A Summary of Healthcare Reform

The Patient Protection and Affordable Care Act (H.R. 3590) was signed into law by President Obama on March 23, 2010. The companion bill, the Healthcare and Education Reconciliation Act (H.R. 4872), was signed into law on March 30, 2010. Together, these two bills constitute what is now commonly referred to as the "Affordable Care Act" or "ACA." Set forth below is a brief summary of some of the key changes that will affect employers and employees under the ACA.

You can view the Affordable Care Act at the following link:

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_public_laws&docid=f:publ148.pdf

Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Office of Consumer Information and Insurance Oversight and Department of Health and Human Services are responsible for the regulations.

What can employers expect?

The extension of benefits offered under the Senate bill and House reconciliation bill will largely become effective in 2014. However, some provisions will go into effect earlier for employer plans. Except as otherwise noted, the provisions described below will become effective for employer plans with plan years beginning on or after September 23, 2010 (or effective January 1, 2011, for calendar plan years).

• **Elimination of lifetime/annual benefits maximums.** Group plans will be required to eliminate lifetime benefit maximums. Restrictive annual limits also will begin to be phased out. Group plans may only place "restricted" annual dollar limits (not less than $750,000, phasing up to not less than $2 million for 2013 plan years) on essential health benefits as defined by the Secretary of Health and Human Services (HHS), with all annual dollar limits on essential health benefits prohibited starting in 2014 plan year. [§ 2711(a) 7(b)]

• **Coverage for adult children.** Group health plans would be required to extend coverage to adult children up to the age of 26 if the children do not have access to group coverage. Note that such coverage will be excludable from federal income taxes; however, it will not supersede any state health insurance mandate applicable to insured policies that extend coverage to even older adult dependents. [§ 2714]

• **Prevents insurers from rescinding coverage.** An insurance company would be prohibited from rescinding coverage to an individual enrolled in a plan except in cases involving fraud or misrepresentation. [§ 2712]

• **Elimination of pre-existing condition exclusions for children with illnesses.** Group plans may not impose pre-existing condition exclusion with respect to children under age 19. [§ 2704]

• **Small business tax credits.** Small businesses employing fewer than 25 employees with average wages of up to $50,000 may be eligible for a new tax credit that would subsidize up to 35 percent of the cost of a group health insurance plan. This 35 percent tax credit would be available starting in 2010 and could increase up to 50 percent by 2014. [§ 1421]

• **Preventive Care Coverage.** Employer plans must provide coverage, without cost-sharing, for preventive services rated A or B by the U.S. Preventive Services Task Force; recommended immunizations; preventive care for infants, children, and adolescents; and preventive care and screenings for women. [§ 2713]

• **Access to certain healthcare providers.** Plans that require designation of a primary care provider must allow the designation of any available participating primary care provider, including pediatricians for children; plans cannot require authorization or referral prior to seeking OB-GYN services; plans cannot require prior authorization for emergency services or set more restrictive cost-sharing requirements when emergency services are provided out of network. [§ 2719A]

• **Over-the-counter drugs.** Except for insulin, over-the-counter drugs without a prescription are not reimbursable from a health care flexible spending accounting (FSA) or health reimbursement account (HRA), and are not a tax-free reimbursement from a health savings account (HSA). Provision is effective January 1, 2011 for all plans regardless of plan year. [§ 2502]

Future provisions that will impact employers

• **Employer reporting value of employee's coverage**. Effective 2012, the value (total annual premiums) of the employee's health coverage must be disclosed on Form W-2. Reporting requirement is voluntary for the 2011 tax year. [§ 9002]

• **Changes to health Flexible Spending Account (FSA)**. Effective 2013, a cap on maximum contributions to a health FSA will be set at $2,500 per year. [§ 9005]

• **Access to health insurance exchanges.** Effective 2014, health insurance exchanges, administered by state governmental agencies or non-profit organizations, will be opened through which individuals and small businesses with up to 100 employees can purchase qualified health insurance coverage. States will be permitted, but not required, to allow businesses with more than 100 employees to purchase coverage through exchanges effective in 2017. [§ 1311]

• **Elimination of pre-existing condition exclusions.** Effective 2014, group health plans would be prohibited from imposing preexisting condition exclusions. [§ 2704]

• **Elimination of excessive waiting periods.** Effective 2014, employers may no longer impose a waiting period for eligibility for benefits of more than 90 days. [§ 2708]

• **Penalty for not offering employee coverage.** Effective 2014, employers who employ at least 50 employees will be charged a $2,000 per employee per year penalty. The penalty excludes the first 30 employees of the employer. For example, an employer who employs 50 employees would be subject to a $40,000 penalty per year (50 employees – 30 employees = 20 employees; 20 employees x $2,000 = $40,000). [§ 4980H]

• **Penalty for offering "unaffordable" employee coverage.** Effective 2014, employers with more than 50 employees who offer coverage that is "unaffordable" (premiums for coverage elected by the employee, exceed 9.5 percent of the family income) will be charged $3,000 per full time employee who enrolls in an "exchange" plan and receives a government subsidy. [§ 1411]

• **Vouchers for employees eligible for "unaffordable plans."** Effective 2014, employees with incomes less than 400 percent of the federal poverty level (FPL) who are exempt from enrolling in their employer plan due to its high cost will be allowed to enroll in an insurance exchange. In order to avoid the $3,000 tax per employee, an employer can offer an employee a voucher equivalent to the employer's contribution toward health care coverage under their group health plan. The employee would use the voucher to purchase coverage from the exchange and excess funds would be paid out to the employee in the form of cash. [§ 10108]

• **Excise tax on "Cadillac" plans.** Effective 2018, insurers and self-insured plans will be charged a 40 percent tax on health insurance premiums in excess of $10,200 for individual coverage and $27,500 for family coverage (higher thresholds for plans covering retirees and certain high-risk industries). The tax excludes dental and vision premiums from the calculations. [§ 4980I]

What can individuals expect?

• **Credit for Medicare Part D seniors.** Seniors covered by Medicare Part D may be eligible for a $250 payment if their prescription coverage reaches the gap, known as the "doughnut hole." Seniors would be eligible for this payment this year. [§ 1101]

• **Tax on high income individuals.** Effective 2013, individuals earning more than $200,000 a year and couples earning more than $250,000 per year would pay a higher Medicare payroll tax of 2.35 percent on earnings, up from the current 1.45 percent. An additional 3.8 percent tax would be applied on unearned income such as dividends and interest for individuals over the income threshold. [§ 9015]

• **Itemized deductions for medical expenses.** Effective 2013, threshold for tax deduction is 10 percent (not 7.5 percent) of adjusted gross income; threshold remains at 7.5 percent until 2017, if the taxpayer or spouse is age 65 or older. [§ 9013]

• **Individual mandate.** Effective 2014, Americans would be required to have insurance or pay a penalty. The penalty would start at $95, or up to 1 percent of income, whichever is greater, and rise to $695, or 2.5 percent of income, by 2016. The maximum penalty imposed on a family would not exceed the greater of 2.5 percent of income or $2,085 per year. Various exceptions apply, such as for individuals with financial hardships or religious objections; Native Americans; individuals without coverage for less than three continuous months. [§ 1501]