

Washington Business Health Update

From the National Business Group on Health

Vol. XX, No. 13 October 1, 2010

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- **HOUSE REPUBLICANS' "PLEDGE TO AMERICA" WOULD REPEAL PARTS OF THE NEW HEALTH CARE LAW**

Last week, House Republicans unveiled their "Pledge to America," which outlines their legislative goals if they win the majority of House seats in November. The document contains the following health care provisions:

- Repeal parts of the health care "reform" law and replace most of it;
- Maintain the law's individual and small group market reforms (eliminate pre-existing condition requirements, etc.);
- Enact comprehensive medical liability reform;
- Add more flexibility to health savings accounts (HSAs);
 - Allow people to purchase over-the-counter (OTC) medicines without a prescription, and
 - Lower qualifying plan deductibles;
- Allow people to buy coverage approved in any state, no matter where they live;
- Cut federal funding for the Internal Revenue Service (IRS) and other government agencies that would enforce the individual coverage mandate, free rider assessment and "Cadillac" tax;
- Expand state high risk pools;
- Provide states' with incentives to reduce health care costs;
- Repeal mandates on small businesses;
- Allow small businesses to form association health plans; and
- "Strengthen the doctor-patient relationship".

The proposal does not detail how the government would pay for any of the provisions and the President would likely oppose the initiative.

This week, the Senate defeated Senator Mike Enzi's (R-WY), Ranking Member of the Health, Education, Labor and Pensions (HELP) Committee, resolution disapproving of the Administration's interim final rules for grandfathered plans.

IMPACT ON EMPLOYERS: Having more flexibility associated with grandfathered plan status would ensure that employers could continue to make changes and effectively manage plans to increase the overall value of employee benefits.

Changes in the health care legal system would reduce the amount of employer dollars diverted from paying for needed, quality care toward frivolous lawsuits and defensive medicine.

HSAs generally give employers more ways to make funds available to employees and their families for current and future health care expenses, including during retirement.

IMPACT ON EMPLOYEES: Employees would continue to benefit from lower costs and improved value if employers maintained their flexibility under grandfathered plan status to make annual changes to improve employees' wellness through innovative programs that address chronic diseases, reward high performing health care providers and many other vitally important strategies that directly translate into better health care for employees and their families.

Employees could also expect improved access to and reduced out-of-pocket costs for health care, especially for high-risk services under comprehensive health care liability reform.

Increased support for HSAs would provide employees with more flexibility to plan and pay for health care expenses and more control over how their health care dollars are spent.

OUTLOOK: *Republicans will attempt to repeal portions of the health care law if they win the majority of congressional seats in November. However, the President is unlikely to support any of these proposals.*

BACKGROUND: Congress passed and the President signed the health care law in March. The federal agencies issued the interim final rules on grandfathered status in June.

Link to the Business Group's comment letter on the Administration's interim final rules on grandfathered status:

<http://www.businessgrouphealth.org/pdfs/081610%20Letter%20to%20HHS,%20DoL%20and%20IRS%20on%20Grandfathered%20Plan%20Regulations.pdf>

Link to the Business Group's Public Policy Alert on the Administration's interim final rules on grandfathered status:

<http://www.businessgrouphealth.org/members/secureDocument.cfm?docID=2777>

NATIONAL BUSINESS GROUP ON HEALTH VIEW ON THESE ISSUES: The Business Group believes the Administration's interim rules on grandfathered status may

inhibit plan changes that enhance the quality, affordability (both to employers and employees) and value of employer-sponsored benefits.

The Business Group supports reforms to the health care legal system that would improve patient safety and eliminate frivolous lawsuits—caps on non-economic damages in malpractice lawsuits; a 3 year statute of limitations after the date of injury or one year after injury discovery; a restriction on attorney contingency fees; limits on attorney fees based on award value; federal jurisdiction for health care litigation and strengthened criteria for the expert witness rule to ensure accurate medical opinions.

As health care costs escalate and consumerism becomes increasingly important, the Business Group supports expanding HSAs and opposes adding administrative hassles. HSAs encourage smart, cost-effective health care spending and provide people a potential retiree health savings vehicle.

➤ **STUDY FINDS NEW YORK CITY'S PROPOSED PAID SICK TIME ORDINANCE WOULD INCREASE EMPLOYERS' COSTS BY \$789 MILLION ANNUALLY**

This week, an employer-commissioned study found that a proposed ordinance introduced by New York City Council member Gail Brewer (D) to mandate that employers provide up to 72 hours (9 days a year) of paid sick time would directly increase employers' costs by:

- 57 cents per employee, per hour for large employers; and
- 24 cents per employee, per hour for small employers.

The study estimates that 375,000 workers in the city (only 12% of the work force) do not have paid sick time and the cost for covering the paid sick time would add \$789 million in increased annual payroll costs, 60% of which would fall on employers who already offer paid leave that would not be credited under the proposal, i.e. Paid Time Off (PTO), etc.

The study also estimates that small businesses' payroll costs would rise 0.31%; 0.4% for retail; 0.71% for hospitality and restaurants, and 1.28% for construction.

