



Legislative Update on The Implementation Of Health Reform

National Association of Health Underwriters
April 15, 2010

— Setting the Course for Responsible Health Care Reform —



Current Status

- On March 21, the House passed HR 3590, the bill passed by the Senate on December 24, 2009, with a 219-213 vote.
- The House and Senate have also passed a reconciliation bill, HR 4872, with a packages of “fixes” to the Senate bill.
- President Obama has now signed both bills into law.



“We have to pass the bill so that you can find out what is in it” Speaker Nancy Pelosi



Full Disclosure

- NAHU supports reform, but opposed the Senate bill –we believe it to be misguided.
- It does not address the cost of providing medical care, the true driver of private health insurance premiums.
- Many of the deficit reduction provisions in it are false savings.



With that said, this bill is the law of the land, like it or not. Our goal is to help you understand what it entails and what, as employers, you need to do to be compliant. We are in the implementation stage and that is bring us challenges for years to come.



Confused – Implementation overload!!

***DON'T
PANIC
YET!!***

*Don't memorize this!
We are at the
End of the
beginning—7 to 10
years of rule making
and changes.*



Setting the Course for Responsible Health Care Reform



What the Senate Bill Does Immediately

- Individuals and employer group plans that wish to keep their current policy on a grandfathered basis can if the only plan changes made are to add or delete new employee/dependents or part of a collective bargaining agreement.
- The reconciliation bill eliminates the ability of plans to grandfather in a number of areas.
 - If you lose your grandfathered status, that DOES NOT MEAN you will be forced into an Exchange in 2014.



The Senate Bill in 2010

- Eligible small businesses are eligible for phase one of the small business premium tax credit.
 - Small employers with fewer than 25 employees will receive a maximum credit, based on number of employees, of up to 50% of premiums by 2014 for up to 2 years if the employer contributes at least 50% of the total premium cost.
 - Businesses do not have to have a tax liability to be eligible
 - Non-profits are eligible
 - Average salary must be \$50,000 or less



The Senate Bill in 2010

- Temporary reinsurance program for employers that provide retiree health coverage for employees over age 55 begins within 90 days of enactment.
- All group plans will be required to comply with the Internal Revenue Section 105(h) rules that prohibit discrimination in favor of highly compensated individuals within six months of enactment.
- Deductibility for Part D subsidies is eliminated in 2013, but this results in an immediate accounting impact.



The Senate Bill in 2010

- Creates high-risk pool coverage for people who cannot obtain current individual coverage due to preexisting conditions.
 - Employers cannot put people in the pool—would pay penalty.
- This national program can work with existing state high-risk pools and will end on January 1, 2014, once the Exchanges become operational and the other preexisting condition and guarantee issue provisions take effect.
- It will be financed by a \$5 billion appropriation.



The Senate Bill in 2010

- Requires the states and the Secretary of HHS to develop information portal options for state residents to obtain uniform information on sources of affordable coverage, including an Internet site.
 - The roll out date for this is July 1, 2010
 - Information must be provided on private health coverage options, Medicaid, CHIP, the new high-risk pool coverage and existing state high-risk pool options.



The Senate Bill in 2010

- Lifetime limits on the dollar value of benefits for any participant or beneficiary for all fully insured and self-insured groups and individual plans including grandfathered plans are prohibited starting with plan years following six months of enactment.
- Annual limits will be allowed prohibited completely by January 1, 2014 and regulations will be out soon describing very limited use until then.



The Senate Bill in 2010

- All group and individual plans, including self-insured plans, within six months of enactment, will have to cover dependents up to age 26.
- The reconciliation package:
 - Extended this requirement to grandfathered plans.
 - Established that dependents could be married and would be eligible for the group health insurance income tax exclusion.
 - Established through 2014, grandfathered group plans would only have to cover dependents that do not have another source of employer-sponsored coverage.



The Senate Bill in 2010

- Health coverage rescissions will be prohibited for all health insurance markets except for cases of fraud or intentional misrepresentation on plan years following six months from the date of enactment.
- All group and individual health plans, including self-insured plans, will have to cover preexisting conditions for children 19 and under for plan years beginning on or after six months after date of enactment.



The Senate Bill in 2010

- For all group and individual plans, including self-insured plans, emergency services covered in-network regardless of provider.
- Enrollees may designate any in-network primary care physician as their primary care physician.
- New coverage appeal process.
- Federal grant program for small employers providing wellness programs to their employees will take effect on October 1, 2010.



The Senate Bill in 2010

- For all group and individual health plans, mandates coverage of specific preventive services with no cost sharing.
 - Grandfathered plans are not required to comply
- Minimum covered services are specified based on existing federal guidelines on specific topics
- This may ultimately be a significant cost increase for many plans.
 - Unclear if dental and vision for children will be included in the preventive care requirements.
 - Impact may be immediate in 2010 or in 2014 with essential benefits package.



