Federal Healthcare Reform Act *(a.k.a. "Obamacare")*: The Initial Changes

By Joseph T. Bartulis, Jr., Esq.

As Massachusetts residents and business operators know, then-Governor Mitt Romney signed into law the Massachusetts Health Care Reform Act in 2006. In March 2010 President Obama signed into law the federal Health Care and Education Reconciliation Act of 2010 and the Patient Protection and Affordable Care Act. Collectively, these two pieces of legislation have become known as the new federal Health Care Reform Act. This legislation is similar in a number of respects to the insurance law that was enacted a few years ago in Massachusetts. By passing this federal legislation, President Obama and Congress indicated they were seeking to give medical coverage to the more than 32 million Americans who presently do not have health insurance. Using a carrot and stick approach, the Act attempts to achieve its broad coverage objectives in a number of ways by incentivizing and/or penalizing employers who do or do not offer insurance coverage to their employees and similarly penalizing employees who do not obtain coverage – which is similar to the approach taken under the Massachusetts law. Among the approaches employed by the Act to increase the number of persons with health care coverage, Congress uses favorable tax credits and creates "health insurance exchanges." Additionally, it penalizes employers that do not offer affordable coverage to individuals, expands Medicare Part D, and taxes so-called "Cadillac" health insurance plans.

While the most notable and costly aspects of the Act do not go into effect until 2014 and beyond, there are a number of provisions within the Act that took effect in 2010 and 2011. In this article, I will briefly introduce the key concepts of some of the most significant changes from 2010 and 2011. In reviewing the following material, readers are asked to keep in mind that the Act does provide that certain individual and group health plans that were in effect on March 23, 2010 (the day Congress voted on the law) are grandfathered and exempt from some aspects of the law until one's health plan is renewed or the collective bargaining agreement to which the insurance relates is terminated. Given the sheer volume of the Act(2600+ pages), and given further its complexity and minute details, readers are also reminded that there may be numerous nuances to one or more of the below discussed aspects that are not addressed in this very short article. There are also a few changes that take effect in 2010 and 2011 but are believed to be of less relevance to a small business audience and were accordingly not included.

TAX CREDIT FOR SMALL BUSINESSES

Under the Act, a small employer is considered to be one which has twenty-five or fewer full time employees. Assuming one's company is small and further assuming the average salary of those employees is $50,000 or less, one's business is considered to be a "qualified small employer" under the Act. Qualified small employers are eligible to receive a tax credit of up to thirty-five percent of the employer-paid portion of the premiums it pays for the family or individual health insurance coverage it provides its employees. The size of the credit turns on the precise size of the business and the average salary of its employees. Whereas many qualified small employers in Massachusetts are already providing this coverage, this law represents a federal tax savings to which the qualified small business can now realize a federal tax savings. Qualified small employers should consult with their CPA to determine the size of their particular tax credit.

MEDICARE PART D DONUT HOLE

While not of primary importance to business owners per se, another change that went into effect on January 1, 2010 is a closure of what is known as the Part D Prescription coverage donut hole. The donut hole is aptly named because there is a gap in prescription drug coverage for individuals on Medicare Part D whose prescription spending is between $2830 and $6440. Pursuant to the Act, persons enrolled in Part D are eligible for a $250 rebate to put towards prescription costs which fall inside the coverage gap.

NURSING MOTHER BREAKS

Employers who have fifty or more employees are required under the Act to provide nursing mothers whose children are one year old or younger "reasonable" length unpaid breaks to nurse their infants and/or express milk for an infant child. The Act does not define "reasonable" length nor does it enumerate how many "reasonable" nursing breaks an infant's mother can take in a given work day. It does, however, require that the employer must provide the mother a private location (other than a rest room) where she may perform this act. Employers who have fewer than fifty employees are expected to comply with the law so long as doing so does not cause the employer undue hardship. Practically speaking, a small business that has no extra space will not be expected to materially reconfigure its office space or add on to its lease space simply to accommodate this provision.

However, a small business which has an empty, rarely used office would be expected to comply.

