Health Care Reform Legislative Update

presented by

United Benefit Advisors

in cooperation with

National Association of Health Underwriters

Keynote Speaker:

Janet Trautwein, CEO

National Association of Health Underwriters

March 24, 2010

Setting the Course for Responsible Health Care Reform

Current Status

- On Sunday, March 21st, the House passed HR 3590, the bill already passed by the Senate, with a 219-213 vote
- The President signed the bill into law Tuesday, March 23rd.
- The House also passed a reconciliation bill on March 21st, HR 4872, with a packages of "fixes" to the Senate bill
- The Senate has now begun 20 hours of debate on this bill
- Debate in the Senate was only able to begin after the President signed the underlying Senate bill because a reconciliation bill can not be passed until the bill it "fixes" is actually law
- A number of changes included in the reconciliation language may not make it through a parliamentarian challenge in the Senate

Current Status

- 20 hours of debate are permitted, but unlimited amendments may be offered
- If the Senate passes the bill without changes, it goes to the President for signature and the combination of the two bills become the new law of the land
- If the reconciliation bill doesn't pass, the Senate bill as passed is the law of the land
- If it is amended, it goes back to the House or to a House Senate conference committee
- In the meantime the Senate bill language is in effect pending the final outcome of the reconciliation bill.

What the Senate Bill Does Immediately

- Eligible small businesses are eligible for phase one of the small business premium tax credit.
- Business must have no more than 25 full-time equivalent employees, pay average annual wages of less than $50,000 and provide qualifying coverage.
- Small employers could receive a maximum credit, based on number of employees, of up to 50% of premiums for up to 2 years if the employer contributes at least 50% of the total premium cost.
- The full amount of the credit will be available to employers with 10 or fewer employees and average annual wages of less than $25,000, and will phase out when those thresholds are exceeded.
  - This is retroactive back to the January 1, 2010.

What the Senate Bill Does Immediately

- Employers that provide a Medicare Part D subsidy to retirees will have to account for the future loss of the deductibility of this subsidy on liability and income statements.
- Current law eliminates this subsidy for the 2011 plan year
  - reconciliation package, if enacted, could delay it to 2013, but there is an immediate accounting impact.

The Senate Bill in 2010

- Temporary reinsurance program for employers that provide retiree health coverage for employees over age 55 begins within 90 days of enactment.
- Group plans (except for self-funded plans) will be prohibited from varying eligibility rules for FTEs based on salary that have the effect of discriminating in favor of higher wage employees within six months of enactment.

The Senate Bill in 2010

- Creates high-risk pool coverage for people who cannot obtain current individual coverage due to preexisting conditions.
- This national program can work with existing state high-risk pools and will end on January 1, 2014, once the Exchanges become operational and the other preexisting condition and guarantee issue provisions take effect.
- It will be financed by a $5 billion appropriation.

The Senate Bill in 2010

- Requires the states and the Secretary of HHS to develop information portal options for state residents to obtain uniform information on sources of affordable coverage, including an Internet site.
  - The roll out date for this is October 1, 2010
- Information must be provided on private health coverage options, Medicaid, CHIP, the new high-risk pool coverage and existing state high-risk pool options.

The Senate Bill in 2010

- Lifetime limits for all fully insured group and individual plans are prohibited within six months of enactment.
- Annual limits will be allowed through 2014 only on HHS-defined non-essential benefits, and after that will be prohibited.
  - The reconciliation package, if enacted, would extend this requirement to self-funded plans.

The Senate Bill in 2010

- All group and individual plans (except for self-funded plans), within six months of enactment, will have to cover dependents up to age 26 under current law.
- The reconciliation package, if enacted:
  - would extend this requirement to self-funded and grandfathered plans
  - clarifies that the group health plan income tax exclusion is extended to dependents up to age 26 and that dependents could be married.
  - Would require group health plans only to cover dependents that do not have another source of employer-sponsored coverage (through 2014)

The Senate Bill in 2010

- Health coverage rescissions, <u>within six months</u> of enactment, will be prohibited for all health insurance markets except for cases of fraud or intentional misrepresentation.
  - The reconciliation package, if enacted, would extend this requirement to self-funded and grandfathered plans.
- Emergency services covered in-network regardless of provider
- Enrollees may designate any in-network doctor as their primary care physician
- New coverage appeal process
- The Secretary may develop guidelines for utilization of value-based insurance designs.
- The Department of Labor will begin annual studies on self-funded plans using data collected from Form 5500.

