



Legislative Brief

Patient Protection and Affordable Care Act

On March 21, 2010, the House of Representatives passed the Patient Protection and Affordable Care Act. The Act (HR 3590) was passed by the Senate on December 24, 2009. Consequently, the Act will become law once it is signed by President Obama.

A second bill, the "reconciliation bill," was also passed by the House on March 21. The reconciliation bill would revise the Act to reflect substantial changes that were necessary in order to achieve enough votes in the House to pass the Act. This reconciliation bill (HR 4872) must now be acted on by the Senate. If passed in the Senate, the bill would become law and revise many of the provisions in the Act. Senate Majority Leader Harry Reid (D-NV) has promised House members that at least 51 Senators will support the reconciliation bill. Debate on the reconciliation bill is expected to start on March 23, 2010.

Changes effective immediately or in 2011

Although existing group health plans will be "grandfathered," that is, exempt from certain requirements, several requirements will now be effective for plan years beginning six months after the date of enactment. If the reconciliation bill becomes law these provisions would include the following items. In addition, the Act states that certain provisions do not apply to plans maintained pursuant to a collective bargaining agreement until the date on which the last of the collective bargaining agreements relating to the coverage terminates.

- No lifetime benefit limits and only limited annual benefit limits
- Coverage for dependent children up to age 26, as long as they do not have access to other employer-sponsored health coverage (the reconciliation bill also assures that this coverage can be provided on a tax-free basis)
- No preexisting conditions for children under age 19
- No rescission of health coverage, except in cases of fraud (primarily an individual insurance policy issue)

Other items that are immediately effective include a Medicare Part D provision that provides that beneficiaries who are in a Prescription Drug Plan and who reach the doughnut hole in 2010 would receive a one-time \$250 rebate, as well as a reinsurance program for pre-Medicare retirees (discussed below)

Additional reforms would be effective for plan years beginning on or after January 1, 2014, including a ban on waiting periods over 90 days.

In 2011, Health Flexible Spending Arrangements, Health Reimbursement Arrangements, and Health Savings Accounts can only reimburse participants for over-the-counter drugs with a prescription written by their health care provider.



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Long-term changes

- In 2014, the Health Insurance Exchanges, individual mandates, subsidies to purchase insurance coverage take effect
- In 2014, the employer "free-rider" mandate begins, requiring that employers with over 50 employees with an employee that obtains subsidies for coverage in an Exchange pay a financial penalty. The penalties, detailed in the Senate summary, are changed and increased in the reconciliation bill.
- In 2018, the excise tax on health plans above a certain threshold would take effect.

Changes affecting retiree health plans

- Retiree reinsurance program: A program that will take effect within 90 days of enactment will reimburse plan sponsors for 80% of claims between \$15,000 - \$90,000 for pre-Medicare retirees age 55-64. The program is funded with \$5 billion and is designed to be a bridge to the Exchanges in 2014
- Medicare Part D: Beneficiaries who are in a Prescription Drug Plan and who reach the doughnut hole in 2010 would receive a one-time \$250 rebate. In 2011, the reconciliation bill provides a 50% discount on brand-name drugs in doughnut hole for retirees in a Prescription Drug Plan; 75% discount on generics. The measure is designed to eliminate the doughnut hole by 2020.
- For employers with a tax liability, the Retiree Drug Subsidy will become taxable in 2013. These employers should immediately consult with their actuaries and accountants as to the implication of this tax change. This change will not generally affect multiemployer plans or governmental plans.
- Medicare Advantage plan payments will be decreased over the next three years.

Plan sponsors will need short-term and long-term strategies to address health care reform. The comprehensive nature of the reforms will likely reach every aspect of plan operations: first, benefit design and cost, and later eligibility rules and the impact of the system reforms on health care costs, including items such as taxes on health insurers and certain manufacturers, and the impact of health insurance exchanges on the health marketplace. Once the reconciliation bill is approved by the Senate, plan sponsors will be able to determine exactly which provisions apply to their benefits, and begin compliance efforts.

CHS will provide additional information as the health reform efforts continue with the reconciliation bill.

This CHS Legislative Brief is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.