

Drinker Biddle

Health Care Reform and Vision Benefits

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Health Care Reform Recap

- > Patient Protection and Affordable Care Act
- > Signed into law on March 23, 2010
- > Over 2,400 pages long
- > Will take more than five years to implement



Vision Benefits in Health Reform

- > Vision Benefits for Children
 - Benefits package for insurance plans participating in state “exchanges” must include vision benefits as part of pediatric services
- > No Additional Taxes
 - Vision and dental plans exempt from tax on high cost employer-sponsored health coverage
- > Flex Spending Accounts
 - Eyeglasses and contacts are protected from new restrictions that will be placed on some items that flex spending accounts cover

Vision Benefits in Health Reform Continued

- > **Lifetime/Annual Limits**
 - Insurance companies prohibited from imposing lifetime limits on benefits and restricted in terms of annual limits in new insurance plans
- > **Tax Credits**
 - Small businesses may qualify for new tax credits if they provide insurance coverage to their employees and meet other criteria
- > **Young Adults**
 - Age limit increased to 26 years of age for a child on their parent's health insurance policy
- > **Consumer Information**
 - Consumer-friendly web portal created to compare health insurance plans

Health Insurance Mandate

- > Americans Required to Have Health Insurance in 2014
 - Unless the individual qualifies for an exception under certain circumstances.
- > No Affordable Coverage Through Employer?
 - Purchase through new state-based health insurance “exchanges”
- > Financial Assistance for Individuals & Families
 - Must be between 133% and 400% of federal poverty level
 - Assistance will be based on income

Rates

- > Beginning in 2014 insurance companies will not be able to charge someone more for their insurance due to their health status (including vision problems)



Implementation Timeline

> 2010

- Access to insurance for uninsured Americans with a pre-existing condition
- No discrimination against children with pre-existing conditions
- Prohibits dropping coverage when people get sick
- Eliminating lifetime limits on insurance coverage
- Extending coverage for young adults

Implementation Timeline

> 2014

- Reforming health insurance regulations
- Eliminating annual limits on insurance coverage
- Establishing health insurance exchanges
- Ensuring choice through a multi-state option

> 2016

- Multi-State compacts to allow insurers to sell policies across state lines

A Mandate to Repeal Health Care Reform?

- > New House Members feel they have a mandate to repeal “Obamacare”
- > The President feels the need to keep intact the majority of his signature accomplishment
- > Senate Democrats are painfully aware that they have 23 seats to protect in 2012
- > Political Issue for 2010 – vital to both sides

Public Sentiment



- > Recent Rasmussen survey reported Jan. 17th shows that 55% of Likely Voters favor repeal of the health care law, while 40% oppose repeal
- > Opposition is not based on experience – most provisions have yet to kick in
- > Last time Congress repealed a major piece of health care legislation was 20 years ago (Medicare catastrophic coverage)

Three Influences on Health Care Reform

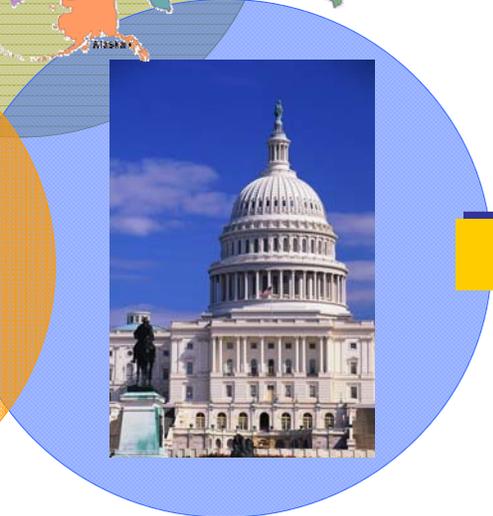
The states



The courts



Congress



“Repeal & Replace” Efforts

- > House voted to repeal the law 245-189 on January 19th
 - 250 word legislation titled “Repealing the Job Killing Health Care Law Act”
- > The Senate should act as a backstop
- > Even if the Senate did agree to a repeal, the President would veto
 - There aren’t enough votes to override a veto
- > Democrats hope that as voters learn more about the law, they will view the bill more favorably
 - There are popular provisions (for example, coverage up to 26 years old, prohibition against dropping patients after they get sick)

Challenge to Successful Repeal

- > Highly complicated law
- > The law remakes every aspect of the health care system at both federal and state levels
- > Almost every part is intertwined or interdependent with other parts of the law, practically and politically
 - For example, hospitals, drug companies, and physicians supported the bill in large part because the individual mandate would increase paying customers
 - Many provisions rated as “cost-savers” used to pay for other provisions
- > The overall law was scored as a “cost-saver”
 - Funding to offset the “savings” of provisions in the law that Republicans want to repeal must be found in a volatile budget environment or will be seen as adding to the deficit