The Senate Bill in 2010

- For fully-insured group and individual health plans, mandates coverage of **specific** preventive services with no cost sharing.
- Minimum covered services include:
  - evidence-based items or services with a rating of `A' or `B' in the current recommendations of the United States Preventive Services Task Force;
  - immunizations recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention with respect to the individual involved;

The Senate Bill in 2010

- Minimum preventive services (cont’d)
  - For infants, children, and adolescents, evidence-informed preventive care and screenings provided for in the comprehensive guidelines supported by the Health Resources and Services Administration;
  - For women, additional preventive care and screenings provided for in comprehensive guidelines supported by the Health Resources and Services Administration;
  - For women, the recommendations issued by the United States Preventive Service Task Force regarding breast cancer screening, mammography, and prevention shall be considered the most current other than those issued in or around November 2009.

The Senate Bill in 2010

- Establishes federal review of health insurance premium rates
- Secretary of HHS, in conjunction with the states, will have new authority to monitor health insurance carrier premium increases beginning in 2010 to prevent unreasonable increases and publicly disclose such information
- Carriers that have a pattern of unreasonable increases may be barred from participating in the exchange
- In addition, $250,000,000 is appropriated for state grants to increase their review and approval process of health insurance carrier premium rate increases

The Senate Bill in 2010

- Minimum loss ratio requirements will be established for insurers in all markets
- The MLR is 85% for large group plans and 80% for individual and small group plans (100 and below).
- The calculation is independent of federal or state taxes and any payments as a result of the risk adjustment or reinsurance provisions
- Carriers will have to issue a premium rebate to individuals for plans that fail to meet the minimum MLR requirements

The Senate Bill in 2010

- Allows the Secretary of DHHS to make adjustments to the MLR percentage if it proves to be destabilizing to the individual or small group markets
- The National Association of Insurance Commissioners (NAIC) is required to establish uniform definitions regarding the MLR and how the rebate is calculated by December 31, 2010

The Senate Bill in 2010

- Imposes a new annual nondeductible fee on pharmaceutical manufacturers and importers of branded prescription drugs (including certain biological products)
- The aggregate annual fees, based on 2009 market share, to be imposed on covered entities will be $2.3 billion
- Ten percent excise tax on amounts paid for indoor tanning services, whether or not an individual’s insurance policy covers the service
- Service provider to assess tax on customer

The Senate Bill in 2011

- All employers must include on their W2s the aggregate cost of employer-sponsored health benefits.
- If employee receives health insurance coverage under multiple plans, the employer must disclose the aggregate value of all such health coverage, but exclude all contributions to HSAs and Archer MSAs and salary reduction contributions to FSAs.
  - Becomes effective on January 1, 2011, but applies to benefits provided during 2010.
- The tax on distributions from a health savings account that are not used for qualified medical expenses increases from 10% to 20%.
- OTC drugs no longer be reimbursable under HSAs, FSAS, HRAs and Archer MSAs unless prescribed by a doctor.

The Senate Bill in 2011

- FSA contributions for medical expenses are limited to $2500 per year, with the cap annually indexed for inflation.
  - The reconciliation package, if enacted, would delay this provision till 2013.
- Small employers (less than 100 lives) will be allowed to adopt new "simple cafeteria plans." Federal grant program for small employers providing wellness programs to their employees takes effect.
- A new federal tax on fully insured and self-funded group plans, equal to $2 per enrollee, takes effect to fund federal comparative effectiveness research takes effect in 2012.

The Senate Bill in 2011

- Premium taxes begin on most private health insurers based on premium volume take effect, which can be passed directly down to fully-insured plan consumers.
- Does NOT apply to self-insured plans, governmental entities, certain nonprofit insurers of last resort, certain nonprofit insurers with a medical loss ratio of 90 percent or more, or self-funded plans.
  - The reconciliation package, if enacted, would delay the implementation of tax until 2014 but increases the amount of fees once they become effective.
  - It also would reduce the amount of the tax for certain insurers and exempt others.

The Senate Bill in 2011

- Creates a new **public long-term care program** and **requires all employers to enroll employees**, unless the employee elects to opt out.
- New (nondeductible) annual fees imposed on medical device manufacturers and importers
  - The reconciliation bill converts the fee to an excise tax of 2.3 percent of the price for which the medical device is sold and delays the effective date until 2013 (from 2011).
  - The tax would not apply to eyeglasses, contact lenses, hearing aids, and any other device deemed by the Secretary to be of the type available for regular retail purposes.

