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Obama Wins Re-election: Health Care Reform Law Here to Stay

After hard-fought campaigns by both candidates, President Barack Obama has been re-elected for a second term in office. Obama's victory in the election, along with last summer's Supreme Court decision upholding the health care reform law, cements the Democratic Party's dedication to the legislation.

While opponents of the law have called for its repeal, health care reform's supporters consider the legislation to be the major achievement of Obama's first term. Obama's re-election, along with continued Democratic control of the Senate, means that implementation of the law will now continue without additional roadblocks.

WHAT DO EMPLOYERS HAVE TO DO NEXT?

With the landscape of employer-provided health care potentially changing over the next few years, employers should consider their future plans related to their role in employee health care. They may have to make some big decisions about whether to continue providing coverage to their employees. The "pay or play" penalties provide some incentive for employers to continue coverage, since they will be at risk for significant penalties if they do not. However, employers may decide that paying the penalty is more cost-effective than continuing to pay the ever-increasing costs of health care for employees and their families.

On the other hand, uncertainty among employees about the quality and cost of individual health coverage continues to make employer-provided health coverage an attractive recruiting and retention tool. Because of these advantages, most employers plan to continue offering coverage for now. The additional uncertainty for employers, with compliance obligations hinging on court decisions and the political process, has made many companies hesitant to make any large-scale changes.

Whatever their future decisions may be, employers that will continue to sponsor group health plans for the near future must prepare for upcoming deadlines. Significant health care reform provisions with looming effective dates include:

- ***Summary of Benefits and Coverage.*** Health plans and issuers must provide an SBC to participants and beneficiaries that includes information about health plan benefits and coverage in plain language. The deadline for providing the SBC to participants and beneficiaries who enroll or re-enroll during an open enrollment period is the **first open enrollment period that begins on or after Sept. 23, 2012**. The SBC also must be provided to participants and beneficiaries who enroll other than through an open enrollment period (including individuals who are newly eligible for coverage and special enrollees) effective for **plan years beginning on or after Sept. 23, 2012**.

- ***60-Days' Notice of Plan Changes***. A health plan or issuer must provide **60 days' advance notice** of any **material modifications** to the plan that are not related to renewals of coverage. Notice can be provided in an updated SBC or a separate summary of material modifications. This 60-day notice requirement becomes effective when the SBC requirement goes into effect for a health plan.

- ***$2,500 Limit on Health FSA Contributions.*** The health care law will limit the amount of salary reduction contributions to health flexible spending accounts to $2,500 per year for plan years beginning on or after **Jan. 1, 2013**.

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- ***W-2 Reporting.*** Beginning with the **2012 tax year**, employers that are required to issue 250 or more W-2 Forms must report the aggregate cost of **employer-sponsored group health coverage** on employees' W-2 Forms. The cost must be reported beginning with the 2012 W-2 Forms, which are issued in **January 2013**.
- ***Preventive Care for Women.*** Effective for plan years beginning on or after **Aug. 1, 2012**, non-grandfathered health plans must cover specific preventive care services for women without cost-sharing requirements. Calendar year plans must comply effective **Jan. 1, 2013**.
- ***Employee Notice of Exchanges.*** Effective **March 1, 2013**, employers must provide a notice to employees regarding the availability of the health care reform insurance exchanges. HHS has indicated that it plans on issuing model exchange notices in the future for employers to use.
- ***Additional Medicare Tax for High-wage Workers.*** In **2013**, health care reform increases the hospital insurance tax rate by 0.9 percentage points on wages over $200,000 for an individual ($250,000 for married couples filing jointly). Employers will have to withhold additional amounts once employees earn over $200,000 in a year.

WHAT GUIDANCE WILL WE SEE?

Regulations on a number of issues remain outstanding. The regulatory agencies responsible for implementation and enforcement of the health care reform law—the Departments of Labor, Treasury and Health and Human Services—began issuing additional guidance once the Supreme Court upheld the law. Additional guidance is expected now that the election is over.

Issues that will likely be addressed in future guidance include:

- ***Employer Pay or Play Mandate***. The agencies are expected to, and have indicated that they will, issue more guidance for employers to help them determine how to comply with the shared responsibility provisions of the law.
- ***Automatic Enrollment***. The Department of Labor is required to issue regulations implementing the rule requiring large employers that offer health coverage to automatically enroll new employees in the health plan (and re-enroll current participants).
- **Nondiscrimination Rules for Fully-insured Plans**. Under health care reform, non-grandfathered fully-insured plans will not be able to discriminate in favor of highly-compensated employees with respect to their health benefits. The IRS delayed the effective date of this rule for additional regulations, which have yet to be issued.

State governments may also take further steps to establish the health insurance exchanges required by the health care reform law. The federal government will step in and set up exchanges for states that fail to establish their own exchanges. Many states have delayed implementation and will need to accelerate their efforts if they want to run their own exchanges.

CHALLENGES FOR IMPLEMENTATION

As we get closer to full implementation of the health care reform law, questions linger about whether the framework is in place for all pieces to be operational by their deadlines. Insufficient staffing of the responsible agencies is one potential issue, along with employer and state government hesitation or inability to implement certain parts of the law. Compliance efforts are likely to pick up now that the election is over.

LOUDOUN INSURANCE GROUP will continue to monitor progress of the health care reform law and its implementation and will keep you informed of important developments.