RETIREE REINSURANCE

While Medicare eligibility usually kicks in at age 65, many employees often retire earlier than that. In recognition of that reality, and likely in light of recent downsizing and early retirement incentives being offered by companies, the Act contains a temporary reinsurance program for employers who offer health insurance to their pre-Medicare eligible employees (those retirees between 55-64.) Plan sponsors who offer health insurance to this group of retirees will be eligible to be reimbursed up to eighty (80%) percent of the benefits provided to the retiree so long as those benefits costs were between $15,000-$90,000.

GREATER PATIENT RIGHTS

While Massachusetts health reform addresses some of the same items referenced in the federal law, the federal law provides that new health plans are precluded from requiring women to receive prior approval or authorization before seeing an OB/GYN. Similarly, new health plans may not require prior approval before a participant in the plan goes to an emergency room. Additionally, there are a number of preventative health procedures for which the Act eliminates the employee copayment. While the copayment may have been removed, that does not mean that the insurance company will not add the cost of what would have been the deductible to the cost of the health plan's annual premium.

EXPANSION OF COVERAGE ELIGIBILITY FOR ADULT CHILDREN

Under the Act, adult children may remain on their parents' health plan as a dependent until the age of twenty-six. There are a few nuances to this coverage business professionals should remain mindful. First, to remain eligible the adult child needs be ineligible to receive coverage from his or her employer. This means that an adult child who works and whose employer offers insurance cannot refuse the coverage in lieu of a lower cost of remaining on his or her parents' health plan. Second, while the law does ensure that eligible adult children can continue to get coverage through their parents plan, the adult child's children and/or spouse, if any, are not entitled to coverage under their spouse's parents' health plan. As such, it is possible that a young parent would be on his parents' health plan while his wife and children do not have any insurance coverage.

ELIMINATION OF THE PRE-EXISTING CONDITION EXCLUSIONS

Massachusetts is one of the only states in the United States that presently prohibits health plans from excluding coverage for preexisting conditions the insured had before he or she got on the health plan. The federal Act seeks to mimic that exclusion by applying a two-phased approach. Initially, plans may not exclude pre-existing conditions of children under nineteen years of age. Thereafter, beginning in 2014, health plans may not exclude against preexisting conditions of anyone else either. Elimination of Coverage Rescission Due to Claims Filed Prior to the passage of the federal Act, some insured individuals were concerned that their coverage would cease if they filed too many claims against the insurance company. Under the new legislation, health plans will be prohibited from rescinding an insured's coverage regardless of the number of claims that individual may or may not file. The only time a health company can unilaterally rescind health plan coverage will be where the insured has committed fraud against the insurance company or has intentionally misrepresented material facts related to one or more aspects of his or her claim

QUALIFYING MEDICAL EXPENSE (QME) DEFINITION

As part of the revision of the definition, over-the-counter medical supplies and medications are no longer covered under HSA, FSA or HRA medical savings accounts. As such, employees should keep that in mind when making their annual monetary elections into their HSA, FSA, or HRA accounts.

HEALTH CARE COVERAGE EXPENSES MUST BE ON W2'S

Beginning in tax year 2011, employers must include in their employees' W2's the value of the health care provided by the employer. While not presently a taxable entry, the government is seeking this information, presumably, to assess the relative values of employer provided health care.

MEDICARE PART D "DONUT HOLE"

Much attention has been given to the so-called Medicare "donut hole." While there are other changes of note, one of the most significant is that there will be a 50% discount available on brand-name drugs purchased by affected individuals.

SMALL EMPLOYER SIMPLE CAFETERIA PLANS

Employers with fewer than 100 employees in each of the preceding two years may establish "simple" cafeteria plans. While there are many nuances, affected small employers may provide tax free benefits to their employees and will have fewer administrative hurdles doing so than presently exist in regular cafeteria plans.

CONCLUSION

This article very briefly touched upon the key aspects of importance to business owners and operators. As time passes and various aspects of the legislation become more familiar to business owners and insurance advisors, etc., they will invariably develop all necessary plans to best comply with the Act and implement its provisions. In the meantime, I suggest that business owners engage their accountant to make sure that they best maximize any potential tax savings for complying with the law. I also suggest small business owners speak with their insurance broker to make sure that the plan his or her company offers timely complies with all mandatory aspects of the new Act.

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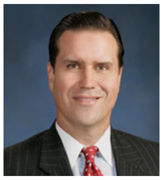

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