation and welcome your questions and comments as we soldier on. Please contact us if you have any questions and, as always, thank you for your continued business!

Sources:
National Association of Health Underwriters—Health Reform Update, March 25, 2010
Kaiser Family Foundation—Focus on Health Reform, March 26, 2010

As one of the largest privately held firms in the Mid-Atlantic Region, EHD is consistently identifying, assessing, and educating our clients of potential problems and concerns in the ever changing marketplace.

As expert problem-solvers with a national scope through our partnership with Assurex Global, we work for you and your bottom line.

EHD is committed to working with you through these monumental reforms. As your partner we are committed to finding the best solutions to help you protect your employees, your business, and your bottom line.