The Senate Bill in 2010

- Establishes federal review of health insurance premium rates.
- Secretary of HHS, in conjunction with the states, will have new authority to monitor health insurance carrier premium increases beginning in 2010 to prevent unreasonable increases and publicly disclose such information.
- Carriers that have a pattern of unreasonable increases may be barred from participating in the exchange.
- In addition, \$250,000,000 is appropriated for state grants to increase their review and approval process of health insurance carrier premium rate increases.



The Senate Bill in 2010

- Minimum loss ratio requirements will be established for insurers in all markets.
- The MLR is 85% for large group plans and 80% for individual and small group plans (100 and below).
- The calculation is independent of federal or state taxes and any payments as a result of the risk adjustment or reinsurance provisions.
- Carriers will have to issue a premium rebate to individuals for plans that fail to meet the minimum MLR requirements.



The Senate Bill in 2010

- Allows the Secretary of DHHS to make adjustments to the MLR percentage if it proves to be destabilizing to the individual or small group markets.
- The National Association of Insurance Commissioners (NAIC) is required to establish uniform definitions regarding the MLR and how the rebate is calculated by December 31, 2010.



The Senate Bill in 2011

- The tax on distributions from a health savings account that are not used for qualified medical expenses increases from 10% to 20%.
- OTC drugs no longer be reimbursable under HSAs, FSAs, HRAs and Archer MSAs unless prescribed by a doctor.
- Creates a new **public long-term care program**.
 - Employers are expected to auto-enroll employees unless they opt out.
 - Employers may elect not to participate



The Senate Bill in 2012

- A new federal tax on fully insured and self-funded group plans, equal to \$2 per enrollee, takes effect to fund federal comparative effectiveness research takes effect in 2012.
- All employers must include on their W2s the aggregate cost of employer-sponsored health benefits.
- If employee receives health insurance coverage under multiple plans, the employer must disclose the aggregate value of all such health coverage,
 - Excludes all contributions to HSAs and Archer MSAs and salary reduction contributions to FSAs.
 - Applies to benefits provided during taxable years after December 31, 2010.



The Senate Bill in 2013

- Additional 0.9% Medicare Hospital Insurance tax on self-employed individuals and employees with respect to earnings and wages received during the year above \$200,000 for individuals and above \$250,000 for joint filers (not indexed).
 - Self-employed individuals are not permitted to deduct any portion of the additional tax.
- Reconciliation measure levied a new 3.8% Medicare contribution on certain unearned income from individuals with AGI over \$200,000 (\$250,000 for joint filers)



The Senate Bill in 2013

- The threshold for the itemized deduction for unreimbursed medical expenses would be increased from 7.5% of AGI to 10% of AGI for regular tax purposes.
 - The increase would be waived for individuals age 65 and older for tax years 2013 through 2016.
- \$2,500 Cap on Medical FSA contributions annually indexed for inflation begins.
 - Originally in 2011—delayed by the reconciliation bill.



The Senate Bill in 2014

- Imposes annual taxes on private health insurers based on net premiums.
 - The reconciliation package delayed the tax from 2011 to 2014 and eliminates existing exemptions for certain insurers from the Senate-passed bill.
 - However, it also significantly increases the amount of fees once they become effective.



The Senate Bill in 2014

- Coverage must be offered on a guarantee issue basis in **all** markets and be guarantee renewable.
- Exclusions based on preexisting conditions would be prohibited in all markets.
- Full prohibition on any annual limits or lifetime limits in all group (even self-funded plans) or individual plans.
- Redefines small group coverage as 1-100 employees.
 - States may also elect to reduce this number to 50 for plan years prior to January 1, 2016.



The Senate Bill in 2014

- All individual health insurance policies and all fully insured group policies 100 lives and under (and larger groups purchasing coverage through the exchanges) must abide by strict modified community rating standards
- Premium variations only allowed for age (3:1), tobacco use (1.5:1), family composition and geography
- Geographic regions to be defined by the states and experience rating would be prohibited.
- Wellness discounts are allowed for group plans under specific circumstances.



The Senate Bill in 2014

- Requires each **state** to create an Exchange to facilitate the sale of qualified benefit plans to individuals, including new federally administered multi-state plans and non-profit co-operative plans.
 - In addition the states must create “SHOP Exchanges” to help small employers purchase such coverage.
 - The state can either create one exchange to serve both the individual and group market or they can create a separate individual market exchange and group SHOP exchange.
 - States may choose to allow large groups (over 100) to purchase coverage through the exchanges in 2017



The Senate Bill in 2014

- Requires all American citizens and legal residents to purchase qualified health insurance coverage. Exceptions are provided for :
 - religious objectors,
 - individuals not lawfully present
 - incarcerated individuals,
 - taxpayers with income under 100 percent of poverty, and those who have a hardship waiver
 - members of Indian tribes,
 - those who were not covered for a period of less than three months during the year
 - People with no income tax liability



The Senate Bill in 2014

- Penalty for non compliance to either a flat dollar amount per person or a percentage of the individual's income, whichever is higher.
 - Capped at the value of a bronze-level premium in the Exchange
- In 2014 the percentage of income determining the fine amount will be 1%, then 2% in 2015, with the maximum fine of 2.5% of taxable (gross) household income capped at the average bronze-level insurance premium rate for the person's family beginning in 2016.
- The alternative is a fixed dollar amount that phases in beginning with \$325 per person in 2015 to \$695 in 2016.