The Senate Bill in 2012

- All group plans and group and individual health insurers (including self-funded plans) will have to provide a summary of benefits and a coverage explanation **that meets specified criteria** to all enrollees
  - when they apply for coverage,
  - when they enroll or reenroll in coverage,
  - when the policy is delivered,
  - and identify any material modification is made to the terms of their coverage.
- The summary and explanation can be provided electronically or in written form, and there is a $1000 per enrollee fine for willful failure to provide the information.

The Senate Bill in 2013

- 40% excise tax on insurers of employer-sponsored health plans with aggregate values that exceed $8,500 for individual coverage and $23,000 for family coverage “Cadillac plan tax” with higher thresholds for retirees over age 55 and employees in certain high-risk professions.
- Transition relief would be provided for 17 identified high-cost states.
- The tax would be indexed annually for inflation by the CPI plus 1 percent.
- Values of health plans include reimbursements from FSAs, HRAs and employer contributions to HSAs; also includes coverage for dental, vision, and other supplementary health insurance coverage.

Changes to Cadillac Tax with Reconciliation Bill

- Changes the effective date of the Senate's tax on Cadillac plans from 2013 to 2018.
- It also raises the threshold for premiums that are exempt from the assessment from $8,500 for individual coverage to $10,200 and from $23,000 for families to $27,500.
- The bill also reduces the formula for indexing the thresholds even further (to just inflation, not inflation plus 1%) so that more plans will fall under the tax faster, but also allows plans to take into account age, gender and certain other factors that impact premium costs.
- Stand-alone vision and dental plans are also excluded from the tax.

The Senate Bill in 2013

- Additional 0.9% Medicare Hospital Insurance tax on self-employed individuals and employees with respect to earnings and wages received during the year above $200,000 for individuals and above $250,000 for joint filers (not indexed).
- Self-employed individuals are not permitted to deduct any portion of the additional tax.
- Reconciliation measure would also levy new 3.8% Medicare contribution on certain unearned income from individuals with AGI over $200,000 ($250,000 for joint filers)

The Senate Bill in 2013

- The threshold for the itemized deduction for unreimbursed medical expenses would be increased from 7.5% of AGI to 10% of AGI for regular tax purposes.
  - The increase would be waived for individuals age 65 and older for tax years 2013 through 2016.
- $500,000 deduction limitation on taxable year remuneration to officers, employees, directors, and service providers of covered health insurance providers.

The Senate Bill in 2014

- Coverage must be offered on a guarantee issue basis in **all** markets and be guarantee renewable.
- Exclusions based on preexisting conditions would be prohibited in all markets.
- Full prohibition on any annual limits or lifetime limits in all group and or individual plans.
  - The reconciliation bill would extend these provisions to grandfathered health plans, including self-funded plans governed by ERISA.

The Senate Bill in 2014

- All individual health insurance policies and all fully insured group policies 100 lives and under (and larger groups purchasing coverage through the exchanges) must abide by strict modified community rating standards with premium variations only allowed for age (3:1), tobacco use (1.5:1), family composition and geographic regions to be defined by the states and experience rating would be prohibited.
- Wellness discounts are allowed for group plans under specific circumstances.
- Redefines small group coverage as 1-100 employees.
  - States may also elect to reduce this number to 50 for plan years prior to January 1, 2016.

The Senate Bill in 2014

- Individuals and employer group plans that wish to keep their current policy on a **grandfathered** basis would only be able to do so if the only plan changes made were to add or delete new employees and any new dependents.
  - The reconciliation bill would include self-funded plans governed by ERISA under the grandfathered plan provisions.
- In addition, an exception is made for employers that have scheduled plan changes as a result of a collective bargaining agreement.

The Senate Bill in 2014

- Requires each **state** to create an Exchange to facilitate the sale of qualified benefit plans to individuals, including new federally administered multi-state plans and non-profit co-operative plans.
  - In addition the states must create “SHOP Exchanges” to help small employers purchase such coverage.
  - The state can either create one exchange to serve both the individual and group market or they can create a separate individual market exchange and group SHOP exchange.
  - States can also apply for a modification waiver from HHS.
  - States may choose to allow large groups (over 100) to purchase coverage through the exchanges in 2017
  - The reconciliation package would allow U.S. territories to create Exchanges and clarify for funding purposes a U.S. territory that establishes an Exchange will be treated like a state for funding purposes.