Attempts to Change the Law – the States

- > Expect substantive action in the states
- > Governors and state legislatures are charged with implementing major portions of the law
 - New insurance “exchanges”
 - Expansion of Medicaid
 - High-risk insurance pools
 - Insurance premium rates



Attempts to Change the Law – the States

- > The law gives states a fair amount of room to interpret many provisions
- > The Department of Health and Human Services (HHS) does not want states to pull out of major provisions, or ask for waivers, so it will likely allow a wide latitude
- > The elections changed the make-up of Governors and state legislatures from 60% Democratic controlled/40% Republican controlled to an almost exact flip
- > State officials may not want to implement the law according to the vision of the Democrats in Washington who wrote the legislation

Attempts to Change the Law – the Courts



- > Attorneys Main lawsuit filed by FL Attorney General
 - 25 other states have joined the FL case
- > Status of health care reform law could end up decided by the Supreme Court
- > No severability clause in the law, but in some cases the Supreme Court has severed a law on its own
- > Expected to wind its way up to the Supreme Court (before 2014)

The Bottom Line

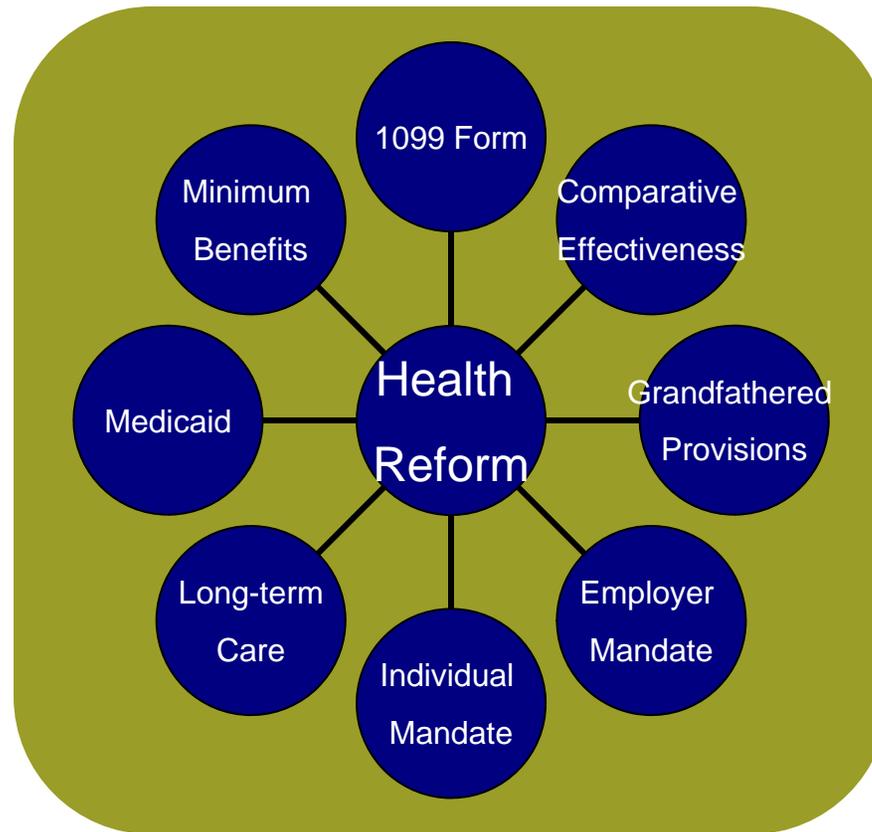
Health Care Reform Law
Doesn't Go Away

So what happens next?

2011: Health Care “Deform”

- > Hearings and investigations
 - Republicans will have the power to subpoena in the House
 - Ways and Means
 - Energy and Commerce
 - Oversight and Government Reform
 - Education and Workforce
 - Keeps Administration officials busy
 - Viewed as useful to 2012 campaigns
- > Targeted votes on specific provisions
- > Defunding of implementation
 - Imposing a prohibition on the allocation of discretionary monies to support implementation – attach to “must-pass” legislation

Targeted Provisions



Policy/Political Outlook

- > Most of the anticipated attempts likely will be opposed by Obama, but he may compromise on some
 - Many moderate Democrats who are up in 2012 were not big supporters of the bill and may force Obama to compromise, by giving the Republicans enough votes in the Senate for some changes
- > Hard to take away a benefit from the public (e.g., elimination of preexisting condition limitations)
- > Unraveling of the delicate third-party stakeholder house of cards (e.g., hospitals, pharma companies) tied to the promise of coverage due to the individual mandate

1099 Form

- > Takes effect in 2012
- > Reporting requirement makes businesses file a 1099 form with the IRS for any vendor to whom they pay more than \$600 in a tax year
- > Included to help offset the cost of the health care law
- > Two failed votes to repeal already
- > Obama indicated he may support repeal; Members of both parties support repeal of this provision

