

# BENEFITS ALERT

Rose & Kiernan, Inc.

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## HEALTH CARE REFORM

On March 21, 2010, the U.S. House of Representatives passed major health care reform legislation, the **Patient Protection and Affordable Care Act, H.R. 3590**. The legislation was previously passed by the U.S. Senate in December 2009. The Bill was signed into law by the President yesterday, Tuesday, March 23, 2010.

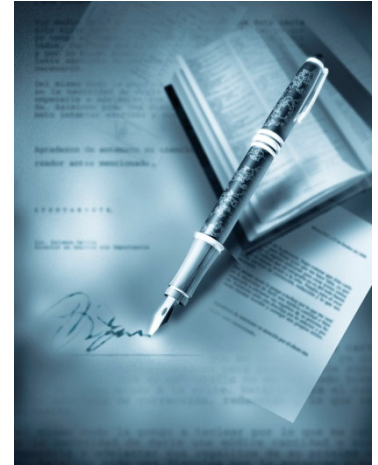
In addition to the main bill, the House also passed a budget Reconciliation Bill, **H.R.4872, the Health Care and Education Reconciliation Act of 2010**. This bill includes changes to the main bill sought by the House. These changes must now be passed by majority vote in the Senate and signed by the President before they take effect. If the Senate makes any changes to the Reconciliation Bill, it will then go to a conference committee of House and Senate members who will have to develop a compromise bill that can pass both Chambers.

**NOTE: This bill applies to insured and self funded clients equally.**

### How Health Care Reform Will Affect Your Business

Although the Reconciliation Bill is yet to be passed by the Senate, major changes are looming. Where applicable, we have pointed out some of the changes that will be required by the existing Reconciliation Bill. Some of the package's provisions that will affect employers include:

- **Employer Mandates.** Effective in 2014, most employers with 50 or more employees must offer coverage to employees. Employers who do not do so may be subject to a fine of \$750 per employee. The Reconciliation Bill changes this amount to \$2000. Construction industry employers with 5-50 full time employees and whose annual payroll is in excess of \$250,000 will also be subject to the \$750 penalty. The benefit plans offered will also have to meet certain requirements. The Reconciliation Bill exempts the first 30 employees from this count so that an employer of 60 will only have 30 employees counted towards this assessment. Also under the Reconciliation Bill, if the employer offers coverage that is deemed "unaffordable", the employer will pay a fine of \$3,000 for each employee who accesses subsidized coverage through the insurance exchange.
- **Individual Mandates.** Citizens and legal residents will be required to have a certain level of health coverage, or pay a tax penalty of up to 1% of income. These rules could restrict the usage of high deductible health plans and will decrease the chance that your employees will decline coverage under your plan.
- **Coverage Subsidies.** Small employers that provide health insurance for employees will be eligible for a tax credit. Also, employers who provide insurance to retirees over age 55 who are not eligible for Medicare are eligible for a temporary reinsurance program. Subsidies for individuals will begin in 2014.
- **Health Benefit Exchanges.** In 2014, state exchanges will be established for small businesses and individuals to shop for health insurance. Larger businesses will be able purchase coverage in the exchanges in the future.



- **Insurance Reforms.** These reforms require policies to provide dependent coverage for children through age 26 if those dependents don't have other employer coverage available. They prohibit lifetime coverage limits, rescission of coverage except in cases of fraud, and imposing pre-existing condition exclusions on children. Provisions pertaining to dependent children, and lifetime coverage limits will take effect in 2010 within 6 months of the signing of the bill. They may affect your benefits and how you administer your benefit programs.
- **Waiting periods.** Fines will be assessed for waiting periods exceeding 90 days. The Reconciliation Bill changes this date to 2014, eliminates the assessment but also prohibits any waiting periods exceeding 90 days
- **Medicare Advantage Plans.** Payments will be frozen in 2011. This does not mean premiums will be frozen, only the payments made by CMS to the carriers who sell Medicare Advantage plans. In 2012, payments will be pegged to Medicare levels ranging from 95% of Medicare payments in high cost areas to 110% in low cost areas.
- **High cost plan excise tax (Cadillac Tax).** The Reconciliation Bill delays the application of the tax, 40% of the amount over the thresholds, until 2018, which gives the plans time to implement changes to fit under the ceiling. The Reconciliation Bill also increases the dollar thresholds from \$8,500 to \$10,200 for single coverage and from \$23,000 to \$27,500 for family coverage (\$11,850 and \$30,950 for retirees and employees in high risk professions). The Law excludes stand-alone dental and vision plans from the tax and permits an employer to reduce the cost of the coverage when applying the tax if the employer's age and gender demographics are not representative of the age and gender demographics of a national risk pool. Under the modified provision, the dollar thresholds are indexed to inflation and the dollar thresholds are automatically increased in 2018 if CBO is wrong in its forecast of the premium escalation rate between now and 2018. This tax is to be paid by your insurance carrier if your plan is insured or administrator if your plan is self funded. We expect these fees to be charged back to the employer in premiums or administrative fees.
- **Future Trends.** Please note that we are advising our clients to prepare for higher trends in prescription drug and Durable Medical Equipment costs as well as insurance carrier administration charges. The reason is the additional tax this bill imposes on pharmaceutical manufacturers (\$4.8 billion beginning in 2011), medical device manufacturers (a \$2 billion fee changing to a 2.9% tax on certain medical devices under the Reconciliation Act) and insurance carriers (\$2 billion beginning in 2011). The fees will change each year and we expect them to be passed on to the employer plan or the consumer directly.
- **FSA plans.** Beginning in 2013, contributions to an FSA plan are limited to \$2,500 per year. Beginning in 2011, OTC items not prescribed by a physician are ineligible.
- **HSA plans.** In 2011, non-eligible withdrawals will now face a 20% tax, up from the 10% tax currently in effect.
- **Medicare tax.** A .9% increase in the Medicare tax rate will apply in 2013 to individuals and joint filers in the same tax earning over \$200,000 and \$250,000 respectively. The Reconciliation bill requires that the Medicare payroll tax will also apply to passive income such as net investment income for those earning over \$200,000 and \$250,000 for individuals and joint filers respectively.
- **Elimination of the deductibility of Medicare Part D subsidy.** Employers receiving this subsidy will have the deductibility eliminated in 2013.
- **Indoor tanning salons.** A 10% tax will apply to indoor tanning services beginning in 2010.
- **Mandated benefit levels.** All employer plans will be grandfathered in but will have to meet government minimum essential benefit levels at a future date.

**Here at R&K we can help you get ready for these changes!!!**

Health care reform will almost certainly involve sweeping changes to the benefits you provide your employees and the manner in how you provide them. However, it will most likely affect each business differently. Your respective R&K Broker and Client Manager can review your company's benefits to help you prepare for the changing landscape.

We are committed to working with you to aggressively drive the maximum value of your employee benefit plans, while minimizing your costs and risks. We look forward to working with you in the days ahead.

*This Summary is provided to you for general informational purposes only and does not include references to other legal resources (e.g., supporting regulations, or formal or informal opinions) unless specifically noted. Please seek qualified and appropriate counsel for further information and/or advice regarding the application of the topics discussed herein to your employee benefits plans.*

Updated: March 24, 2010