The Senate Bill in 2014

- Employers do not have to offer coverage, but if they employ more than 50 full-time employees they must pay a fine of $750 per year for each full time employee they don’t cover.
  - Coverage must meet the essential benefits requirements in order to be considered compliant with the mandate.
  - The reconciliation bill increases the annual fine specified in H.R. 3590 from $750 to $2000, but exempts the first 30 employees from the fine .
- An employer with more than 50 employees offering coverage with one full-time employee receiving a tax credit through the exchange will pay the lesser of $3,000 for each of those employees receiving a tax credit or $750 for each of their full-time employees total.

The Senate Bill in 2014

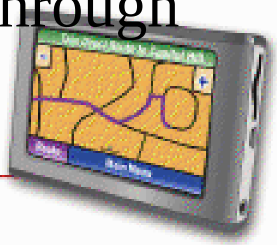
- For the construction industry only, the responsibility requirement to provide affordable coverage applies to employers of more than 5 people with annual payrolls of more than $250,000.
- An employer with more than 50 full-time employees that requires a waiting period before an employee can enroll in health care coverage will pay $600 for any full-time employee subject to more than a 60-day waiting period.
  – Reconciliation bill changes waiting period maximum to 90 days.

The Senate Bill in 2014

- Require employers to give a voucher to use in the individual market or exchange instead of participating in the employer-provided plan.
  - Employees must be ineligible for subsidies
  - The value of vouchers the employer contribution adjusted for age
  - employee can also keep amounts of the voucher in excess of the cost of coverage elected in an exchange without being taxed on the excess amount.
- Establishes standards for qualified coverage, including mandated benefits, cost-sharing requirements, out-of-pocket limits and a minimum actuarial value of 60%.
- Allows catastrophic-only policies for those 30 and younger.

The Senate Bill in 2014

- Requires all American citizens and legal residents to purchase qualified health insurance coverage. Exceptions allowed for :
  - religious objectors,
  - individuals not lawfully present ,
  - incarcerated individuals,
  - those who cannot afford coverage,
  - taxpayers with income under 100 percent of poverty,
  - members of Indian tribes,
  - those who have received a hardship waiver
  - those who were not covered for a period of less than three months during the year.
- Violators are subject to an excise tax penalty of up to $750/person or up to 2 percent of income (capped at the annual cost of the average bronze level premium plan offered through the exchanges).



The Senate Bill in 2014

- The reconciliation package changes the excise tax penalty for non compliance to either a flat dollar amount per person or a percentage of the individual's income, whichever is higher.
- In 2014 the percentage of income determining the fine amount will be 1%, then 2% in 2015, with the maximum fine of 2.5% of taxable (gross) household income capped at the average bronze-level insurance premium (60% actuarial) rate for the person's family beginning in 2016.
- The alternative is a fixed dollar amount that phases in beginning with \$325 per person in 2015 to \$695 in 2016.
- The reconciliation package also exempts those with incomes below the federal tax filing threshold from the tax.

The Senate Bill in 2014

- Health plans, including self-funded employer plans and public programs, must provide coverage documentation to both covered individuals and the IRS.
- Requires employers of 200 or more employees to auto-enroll all new employees into any available employer-sponsored health insurance plan.
  - Waiting periods subject to limits may still apply.
  - Employees may opt out if they have another source of coverage.
- Requires all employers provide notice to their employees informing them of the existence of an Exchange.

The Senate Bill in 2014

- Codifies and improves upon the HIPAA bona fide wellness program rules and increases the value of workplace wellness incentives to 50% of premiums.
- Establishes a 10-state pilot program to apply the rules to HIPAA bona fide wellness program rules the individual market in 2014-2017 with potential expansion to all states after 2017.
- New federal study on wellness program effectiveness and cost savings.

The Senate Bill in 2014

- Creates sliding-scale tax credits for non-Medicaid eligible individuals with incomes up to 400% of FPL **to buy coverage through the exchange.**
  - The reconciliation provides slight increases to the subsidy amounts for all subsidy-eligible individuals and increases the cost-sharing subsidies for those making 250% FPL or less.
  - However, beginning in 2019, a failsafe mechanism is applied that reduces overall premium subsidies if the aggregate amount exceeds 0.504 percent of GDP.

The Senate Bill in 2014

- Allows states to apply for a waiver for up to 5 years of requirements relating to:
  - qualified health plans,
  - exchanges,
  - cost-sharing reductions,
  - tax credits,
  - the individual responsibility requirement,
  - and shared responsibility for employers,
  - provided that they create their own programs meeting specified standards.