The proposal has 35 sponsors on the City Council—a veto-proof majority—but lacks the backing of Mayor Michael Bloomberg (I). He is concerned about additional mandates on businesses still dealing with the effects of a national recession. In addition, City Council Speaker Christine Quinn (D), who requested the study and who is also considering a bid for mayor in 2013, has yet to take a formal position on the bill, but remains concerned about its impact on small businesses.

New York City's proposed paid sick time bill would:

- Allow employers with paid leave policies (such as paid time off) that could be used for the same purposes of the bill to keep their existing policies;
- Require employers to provide 1 hour of paid sick time for every 30 hours worked to employees who work 80 hours or more in a calendar year;

- Allow employees working for small employers (less than 20 employees, including all full-time, part-time and temporary employees) to accrue up to 40 hours of paid sick time (5 days) per year, while employees for larger employers (more than 20 employees) would be eligible to accrue up to 72 hours (9 days) of paid sick time annually;
- Begin accruing paid sick leave for employees at the start of employment and in hour increments, after 90 days (3 months) of employment;
- Allow unused paid sick time to carry-over, but employees could not use over 72 hours (9 days) for large employers or 40 hours (5 days) for small employers;
- Allow employees to use the time to care for their own illness (mental or physical), the illness of a family member (including domestic partners), to seek preventive medical care for themselves or a family member; or in the event that a public health emergency leads to the closure of their own workplace or a child's school or daycare;
- Not require employers to compensate for unused paid sick time following employees' termination;
- Allow employees transferred to a different division in a company or rehired within 1 year of separation to keep their unused leave;
- If the leave is "foreseeable", allow employers to require employees to provide 7 days of notice before employees could take the paid sick time or "as soon as practicable" if it is not "foreseeable";
- For paid sick time of more than 3 consecutive days, employers could require employees to submit certification that it was necessary;
- Prohibit employers from requiring employees to find replacements to cover the hours when they are on paid sick time;
- Prohibit employers against taking retaliatory action or discriminating against employees that take paid sick time;
- Require employers to notify employees about paid sick time (in English and any language spoken by at least 5% of the employers' workforces)—by placing a poster in a "conspicuous" place in the workplace would meet this requirement;
- Require employers to keep a record of hours worked by employees and paid sick time taken for 5 years;
- Allow employers to offer additional paid sick time beyond the requirements of the bill; and
- Not preempt current collective bargaining agreements.

Link to the study:

<http://www.pfnyc.org/reports/2010-Paid-Sick-Leave.pdf>

IMPACT ON EMPLOYERS: Mandating paid sick leave would limit employers' flexibility in leave provisions, raise labor costs, and possibly reduce employment levels.

IMPACT ON EMPLOYEES: Employees currently without paid sick leave or who have used it up would gain it but could face lower wages or scaled back benefits to pay for mandated paid sick leave. Some employees may lose their jobs.

OUTLOOK: *The New York City Council may pass the paid sick time ordinance; however, it will not become law unless the Mayor changes his stance and supports it.*

BACKGROUND: In 2010, over 18 states and cities considered bills to mandate paid leave, and there are at least 4 bills in the House to mandate paid sick leave or paid family leave. In addition, on March 31, 2010, President Obama hosted a White House Forum on Workplace Flexibility to promote the benefits of state and federal legislation on paid sick leave and his FY2011 budget would increase aid to states wishing to establish paid sick leave funds.

Currently, the Family and Medical Leave Act (FMLA) requires employers with at least 50 employees to permit employees to take up to 12 weeks of unpaid leave annually for the birth or adoption of a child, the care of a spouse, child, or parent with a serious health condition, and for the employee's own serious health condition. California became the first state to provide paid leave for FMLA in 2004. San Francisco, CA; Washington State; Washington, D.C.; and Milwaukee, WI enacted similar laws in 2006 and 2008.

An additional study by George Mason University analyzing federal legislation, the Healthy Families Act (HFA), that would require employers with 15 or more employees to permit employees to earn, at least, 7 days of paid sick leave annually found it would directly increase employers' payroll costs by up to \$35.3 billion per year, while only saving them and their employees between \$1.6 billion and \$6.6 billion per year in lower labor turnover costs and other savings.

Link to the study of the HFA:

<http://www.consad.com/content/reports/Potential%20Economic%20Impact%20of%20HFA.pdf>

NATIONAL BUSINESS GROUP ON HEALTH VIEW ON THESE ISSUES: The Business Group believes that mandating paid sick leave is unnecessary and may increase unemployment if it adds to labor costs. Many Business Group members voluntarily offer generous sick leave benefits—paid and unpaid and most employers have been and will continue to be very flexible on leave policies for employees. A mandate would limit employers' flexibility in designing benefit packages that meet the needs of their unique workforces

The Business Group provides policy input as a member of the National Coalition to Protect Family Leave to oppose mandated paid sick leave legislation.

Link to the Business Group position statement on mandated paid sick leave:

<http://www.businessgrouphealth.org/pdfs/Mandated%20Paid%20Sick%20Leave.pdf>

If you would like more details on these or other issues or would like a phone briefing on legislation, or want to express concerns about specific issues, please contact Steven Wojcik, Vice President, Public Policy at Wojcik@businessgrouphealth.org or 202-585-1812. **Also, as part of our "Ask a Benefits Question" service, we are happy to respond within 24 hours to any health benefits question on policy, regulations or legislation.**

This material is provided for information purposes only and is not a substitute for legal advice.

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