VOID CORRECTED

PAYER'S name, street address, city, state, and ZIP code		1 Gross distribution \$	CMB No. 1545-0119 2005 Form 1099-R		Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.
		2a Taxable amount \$			
		2b Taxable amount not determined <input type="checkbox"/>	Total distribution <input type="checkbox"/>		Copy 1 For State, City, or Local Tax Department
PAYER'S Federal identification number	RECIPIENT'S identification number	3 Capital gain (included in box 2a) \$	4 Federal income tax withheld \$		
RECIPIENT'S name		5 Employee contributions or insurance premiums \$	6 Net unrealized appreciation in employer's securities \$		
Street address (including apt. no.)		7 Distribution code(s)	IRA/SEP/SIMPLE <input type="checkbox"/>	8 Other \$	
City, state, and ZIP code		9a Your percentage of total distribution %	9b Total employee contributions \$		
Account number (see instructions)		10 State tax withheld \$	11 State/Payer's state no.	12 State distribution \$	
		13 Local tax withheld \$	14 Name of locality	15 Local distribution \$	

Form 1099-R Department of the Treasury - Internal Revenue Service

Comparative Effectiveness

- > Comparative Effectiveness is research comparing the effectiveness of different types of treatments
- > Law funds millions of dollars in studies
- > Supporters say it is “evidence-based medicine”
- > Opponents say it will be used to ration care
- > The law does restrict the use of the research as sole determinant in payment decisions, but does not affect how private insurers may use information



Grandfathered Provisions

- > Included in bill to help keep promise that Americans would not lose their current coverage
- > Provision allows insurance plans to avoid some of the law's new mandates, but if an employer modifies its insurance in a significant way it loses its grandfathering protection and must comply with the law's new rules
- > There is already one amendment offered to broaden the scope of changes allowed to a plan
- > Is it too late to fix this provision?

Employer Mandate

- > Takes effect in 2014
- > Employers who don't provide insurance can face a fine if any employees take a tax credit to buy insurance
 - If even one worker gets the credit, then the employer can be penalized \$3,000 for each worker or \$2,000 for everyone on the payroll, whichever is less
 - The first 30 workers do not count in the assessment
 - Small companies with 50 or fewer workers are exempt
- > Employers contend that they will be forced to cut jobs if they have to increase payments for health insurance
- > The provision was part of a compromise in which hospitals and drug companies agreed to accept lower Medicare payments because they believed that millions more Americans would have insurance, which will give them more paying customers

Individual Mandates

- > Requires every American to obtain coverage
- > Can be through employer coverage, individual coverage, grandfathered plans, or Medicare and Medicaid
- > Beginning in 2014, people who don't obtain insurance face a penalty paid through their tax return
- > At the heart of court challenges

Long-Term Care

- > A national system to provide long-term care insurance known as the Community Living Assistance and Support Services Act (CLASS)
- > Premiums could be steep
- > Questions about whether the financing structure is sustainable
- > To be offered by participating employers to workers automatically, though employees could opt out
- > No one could be excluded for a pre-existing condition
- > Participants will not be eligible for benefits until five years after enrolling, and the benefit would be at least \$50 a day
- > Could be a target of repeal because of deficit concerns, but fees generated in first five years would have to be offset

Medicaid

- > All children and adults under the age of 65 and up to 133 percent of the federal poverty level will be eligible for “essential benefits” through Medicaid
- > Concerns that states grappling with budget crises will not be able to handle the cost of the expansion
- > There is a multistate lawsuit in federal district court in Florida that challenges the expansion
- > States may ask for waivers

Medical Loss Ratio

- > Goes into effect in January 2011
- > Requires that large group plans spend 85 percent of premiums on clinical services and activities related to quality of care - only 15 percent can go to other items, such as administrative costs, advertising, and profits
 - For small group and individual plans, it's 80 percent of premiums
- > Amendments may be offered to broaden the definition of a quality improvement
- > Republicans may find Democratic support for tweaks that help out states facing a loss of small insurers, particularly Democrats from rural states with limited insurance markets

Minimum Benefit Standard

- > When the law's requirement that all individuals have health insurance begins in 2014, uninsured Americans will be able to go to state-run health exchanges to buy insurance
- > Congress set up minimum benefits for individuals who may seek insurance in state exchanges in 2014
- > Every plan in the exchange must cover such services as emergency room visits, maternity care, prescription drugs, hospitalization, and medical tests
- > IOM has started work on this – best to be “unspecific”
- > The law creates five tiers of acceptable plans, from bronze to platinum, so consumers can decide what to buy based on how much they can afford to pay for deductibles and co-payments

Conclusion

- > Tweaks possible, repeal unlikely
- > A lot of posturing
- > Setting the stage for 2012 elections
- > Keep an eye on the states



Questions/Discussion

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