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Alerts

Health Care Reform: Health Insurance Exchanges and Private Insurance

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Health Care Alert

This is the second in a series of health care alerts that Hinshaw & Culbertson LLP will publish on the topic of health care reform.

The recently passed Patient Protection and Affordable Care Act and the Health care and Education Reconciliation Act of 2010 (collectively referred to as "Health Care Reform") have made sweeping changes to the private health insurance market and established the basis for state-based health insurance exchanges. While most of these changes do not take place immediately, there are certain insurance reforms effective as early as three months after enactment of the new laws.

Eventually, most U.S. citizens and legal residents will be required to have health insurance through an employer-based system, a state-based health insurance exchange, or other federal programs including Medicare and Medicaid. Financial incentives and disincentives have been designed to encourage all citizens and legal residents to obtain health coverage. The following summary highlights key health insurance coverage provisions of the legislation, and describes implementation of health insurance exchanges.

Changes to Private Insurance Coverage

2010

- Beginning at the end of June 2010, a temporary national high-risk pool will be established to provide health coverage to individuals with pre-existing medical conditions. To qualify for this pool and certain subsidized premiums, U.S. citizens and legal immigrants with pre-existing medical conditions must have been uninsured for at least six months.
- Beginning six months after enactment (September 2010), dependent coverage will be extended to age 26 for children of policy holders for all individual and group policies.
- Beginning six month after enactment, coverage for children must not be denied based on pre-existing conditions.
- Beginning six month after enactment, lifetime dollar value limits of coverage will be eliminated from individual and group health plans, except in cases of fraud.

2011

- Beginning with each health plan's 2010 plan year, health insurance plans will be required to report the proportion of premium dollars spent on clinical services, quality and other costs, and may be required to rebate a portion of the premium spent on clinical services beginning January 1, 2011.

2014

- Beginning January 1, 2014, when the provisions for health insurance exchanges (discussed further below) begin, all new health insurance policies will be required to comply with one of four benefit categories of plans. Existing individual and employer-sponsored plans will not need to meet the new benefit standards. Also beginning in 2014, deductibles for health plans in the small group market will be limited to $2,000 for individuals and $4,000 for families.

2016

- States will be permitted beginning January 1, 2016, to form health care choice compacts and may allow insurers to sell policies in any state participating in the compact. Insurers selling policies through a compact would only be subject to the laws and regulations of the state where the policy is written or issued, with few exceptions.

Health Insurance Exchanges

2013

- In 2013, the Consumer Operated and Oriented Plan (CO-OP) program is scheduled for creation in order to foster the beginning of nonprofit, member-run health insurance companies in all states. This program will award loans and grants to establish CO-OPs by July 1, 2013.

2014

- Beginning January 1, 2014, state-based American Health Benefit Exchanges and Small Business Health Options Program (SHOP) Exchanges will begin, and will be administered by a governmental agency or nonprofit organization. Through these exchanges, individuals and small businesses with up to 100 employees will be able to purchase qualified coverage.
- The exchanges will consist of four benefit categories of plans, and also a separate "catastrophic plan" available to those individuals age 30 or under and those exempt from the mandate. The four benefit categories will include platinum (covering 90 percent of benefit costs), gold (80 percent), silver (70 percent) and bronze (60 percent) plans, with essential benefits provided and out-of-pocket limits equal to the Health Savings Accounts maximums (for 2010, $5,950 for individuals and $11,900 for families).
- Under the health insurance exchanges, plans will be required to guarantee issue and renewability, and will be permitted to vary rates based only on age, premium rating area, family composition and tobacco use. Out-of-pocket limits will be established for those with incomes up to 400 percent of the federal poverty level (FPL). Finally, any waiting periods for coverage under plans must be limited to 90 days.
- States will also be permitted to create a Basic Health Plan for uninsured individuals with incomes between 133 and 200 percent of the FPL, and will receive up to 95 percent of the funds that would have been paid as a federal premium on such coverage.
- States will have the option to prohibit plans in the exchanges from providing abortion coverage. Any plans offering such coverage must segregate premium payments for abortion coverage to ensure that no federal funds are used for abortions.
- In 2014 (upon implementation of the exchanges), almost all U.S. citizens and legal residents will be required to have qualifying health coverage with at least an "essential benefits package," covering those services typical of an average employer-based plan, or face a phased-in tax penalty beginning at $95 in 2014 and rising to $695 per individual in 2016, or, for families, $285 in 2014 rising to $2,085 in 2016. Some exemptions will be granted for financial hardship, religious objections, American Indians and others. At that time, employers with more than 50 employees that do not offer coverage will also face a fee for each employee, with same number of employees excluded from fees, depending on the size of the employer. All employees will be permitted to opt out of employer-based coverage and obtain insurance on an exchange or elsewhere.

The recent Health Care Reform laws enact major changes for individuals, employers, providers and insurers. The private insurance and health insurance exchanges discussed above are some of the most significant changes made. Hinshaw will keep its clients advised on implementing regulations as they become available and will continue researching the impacts of these changes on all parties.

For more information, please contact your regular Hinshaw attorney.

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