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DATE: July 24, 2009
TO: Our Valued Client Partners & Friends
FROM: HIB Account Team
RE: LEGISLATIVE UPDATE 2009-12
Health Care Reform: A Chalk Board Analysis

We are pleased to bring you our **Legislative Update 2009-12: Health Care Reform - A Chalk Board Analysis**. This update reviews some the actions which have been taking place in Capitol Hill regarding Health Care Reform. By no means is this final, but we wanted to provide you with a summary of what is occurring.

We will continue to keep you informed of any breaking news with regard to this topic. In the meantime we hope you find this informative, and please, if you have any questions, contact your HIB Account Team for assistance.

Health Care Reform: A Chalk Board Analysis

On Tuesday, July 14, 2009, the House Committees on Energy and Commerce, Ways and Means, and Education and Labor (House Tri-Committee) released draft health care reform legislation: [America's Affordable Health Choices Act \(H.R. 3200\)](#).

On Wednesday, July 15, 2009, the Senate Health, Education, Labor, and Pension Committee passed its version of [America's Affordable Health Choices Act](#). The Senate Finance Committee has yet to act. By Friday, July 17, 2009, each of these committees had modified and approved slightly different versions, and the Congressional Budget Office signaled its concern on the cost of the Senate version of the Plan estimating the Plan to be \$615 billion over 10 years. Others estimate the House version would cost \$1 trillion over 10 years. Fiscally conservative Democrats (blue dogs) could join with Republicans to block passage absent a clear way to pay for it.

On Monday, July 20, 2009, various congressmen, both Democrat and Republican, called for the process to slow down and get it right. The White House continues to push for a final bill by Labor Day. Senator Reid announced today that the Senate will not vote on health care legislation prior to the summer recess (Labor Day).

The purpose of this Memorandum is to provide you with an overview of the major tenets of H.R. 3200 and a discussion of its potential consequences. It is important to note that we may now have a framework for reform, but we are far from certain as to the end product.

DISCUSSION

1. The Legislation Process. The players include three House Committees and two Senate Committees, to wit:

HOUSE	SENATE
Energy and Commerce	Health Education, Labor and Pensions (HELP)
Education and Labor	Finance (Taxation)
Ways & Means (Taxation)	

The House and Senate versions, when finalized, will go to a Conference Committee composed of members from both chambers. The resulting product will then be brought to a final vote in each chamber and if passed, it will go to the White House.

2. The Timetable. If Health Reform becomes a reality in 2009, certain insurance reforms will take effect in 2010. The full program would go into effect in 2013.

3. Its Reach. H.R. 3200 is comprehensive, addressing most all health delivery systems including group and individual health insurance, Medicare, Medicaid, Healthy Families and even providers, and creates yet another government agency: The Health Choices Administration headed by the Health Choices Commissioner appointed by the President.

4. Qualified Health Benefit Plans. H.R. 3200 and, for the most part, the Senate HELP Committee’s bill, will include underwriting reforms, rating restrictions, new market standards, and minimum plan design requirements. It is clear that state law will no longer guide the content of insured health plans.

- a. **Underwriting Reforms.** This will include:
 - Elimination of all pre-existing condition limitations; and,
 - Guarantee issue and renewal for all individual and group insured health plans.
- b. **Rating Restrictions:**
 - Variations in rate may only exist by family structure, geographic region, value of the benefit provided, tobacco use, and age. The maximum age adjustment cannot exceed the ratio: 2 to 1. It is important to note that insurers no longer can use claims experience, gender, or class of business in rating.
- c. **Market Standards:**
 - Health Choices Commissioner will define marketing practices;
 - *Uniform Grievance and Appeal Mechanisms.* Does this imply that the Employee Retirement Income Security Act’s (ERISA’s) rules are not adequate?
 - *Transparency and disclosure.* The Commissioner will set new standards. What about ERISA’s?
 - *Timely Payment of Claims.* The new law would adopt the Medicare standard for plans offered through the Insurance Exchange;

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- *Standardized Coordination of Benefits (COB) and Subrogation Rules.* At present each state sets its own COB rules and the federal courts have made a mess out of subrogation.
- d. **Minimum Plan Design Requirements.** The plan design rules for the Insurance Exchange plans give us an insight as to the comprehensive nature of design mandates. Please see the next paragraph. Plans may no longer have lifetime or annual maximums. Additionally, H.R. 3200 allows the Commissioner to set non-discrimination rules.
5. **The Insurance Exchange.** The Senate proposes an Insurance Exchange at the state level. H.R. 3200 would call for a National Insurance Exchange with an option for states to operate their own. The Insurance Exchange would offer essential health care benefit plans (inpatient care, ambulatory care, emergency care, laboratory, preventive and wellness services, as well as drug coverage, mental health, maternity and newborn and pediatric services). The Exchange would offer both group and individual policies underwritten by insurers and also provide access to a public health insurance option. Under H.R. 3200, the Commissioner will dictate which insurers and plans it will make available.
6. **Public Health Insurance Plan.** Health and Human Services (HHS) will design and implement the plan. It will contract with providers and negotiate pricing much in the same way it does for Medicare services. The difference from Medicare is that the public health plan option must meet the same marketing, underwriting, rating and plan design requirements established for private insurers with offerings in the Exchange.

