FEDERAL HEALTH REFORM UPDATE: THE OBAMA PLAN

President Obama released a "new" health reform bill a few weeks ago just ahead of the health reform summit held at the White House. What actually was released was a summary of proposed changes to legislation already passed by the U.S. Senate in December.

In comparing his plan to the Senate bill, the Obama plan:

- Retains a mandate on individuals to purchase health insurance but adjusts affordability credits and penalties for non-compliance to benefit lower income individuals.
- Retains health insurance market reforms and the creation of "Exchanges".
- Increases the penalty on employers that do not offer health coverage if even one full-time employee accesses affordability credits to purchase coverage through an Exchange plan. The penalty would equal $2,000 multiplied by the total number of full-time employees minus 30 employees (a provision to help smaller employers).
- Allows employers to impose waiting periods of up to 90 days without penalty.
- Imposes new rate regulations on insurers not applicable to self-funded plans.
- Closes the Medicare prescription drug "donut hole" by 2020.
- Requires plans to cover preventive services with no cost sharing starting in 2018.
- Retains an excise tax on health premiums that exceed certain thresholds, but the thresholds are increased to $10,200 for single plans and $27,500 for family plans and the effective date is delayed to 2018. Unlike the Senate bill, the Obama plan excludes dental and vision plans from the calculation, although other medical benefits such as contributions to FSAs are presumed to be part of the calculation.
- Increases taxes on those with incomes above $200,000 ($250,000 for a married couple) and adds a new tax on unearned income above those thresholds.
- Retains taxes on insurers, the pharmaceutical industry and medical device manufacturers, although certain effective dates are delayed.
- Incorporates certain Republican ideas such as increasing Medicaid rates for physicians and ensuring Health Savings Accounts are offered through the Exchanges.

Legislative language is currently not available on the Obama plan. It is possible that the details could change as negotiations with lawmakers progress and the proposal is translated into legislative language. A detailed chart comparing the House, Senate and the Obama plan from a plan sponsor perspective is available from the **American Benefits Council**.

Steps Leading to Passage of Health Reform

In 2009, both the U.S. House and the U.S. Senate approved health care reform bills that differed on some key aspects. Before the houses could negotiate a deal on health reform, a special election was held to fill U.S. Senator Ted Kennedy's vacant seat in Massachusetts. The upset victory of a Republican in that election destroyed Democrats' filibuster proof majority in the Senate.

As a result, President Obama and Congressional leaders have been forced to develop a new strategy to pass health reform, which includes efforts to attract Republican support for the final plan. Most believe a bipartisan effort to pass reform is unlikely to materialize, and that it is more likely that the two houses and President Obama will pursue a strategy involving "budget reconciliation" to pass health reform.

Budget reconciliation is a procedural maneuver that allows bills to pass without filibuster and with a simple majority of 51 votes. However, there are special rules that must be met in order to use reconciliation; mainly that all provisions included in a reconciliation bill must directly impact the federal budget.

A number of provisions of health reform would not directly increase or decrease federal spending, including insurance industry reforms strongly supported by both houses. Therefore, it is expected that if reform proceeds, it will proceed with the House of Representatives first approving the legislation passed by the U.S. Senate in December, and then quickly passing another bill of "changes" to the Senate plan that would then be approved by the Senate via reconciliation. Public opinion will certainly factor into whether the bill will ultimately pass via reconciliation.

Democratic Leaders' Latest Timeline for Reform

(Subject to delay)

Now through mid-March	The President and Congressional leaders negotiate the reconciliation bill, which would detail changes to the Senate bill.
March 19, 2010	The House approves the bill passed by the Senate on December 24, 2009 and sends it to President Obama. Within days, the House approves a separate bill of changes to the first bill.
Before the end of March	The reconciliation debate begins in the Senate. Even though a filibuster is not possible, consideration of amendments is unlimited. Senate leaders hope to begin this process before Easter recess to encourage members to limit debate.
March 29, 2010	Congress is scheduled to break for Easter and in-district work.
April, 2010	Final version of the health bill hits the president's desk.

Key Dates for Change if Reform is Enacted

Based on the Senate bill and the Obama summary.

Within a Year of Enactment

» A temporary high-risk pool would be created for uninsured individuals who have been denied coverage by insurance companies.

» Certain insurance market reforms would go into effect, and a rate regulation would be implemented. Transparency provisions for insurers would go into effect.

» Plans would be required to cover dependents up to age 26.

» A "reinsurance pool" for companies that provide coverage to early retirees would be created through January 1, 2014.

» FDA would be authorized to approve generic biologics and grant biologic manufacturers 12 years of exclusive use

2010-2011

» Work would begin on the creation of "Exchanges," as well as other implementation work.

» Certain changes to FSAs, HSAs, MSAs, and HRAs would take effect.

» Health plans would be required to issue rebates if medical loss ratios are too low.

2012

» Employers who receive prescription drug subsidies for retirees would begin paying taxes on them.

2013

» Increased payroll taxes on high income earners would begin. Employer portion would not be affected.

» Health care choice compact regulations that allow for the sale of insurance across state lines would be issued, but would not take effect until 2016.

2014

» Individual mandate goes into effect. Americans would be required to have health insurance coverage or pay a specific monetary penalty.

» State-based health insurance Exchanges are scheduled to be up and running and affordability credits take effect.

» Employer penalties take effect, which requires employers to pay a penalty if employees access affordability credits to purchase insurance.

» Penalties will be assessed on employers that impose waiting periods for employee coverage longer than 90 days.

» Certain lower income employees would become eligible for subsidies to purchase non-employer coverage through the Exchange.

» Significant insurance market reforms would be implemented.

2017

» Exchanges could be opened up to larger employers.

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