



Alerts

An Eagle's Eye View of the Health Care Reform Legislation

April 7, 2010

Hinshaw Health Law Alert

Health Care Reform Basics

This is the first in a series of health care alerts Hinshaw & Culbertson LLP will publish on the topic of health care reform. This first alert is an overview of the general provisions of the Patient Protection and Affordable Care Act (PPACA). The rules and regulations developed to further the purposes of this legislation will clarify various of its provisions, and will be promulgated in the near future and for years to come.

Although there are 10 titles in the legislation, many commentators believe there are six general themes as set forth below:

1. Insurance Reforms/Health Insurance Exchange
2. Individual and Employee Responsibility for Coverage
3. Tax Provisions (Credits/Levies)
4. Medicare/Medicaid
 - Provider Payments
 - Delivery System Reform
 - Quality
 - Fraud and Abuse
5. Prevention and Wellness
6. Miscellaneous Provisions providing for grant funding and demonstration programs among other things

General Substantive Areas Within the Six Themes Include the Following:

Insurance Reforms

These reforms will include restrictions on annual limits by 2014, requirements for small and group market plans for essential qualified health benefits packages by 2014, dependent coverage through age 26 within six months of enactment, guaranteed issue and renewal, prohibition on lifetime limits within six months of enactment, limitations on marketing practices, analysis and restrictions on Medical Loss Ratios, establishment of a high risk pool (within 90 days from the date of enactment) for certain individuals, prohibitions on certain types of discrimination in issuing policies (with different effective dates), prohibition on pre-existing conditions for children (within six months from enactment) and generally by 2014, requirements of coverage for preventive care and immunizations (six months from enactment), quality reporting, rate review, limitations on waiting periods, and prohibitions on rescission of insurance.



Health Insurance Exchange

An exchange must be established by states on or before January 1, 2014. These exchanges will facilitate the purchase of qualified health plans for individuals and small businesses. A basic benefit package will be required and eligibility will be based on size of employers and individual ability to otherwise obtain insurance. States will be able to act in tandem to establish exchanges and will have flexibility in benefits offered above and beyond the basic qualified benefit package.

Individual and Employer Responsibility

There are various provisions requiring employers to offer insurance and placing responsibilities on individuals to purchase insurance. Penalties are provided for employers and individuals who do not comply. These provisions will be detailed in more specificity in upcoming Hinshaw employment alerts.

Tax Provisions (Credits and Revenue Raisers)

There are various tax credit and revenue provisions within the legislation, but we focus here on those that may directly impact our health care clients.

Health Insurance Provider Industry User Fee

Annual fee on health insurance provider industry, effective 2014 as follows: \$8 billion in 2014, \$11.3 billion in 2015-2016, \$13.9 billion in 2017, \$14.3 billion in 2018, and \$14.3 billion + rate of premium growth in 2019 and beyond.

Medical Device Industry Excise Tax

2.3% excise tax on medical devices sold in the United States, effective 2013.

Prescription Drug Industry User Fee

Annual fee on brand name prescription drug manufacturers, effective 2011 as follows: \$2.5 billion in 2011, \$2.8 billion in 2012-2013, \$3.0 billion in 2014-2016, \$4.0 billion in 2017, \$4.1 billion in 2018, and \$2.8 billion in 2019 and beyond.

Tax-Exempt Hospitals

501(c)(3) hospitals would be required to: conduct a community health needs assessment every three years; implement a financial assistance policy; limit charges to certain patients to amounts generally billed to insured patients; and follow certain debt collection practices.

Qualified Medical Expenses

The cost of over-the-counter medicines may not be reimbursed through a health FSA or HRA, a health savings account, or an Archer MSA, effective 2011.

Tax Deduction for Part D Expenses

Eliminates the deduction for the employer subsidy for employers who provide prescription drug coverage to employees eligible for Medicare Part D, effective 2013.

Medicare - Provider Payments

The changes to Medicare reimbursement are numerous and will be detailed and highlighted in a future alert. The changes impact providers from hospitals, to laboratories, to DME companies, dialysis providers, ambulatory surgery centers, home health agencies, hospice, drug companies and long term care. The changes impact the Medicare DSH payments, Medicare Part D coverage, Medicare Advantage, specialty hospitals and physician reimbursement.



Medicare - Primary Care, Coordinated Care, Delivery System Reform

These provisions provide for a payment system based on pay for performance versus fee for service. The provisions provide for Accountable Care Organizations to promote accountability and coordinate Medicare Parts A and B services, access to comprehensive health risk assessments, bundled payments, Medical Home grants/demonstrations programs and a 10% bonus to primary care providers in health professional shortage areas.

Medicare - Quality and Transparency Initiatives

These provisions enhance quality measures and reporting.

Medicare - Fraud and Abuse

There are various provisions that require enhanced compliance, greater enforcement penalties and funding for fraud and abuse control.

Medicaid Program

The Medicaid initiatives include similar changes as in the Medicare reimbursement program, such as utilization of ACOs, medical homes and bundled payments along with enhanced Medicaid prescription drug coverage.

If you have questions or comments about PPACA, please contact your regular [Hinshaw attorney](#). Also look for future alerts that drill down on specific topics highlighted generally here. The next alert will be on health insurance reforms and the establishment of the Health Insurance Exchange followed by an alert on the self disclosure and qui tam implications of PPACA. Future alerts will discuss clinical integration, tax-exempt issues as well as several other provisions that will affect providers of health care.

This alert has been prepared by Hinshaw & Culbertson LLP to provide information on recent legal developments of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.