FINANCIAL DISCUSSION

Last Friday the Congressional Budget Office (CBO) placed a large price tag on the current Health Reform options and its impact on government spending. Late Friday night, the CBO announced it had done some recalculating and now finds the plans “budget neutral.” Whatever the right answer, employers and individuals both have a huge financial stake.

1. **Mandated Coverage.** Although this has been a hotly contested issue, both the House bill (H.R. 3200) and the Senate HELP Committee bill would require that all legal U.S. residents must obtain health insurance coverage. The Senate bill would allow for exemptions. Those not exempt would be subject to an annual minimum penalty of \$750 in the absence of health care coverage. The House bill calls for a federal tax set at 2.5% of adjusted gross income applicable to those who do not obtain coverage. These provisions would take effect in 2013 under the current timeline.

Both bills will provide for premium credits for purchases through an Insurance Exchange.

2. **Employer Plans.** Basically, the Senate proposal would require an employer with 25 or more employees to offer health care benefits or pay an annual penalty of \$750 per uncovered full-term employee (\$375 for part-time). The penalty would also apply to employers who offer coverage but pay less than 60% of their employees’ monthly premiums! For employers subject to the penalty, the penalty will apply to all employees beyond the first 25.

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The Senate proposal also includes the availability of tax credits to employers with 50 or less full time employees who do offer coverage and do pay at least 60% of the premium, at least for the first three years.

The House bill gives employers the option to buy group health coverage or to pay into a fund on the employees' behalf. It sounds like pay or play all over again. The House bill's minimum employer contribution requirements toward the premium cost are more rigorous than those found in the Senate bill (72.5% for single coverage; 65% for family coverage). Large employers who do not provide health coverage will pay an 8% payroll tax. Small employers would pay a 2% to 6% payroll tax based on payrolls in excess of \$400,000.

- 3. Medicare and Medicaid Expansion.** H.R. 3200 provides for elaborately detailed changes to Medicare coverage and provider payments. It also suggests partially eliminating the Part-D (Drug Plan) do-nut hole (\$500 reduction in 2011) and instituting major drug discount requirements. Of interest to employers, Medicaid would become available to a larger number of low-income workers, starting in 2013. H.R. 3200 would prohibit states from setting restrictive eligibility requirements in the Children's Health Insurance Program (CHIP).
- 4. More Revenue Raising Provisions?** As late as Tuesday, July 21, 2009, members of Congress announced agreement with President Obama that the White House will achieve more Medicare savings. However, many Capitol Hill watchers believe that Congress must create additional revenue-raising vehicles to pay for the cost of health reform. On Tuesday, President Obama stated that he did not want to see any additional tax burdens placed on individuals making less than \$250,000. The House bill does contain a surtax for individuals with adjusted gross income in excess of \$280,000 (\$350,000 for joint filers), whether they have insurance or not.

FURTHER DISCUSSIONS

- 1. The Senate Finance Committee.** This Committee has yet to vote on its bill. There are bipartisan efforts underway to produce a sound approach but with many of the same design elements found in the HELP bill.
- 2. Other Taxes.** Although not a topic for discussion here, the current health reform bills also call for an increase in corporate taxation as a way to bring budget neutrality.
- 3. Other Laws.** H.R. 3200 also includes a COBRA amendment which would allow a COBRA continuee to remain on the former employer's plan beyond 18 or 36 months and until he/she becomes eligible for coverage under a new employer's health plan or coverage through the Exchange (which won't exist until 2013).

Self-insured health plans would have to pay a new federal tax to fund research in plan effectiveness beginning in 2013. The amount estimated is \$375 million per year. The bill allows for a minimum payment of \$2.00 per participant. HHS also would, at some future point, determine a minimum level of claims reserves to be held by self-insured plans, while also meeting the federal minimum plan design and contribution requirements applicable to insured plans.

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4. **State-Sponsored Single Payor Plans.** H.R. 3200 also would allow states to establish single payor plans exempt from the pre-emption provisions under ERISA. This would appear to be the only option available to states under the reform bills so far.
5. **Other Provisions.** It is important to note that both H.R. 3200 and the Senate HELP bill contain mandates for addressing fraud, abuse, wasteful spending, Medicare beneficiary improvements, and studies in medical benefit delivery and payment procedures. They do not contain major cost saving vehicles or substantive plan design changes. As a result they may not produce the savings the White House has promised.

FINAL COMMENTS

It appears that we will have a reform bill containing a public health plan and an insurance exchange. Burdens will increase for employers under the proposed reform packages, both by way of taxes, reporting, plan design and contribution requirements. But much more will rest on the breadth of jurisdiction and powers available to a Health Choice Commissioner. As with ERISA and HIPAA, the teeth of the law will be found in regulations. We will all be very busy as reform becomes reality.

We will provide additional information as it becomes available.

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