

FEDERAL HEALTH CARE REFORM: IMPACTS ON EMPLOYERS

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The proposed federal health care reform bills¹ will have a profound effect upon how employers implement and manage their employees' health care benefits. Unlike the flexibility afforded employers today to establish and maintain their employee health care benefit plans, the reforms will strictly regulate many aspects of employer-sponsored health coverage, whether fully-insured or self-funded. This paper is an attempt to identify and explain those impacts.

Restrictions and Controls on Health Care Benefits

The federal reform proposals, if enacted, would make significant changes to how employers offer health care benefits to employees. Rather than having a large amount of flexibility to offer and manage health care benefits for their employees, employers would face increased restrictions and controls, including the following.

Large employers required to offer coverage, or pay penalties to federal government

Under the House bill, employers may only maintain their current health benefits coverage arrangements for a five year period, arrangements which may or may not include coverage for all employees. After that time, employers with 100 or more total employees will be *required* to provide their employees' health coverage and also to contribute 72.5% toward the cost of a standardized "essential benefits package" for full-time employees, and 65% towards the cost of coverage for their families. Employers will also be required to contribute to the cost of health care benefits for part-time employees, though that amount is yet to be determined. Employers that self-fund their health care benefits must also meet these requirements. If an employer chooses not to offer coverage compliant with these requirements, the employer must pay an eight percent payroll tax to the federal government. Smaller employers, those with payrolls between \$500,000 and \$750,000, will pay a lesser percentage of payroll tax-- between two and six percent.

Similarly, under the Senate bill, if an employer with more than 50 full-time employees (not counting temporary or seasonal employees) fails to offer coverage to full-time employees and dependents, and if one of its employees obtains coverage in the government-run Exchange with a premium subsidy or cost sharing assistance, the employer would be penalized. Even if an employer does offer coverage, but one of its employees obtains Exchange coverage with premium subsidy or cost sharing assistance, the employer would still be penalized. The Senate bill will impose pressure on employers to keep the cost of their employee health benefits low, so that all employees can afford to take up coverage, or alternatively, it may cause employers to drop employee coverage altogether.

Employers required to offer standardized benefits likely to be more expensive

Both the Senate and the House bills will require employers to offer a standardized menu of benefits that must include certain benefit categories and meet actuarial value targets set by the government. This requirement is also imposed upon employers that self-fund their benefits. The types of benefits required to be provided include preventive benefits (yet to be defined) with no cost-sharing by covered individuals; maternity and mental health benefits; and pediatric services including dental and vision benefits. There is also mandated dependent coverage of young adults up to age 26 or 27, depending on the bill. Additionally, employers will be prohibited from establishing lifetime limits on benefits, while annual benefit limits are either prohibited (as in the proposed House Bill) or restricted so as not to be "unreasonable" (as in the proposed Senate Bill). All of these changes will hamper an employer's ability to tailor the health benefits it offers to meet its workforce's needs, and will likely drive up the cost of coverage for both employers and employees.

¹ The two bills discussed in this paper are the House bill, the "Affordable Health Care for America Act," HR 3962, and the Senate bill, the "Patient Protection and Affordable Care Act," S. Amdt. 2786.

Complex rules and reporting requirements for wellness programs

On a positive note, the Senate bill proposes to expand employers' ability to implement wellness programs as a part of their benefits packages and would establish more generous incentives for employees to participate in those programs. The bill raises the cap on incentives, providing employers with more latitude to reward the achievement of health standards within wellness programs or to penalize those who fail to achieve such standards. The bill also allows the federal agencies that enforce the HIPAA nondiscrimination rules to raise the cap to as much as 50% of the cost of coverage.

However, there are also a number of unclear requirements and complexities introduced in the Senate bill which will increase the administrative burden to employers that establish and maintain wellness programs. For example, the Senate bill will impose a new requirement that employers and health insurers annually report details of their wellness programs to the Department of Health and Human Services for inclusion in a report to Congress on the effectiveness of employer-sponsored wellness programs. This annual reporting will impose additional administrative burdens and costs on plans, their administrators and health insurers.

Employers restricted in eligibility and waiting periods

The Senate bill imposes additional restrictions on employers' ability to establish eligibility for employee health care benefits. Employers with fully-insured plans would be prohibited from imposing different eligibility rules for full-time employees, either those based on wages or those that have the effect of favoring higher wage employees, even if the employer's eligibility rules are based upon other factors such as management category or length of service. Additionally, if an employer imposes a coverage enrollment waiting period of greater than 30 days, the employer is assessed a penalty, and employers would be prohibited from imposing a waiting period of more than 90 days.