An Overview of Health Care Reform

By Bill Balek, Director of Legislative Affairs, ISSA (Dec. 3, 2012)

The presidential elections have come and gone, and despite Mitt Romney's vow to repeal and replace it, health care reform remains with us. It's hard to believe, but it's been almost three years since President Barack Obama signed into law the Patient Protection and Affordable Care Act (PPACA, also popularly referred to as "Obamacare") along with the Health Care and Education Reconciliation Act. These laws substantially overhaul our system of health care in the U.S., and will impact businesses, small and large, across the nation and across all industry sectors.

While the law is almost 3 years old, it is important to note that many of the major provisions of the PPACA (such as mandated health care) are scheduled to go into effect January 1, 2014. While that might seem light years away, it is important that businesses understand the major changes that lie ahead and prepare appropriately now.

The information below is intended to summarize the major provisions of the PPACA to help ISSA members better understand and anticipate the changes to health care that soon will impact their businesses and operations. Please be aware that the information below is of a general nature. Individual companies are encouraged to obtain professional guidance as to how health care reform may affect their specific business.

Penalties for NOT Providing Insurance

The major provision of interest to the business community addresses an employer's obligation to provide insurance. Technically, the new law does not require employers to provide health insurance for any employee. However, effective **January 1, 2014** an employer with 50 or more full-time employees must pay a penalty if at least one full-time employee requires a public subsidy for insurance, subject to an exemption for the first 30 workers.

Employers will be penalized $2,000 for each full-time employee who must find his own health coverage because his company offers none. Please note that the first 30 full-time workers are excluded from the penalty. When an employer does offer coverage but an employee turns it

down because it is "unaffordable" (defined by the law as costing more than 9.5 percent of the employee's household income), the penalty is $3,000 for every employee who buys insurance on the exchange with a subsidy.

"Full-time" employees are defined as anyone who works on average 30 or more hours a week. Moreover, under the legislation, employers are required to convert their part-time employees (excluding seasonal workers) into full-time equivalents for the purpose of determining whether they have 50 or more full-time employees and thus are subject to the penalty provisions. This process is to be done each month and requires employers to add up their part-timers hours and divide the aggregate by 120, which is the equivalent of 30 hours a week.

However, part-timers do not count for calculating the penalty itself. So from a practical viewpoint, only employers with at least 31 full-time workers will have to engage in this exercise because the first 30 full-time workers are excluded from the penalty.

Tax Credits for Small Businesses

Many small businesses that provide health insurance for their employees will receive a small business tax credit, targeted to those firms with employees whose average wages are low, to alleviate their disproportionately higher costs and encourage coverage.

From 2010 to 2013, the law provides employers with a tax credit of up to 35 percent of their contribution to health insurance if they have 25 full-time workers or fewer and average annual wages of less than $50,000—provided that the employers' contribution is at least 50 percent of the premium cost.

Once the health insurance exchanges are running starting in 2014, eligible small businesses that purchase coverage through the state-based exchanges will be able to receive a tax credit of up to 50 percent of their contribution to health insurance for two consecutive years, provided this contribution is 50 percent of the premium cost. The full credit is available to businesses with the equivalent of 10 or fewer full-time workers paid, on average, less than $25,000.

Health Insurance Exchanges

Effective January 1, 2014, state governments must establish health insurance exchanges for individuals and small businesses.

The uninsured and self-employed would be able to purchase insurance through state-based exchanges with subsidies available to individuals and families with income between the 133 percent and 400 percent of the poverty level.

In addition, states must set up "small business health options programs", also known as "SHOP exchanges", through which small employers can purchase insurance. Plans offered on the exchange will have to be standardized for easy comparison and offer minimum levels of benefits established by the legislation. Beginning in 2017, a state may allow large employers (with at least 101 employees) to participate in the exchange.

Mandated Health Care for Individuals

Effective January 1, 2014, the law will impose an annual penalty on those individuals who do not have health insurance. Initially the annual penalty will be $95, or up to 1 percent of income, whichever is greater. This penalty will increase to $695 or 2.5 percent of income by 2016. These limits are for individuals. Families will have a limit of $2,085.

Insurance Reforms

Of course, the health care legislation sets forth a whole host of insurance reforms outlined below, which became effective on September 23, 2010:

- Dependent children will be permitted to remain on their parents' insurance plan until their 26th birthday.
- Insurers are prohibited from charging co-payments or deductibles for preventive care and medical screenings on all NEW insurance plans.
- Insurers' abilities to enforce annual spending caps will be restricted and completely prohibited by 2014.
- Insurers are prohibited from dropping policy holders when they get sick.
- Insurers are required to reveal details about administrative and executive expenditures.
- Insurers are required to implement an appeals process for coverage determination and claims on all NEW plans.

Effective January 1, 2014:

- Insurers are prohibited from discriminating against or charging higher rates for any individuals based on pre-existing medical conditions.
- Insurers are prohibited from establishing annual spending caps.

Paying for Health Care Reform

Of course, the major overhaul of our health care system will require substantial finances that will be supplied through a variety of taxes:

- Individuals earning more than $200,000 a year, or for married taxpayers a combined income over $250,00, will pay an additional 0.9 percent in federal income tax to help fund the expansion of Medicaid starting in 2013.
- Investment income of individuals earning more than $200,000 a year or for married taxpayers a combined income over $250,000, will be subject to a new 3.8 percent Medicare tax also starting in 2013.
- Effective January 1, 2018, a new 40% excise tax on high cost ("Cadillac") insurance plans is introduced. The tax is levied on the insurance company and not the insured. However, it is anticipated that the tax will result in increased premiums.
- A new excise tax will go into effect in 2014 that is applicable to pharmaceutical companies and is based on the market share of the company.
- Most medical devices become subject to a 2.9% excise tax collected at the time of purchase beginning in 2014.

- Health insurance companies become subject to a new excise tax based on their market share. The rate gradually increases between 2014 and 2018 and thereafter increases at the rate of inflation.

Conclusion

President Obama's re-election in effect has guaranteed that the Patient Protection and Affordable Care Act will survive after nearly three years of attack and uncertainty. Now the focus has shifted to the vast amount of work needed to put pieces of the legislation in place so states can help their residents meet the contentious requirement of mandatory health insurance by Jan. 1, 2014. The federal government also is under immense pressure to provide more guidance, especially to small businesses, while building its own tools to ensure the law's success.

Experts predict that the Obama Administration will now step up its efforts to promote and explain the PPACA to a public which remains sharply divided and confused about it. In fact the Administration took a big step forward in this direction when it recently issued rules that define the "essential health benefits" that might be offered to most Americans and by allowing employers to offer much bigger financial rewards to employees who quit smoking or adopt other healthy behaviors.

More news regarding the implementation of health care reform is expected to emanate from the Administration in the coming months. ISSA will continue to monitor and report upon all pertinent developments in the health care reform arena.