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President Signs Health Care Reform Law

On Sunday night, the House of Representatives passed the Patient Protection and Affordable Care Act (H.R. 3590), which President Obama has now signed into law. In addition, the House passed the Health Care and Education Affordability Reconciliation Act, which makes several changes to H.R. 3590. Some of the changes that would most directly impact plan sponsors are described below.

Background

Last year, both the House and Senate passed their own separate versions of health care reform legislation. There were significant differences between the two versions. However, after Senator Scott Brown's (R-MA) election, it was unclear what direction health care reform would take.

On March 21, 2010, the House passed the Patient Protection and Affordable Care Act (the Patient Protection Act), which is identical to the Senate bill passed late last year. (See our December 24, 2009 *For Your Information*.) The President has just signed the Patient Protection Act into law.

Also on March 21, the House passed the Health Care and Education Affordability Reconciliation Act (the Reconciliation Act), which makes some significant changes to the Patient Protection Act. The Senate is expected to take up the Reconciliation Act this week, but it is unclear when the Senate may pass the Reconciliation Act and what amendments it will propose.

> ***BUCK COMMENT.*** *Regardless of what the Senate does with the Reconciliation Act, the Patient Protection Act is now law. Unlike some of the provisions in the Reconciliation Act, the Patient Protection Act does not generally have an immediate impact on employer plans. However, a few provisions take effect on the first plan year beginning six months after enactment – e.g., a provision prohibiting preexisting condition limitations for children under age 19.*

Reconciliation Act: Changes to the Patient Protection Act

The following highlights those items in the Reconciliation Act that will most directly impact plan sponsors. For a full side-by-side comparison of the Patient Protection Act and the Reconciliation Act see our Health Reform at a Glance.

Impact on Plans

For plan years beginning after six months after the date of enactment (January, 2011 for calendar year plans), the Reconciliation Act would –

- require coverage of adult children up to age 26, provided these adult children are not eligible for other employer coverage; the coverage would be provided on a tax-free basis to the employee
- prohibit lifetime limits and "restricted" annual limits.

Beginning in 2014, the Reconciliation Act would –

- increase the annual "play or pay" penalty for employers who do not provide any health care coverage for full-time employees from $750 to $2,000 per employee
- prohibit waiting periods over 90 days
- prohibit pre-existing condition exclusions
- prohibit annual benefit limits on essential benefits.

BUCK COMMENT. *The Reconciliation Act would not require an "adult child" to be unmarried. Thus, plans that exclude married dependents would likely have to be amended. These plan design changes may also apply to retiree plans.*

Tax Provisions Impacting Plans

In addition, a number of the "revenue" provisions would directly impact employer-sponsored plans.

Excise Tax on Cadillac Plans. The Reconciliation Act would –

- delay the 40 percent excise tax until 2018
- exclude stand alone dental and vision plans from the tax
- increase the threshold to $10,200 (single)/$27,500 (family) (with an increase to $11,850 and $30,950 for retirees and employees in high risk professions)
- permit an employer to increase the threshold where the employer's age and gender demographics are not representative of those of a national risk pool
- index the dollar threshold to reflect inflation and automatically increase it if the CBO premium inflation forecast to 2018 is incorrect.

FSA Contribution Limits. The Reconciliation Act would delay the $2,500 annual limit on contributions to health FSAs from 2011 to 2013.

Medicare Part D Subsidies to Employers. The Reconciliation Act would delay the effective date for including Medicare Part D subsidies in income from 2011 to 2013.

> ***BUCK COMMENT.*** *While the Reconciliation Act would delay the effective date of taxation of the Part D subsidy payments to 2013, employers receiving the subsidy will still need to reflect the financial impact of the Patient Protection Act in the first quarter of 2010.*

Medicare Part D Donut Hole

The Reconciliation Act would phase out the Part D donut hole by 2020. In 2010, a $250 rebate would be paid to each enrollee who enters the donut hole. Starting in 2011, a 50% discount on brand name drugs would be provided (funded by pharmaceutical manufacturers). Also starting in 2011, the beneficiary coinsurance would be phased down until it reaches the standard 25% beneficiary coinsurance in 2020.

> ***BUCK COMMENT.*** *The combination of the taxation of the Part D subsidy payments and enhanced standard Part D benefits will make an employer sponsored Part D plan a much more attractive financial alternative to the Part D subsidy.*

Conclusion

President Obama has now signed the Patient Protection Act into law. The Reconciliation Act may be enacted soon, although this is not clear. While both contain many provisions that will impact employer-sponsored plans, most of these will not be immediately effective. For example, the first time plan sponsors will have to make changes to comply with the Reconciliation Act will be for plan years beginning six months after today (which means plan years beginning in October 2010 at the earliest). For calendar year plans, this will mean January 1, 2011. At that time, plans will need to begin covering nondependent children through age 25 and eliminate lifetime maximums.

Buck's consultants are available to model the impact of the Patient Protection Act and the provisions of the House Reconciliation Act on employer programs and to answer any questions you may have.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.