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**WHAT THE HEALTH CARE LEGISLATION
WILL MEAN FOR YOU AS AN EMPLOYER**

March 23, 2010

By Jay Turner
Birmingham, AL

On Sunday night, the House of Representatives passed the Patient Protection and Affordability Act (H.R. 3590), the Senate's health care reform bill. President Barack Obama signed the bill into law today. Highlights of the bill that will be of interest to employers are detailed below. The effective dates of the various provisions are also included.

- **Employer Mandate – “Play or Pay”** - Employers with more than 50 employees that do not offer group health coverage and have at least one full-time employee who receives a premium tax credit would be assessed a penalty of \$750 per full-time employee if the employer fails to offer qualifying health coverage. Employers with more than 50 employees that offer group health coverage but have at least one full-time employee receiving a premium tax credit will pay the lesser of \$3,000 for each employee receiving a premium credit or \$750 for each full-time employee. These provisions are effective beginning in 2014.

- **Waiting Period Restrictions** - Any employer that imposes a waiting period before employees can enroll in a group health plan would be required to pay \$400 for any full-time employee in a 30-60 day waiting period and \$600 for any full-time employee in a 60+ day waiting period. These provisions are effective beginning in 2014.

- **Insurance Exchanges** – The bill creates state-based American Health Benefit Exchanges and Small Business Health Options Program (“SHOP”) Exchanges. The goal is that state-based insurance exchanges will provide a more organized and competitive marketplace for consumers and small employers to purchase health insurance. The insurance exchanges must be in place beginning in 2014.

- **Individual Mandate** – The bill requires individuals to purchase qualifying health coverage. Those without coverage would be required to pay a penalty tax of the greater of \$750 per year up to a maximum of three times that amount (\$2,250) per family or 2% of household income. These penalties become effective in 2014.

- **Medicaid Expansion** - The bill expands Medicaid to all individuals under age 65 with incomes of up to 133% of the Federal Poverty Level based on modified adjusted gross income. This change is effective in 2014.

- **Changes to Health Care Spending Accounts** – The bill contains a change in

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the definition of “qualified medical expense” that affects reimbursements and withdrawals under all types of health care accounts, such as flexible spending accounts, health reimbursement arrangements, health savings accounts, and Archer medical savings accounts. Over-the-counter medications will no longer be a “qualified medical expense.” Additionally, the amount employees could contribute to health care flexible spending accounts will be capped at \$2,500. The effective dates of these provisions are likely to be modified by the House reconciliation bill.

- **Elimination of Lifetime Caps** – The bill eliminates lifetime caps on essential benefits provided under group health plans. This prohibition on lifetime caps is effective six months after enactment of the bill (September 23, 2010).
- **Preexisting condition exclusions** – Group health plans may not impose preexisting condition exclusions beginning in 2014. Group health plans may not impose preexisting condition exclusions for children under the age of 19 for plan years beginning on or after September 23, 2010. These requirements will make substantial changes to the Health Insurance Portability and Accountability Act (“HIPAA”) portability requirements affecting group health plans.
- **Dependent Coverage** – Effective immediately, group health plans that offer dependent coverage must allow dependent coverage to continue up to age 26.
- **Subsidies for Small Employers** – The bill provides for small employers (fewer than 25 employees) to receive tax credits for purchasing group health insurance for their employees. The subsidies shrink as an employer’s size and average pay increase. The subsidy is phased in beginning this year.

Immediately after passing the Senate’s health care reform bill, the House was quick to also pass the Health Care and Education Reconciliation Act of 2010 (“Reconciliation Act”), containing the changes to the Senate’s health care reform bill requested by the House. The Reconciliation Act will make significant changes to the Senate’s health care reform bill, including modifying the tax on “Cadillac” health plans and removing special carve-out deals for states like Nebraska. The Senate’s health care reform bill would not have passed the House without the Senate Democratic leadership’s assurances that the House’s requested changes would be passed. Debate on the Reconciliation Act begins in the Senate today and is expected to result in final legislation before Congress recesses in two weeks. The President will probably receive a second health care reform bill containing the changes requested by the House.

If you would like to discuss the impact of this important legislation on your benefit plans, please contact any member of Constangy’s **Employee Benefits practice group**, or the Constangy attorney of your choice.

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