The Senate Bill in 2014

- Creates sliding-scale tax credits for non-Medicaid eligible individuals with incomes up to 400% of FPL **to buy coverage through the exchange.**
 - The reconciliation provides slight increases to the subsidy amounts for all subsidy-eligible individuals and increases the cost-sharing subsidies for those making 250% FPL or less.
 - However, beginning in 2019, a failsafe mechanism is applied that reduces overall premium subsidies if the aggregate amount exceeds 0.504 percent of GDP.



The Senate Bill in 2014

- Essential benefits packages are defined
 - Based on actuarial equivalents
 - Defines cost-sharing, mandates, and minimum covered benefits
- Multiple levels available based on actuarial equivalents
- Self-funded plans may not be subject to all requirements, but may not meet employer mandate requirements if they don't comply
- Allows catastrophic-only policies for those 30 and younger.



The Senate Bill in 2014

- Applies to employers with more 50 employees.
- Employers do not have to provide coverage, but if even one employee receives a tax credit through the exchange, the employer will be penalized.
 - Coverage must meet the essential benefits requirements in order to be considered compliant with the mandate.
 - When determining whether an employer has 50 employees, the reconciliation bill changed the calculation of employees so that part-time employees must be taken into consideration based on aggregate number of hours of service.
 - This does not mean that part-time employees must be covered.
- Fine for noncompliance is \$2000 per FT employee annually, but first 30 employees not counted (i.e., if the employer has 51 employees and doesn't provide coverage, the employer pays the fine for 21 employees).



The Senate Bill in 2014

- An employer with more than 50 employees that **does offer** coverage but has at least one FTE receiving a tax credit in the exchange will pay the lesser of \$3,000 for each of those employees receiving a tax credit or \$2,000 for each of their full-time employees total.
- An individual with family income up to 400% of FPL is eligible for a tax credit instead of employer coverage if—
 - the actuarial value of the employer’s coverage is less than the minimum standard
 - or the employer requires the employee to contribute more than 9.5% of the employee’s family income toward the cost of coverage.
- Waiting periods in excess of 90 days are prohibited.



The Senate Bill in 2014

- Requires employers to give a voucher to use in the exchange instead of participating in the employer-provided plan.
 - Employees must be ineligible for subsidies
 - An affordability test is required
 - Adjusted for Age
 - Employee can also keep amounts of the voucher in excess of the cost of coverage



The Senate Bill in 2014

- Requires employers of 200 or more employees to auto-enroll all new employees into any available employer-sponsored health insurance plan.
 - Waiting periods subject to limits may still apply.
 - Employees may opt out if they have another source of coverage.
 - Implementation date is unclear, may change to earlier via regulation
- Requires all employers provide notice to their employees informing them of the existence of an Exchange.



The Senate Bill in 2014

- Codifies and improves upon the HIPAA bona fide wellness program rules and increases the value of workplace wellness incentives to 30% of premiums with DHHS able to raise to 50%
- Establishes a 10-state pilot program to apply the rules to HIPAA bona fide wellness program rules the individual market in 2014-2017 with potential expansion to all states after 2017.
- New federal study on wellness program effectiveness and cost savings.



The Senate Bill in 2014

- Allows states to apply for a waiver for up to 5 years of requirements relating to:
 - qualified health plans,
 - exchanges,
 - cost-sharing reductions,
 - tax credits,
 - the individual responsibility requirement,
 - and shared responsibility for employers,
 - provided that they create their own programs meeting specified standards.



The Senate Bill Beyond 2014

- 40% excise tax on insurers of employer-sponsored health plans with aggregate values that exceed \$10,200 for singles and from \$27,500 for families takes effect in 2018.
 - Values of health plans include reimbursements from FSAs, HRAs and employer contributions to HSAs.
 - Stand-alone vision and dental are excluded from the calculation.
 - Premium values are indexed to CPI
 - Allows plans to take into account age, gender and certain other factors that impact premium costs



What can you do?

- We need your Questions – we will be forwarding these to our regulatory contacts—send them to **reformimplementation@nahu.org**
- Those of you with “practical” business knowledge give a different perspective.
- Talk with your clients, your payroll vendors and tax advisors.
- We will update you as more information is available.

