

## Health Reform Update- April, 2011

### Status of Federal and Vermont Health Care Reform

While the Obama Administration moves quickly to implement many of the early provisions of the Affordable Care Act (ACA), Congress – and in particular the Republic-controlled House of Representatives – continues to try to repeal specific provisions. You almost need a scorecard to keep up with what's in and what's out.

Also, conflicting opinions have been delivered by three federal judges on the constitutionality of the law itself, which means the ultimate decision will be made by the Supreme Court, who have decided against requests to expedite their review of the cases, forcing the cases to wind their way through appeals first. So, it's not clear that the Supremes will hear the cases prior to the 1/1/2014 enactment of the individual mandate and Health Exchanges.

### What Has Been Implemented Since the Summer of 2010

The Center for Consumer Information & Insurance Oversight (the agency within CMS responsible for implementation of ACA) has been very busy. All of the following has been implemented in the past nine months:

- Grants to states to establish Consumer Assistance Programs, and stronger insurance rate review processes
- New federal regulations were issued for insurers on:
  - external appeal right for consumers
  - requirement to cover adult children of plan members
  - requirements and limitations on medical loss ratios
  - preexisting condition exclusions, lifetime and annual dollar limits on benefits, rescissions, and other patient protections
  - coverage of prevention services without cost sharing
  - extending these regulations to Student Health Plans
- Set up a national Pre-Existing Condition Insurance Plan to make health insurance available to those that have been denied coverage by private insurance companies because of a pre-existing condition.
- Set up the Early Retiree Reinsurance Program (ERRP) to provide reimbursement to employer and union sponsors of participating employment-based plans for a portion of the cost of health benefits for early retirees and their spouses, surviving spouses and dependents, as an incentive to continue those programs.
- Early Innovator Grants to assist a few pilot states in developing model Internet-based insurance exchange software (the "Expedia" model for comparing insurance plans).

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## What Has Been Repealed in 2011

**Free Choice Vouchers:** US House and Senate Republicans flexed some muscle over the recent budget negotiations to win repeal of a provision of ACA that hadn't even received much public notice: the "Free Choice Voucher" requirement for employers. Under ACA, when an employer who offered health insurance to employees required an employee premiums share that exceeded a certain percentage of the employee's household income, the employer would be required to provide the employee with a voucher valued at the employer's own premium contribution. The employee could then use the voucher to help pay the premium cost on the state's Health Insurance Exchange. After passage of ACA, concerns were raised that employees could use the vouchers to buy less expensive coverage (e.g. higher deductible plan) in the exchanges and pocket the difference, becoming "underinsured." Also, employers raised questions about how they could verify "household income" to determine voucher eligibility. Congressional leaders and the Administration agreed to repeal of this provision as part of the new budget act.

**Grants for Health Coops:** Start-up funding for health coops was also trimmed in the budget agreement, on the grounds that they were "stealth public option" plans.

**1009 Reporting:** The ACA included a provision that would require businesses doing more than \$600/year with another corporate business to report said payments on a Form 1099. It wasn't exactly clear what the purpose was, except to perhaps capture unreported, taxable income. But virtually every small business in America does at least that much business with most of their vendors. The task for Fortune 500 corporations was staggering. Everyone agreed in retrospect this was a bad idea, but it took months and months to figure out how to do it without endangering other parts of the bill. Finally last month, Congress passed, and the president signed, a repeal of the generally disliked provision.

## What the House Has Voted to Repeal, but the Senate Has Not

Following their vote in January, House Republicans have made no secret of their continued desire to repeal the entire ACA, but short of that, are trying various tactics to hamstring the Obama Administration from implementing key parts of the law.

Such as:

**Funding to States to Operate Health Insurance Exchanges:** ACA included funding for states to set up their Health Insurance Exchanges, once the state had filed, and CMS had approved, a plan that complied with the ACA and regulations. The House has voted to eliminate the funding for the states, which would make it very difficult, if not impossible, for states to then comply. The fallback in ACA if states don't run exchanges is for the federal government to step in. Obviously, this would create another budgetary showdown in Congress.

**Prevention and Public Health Funding:** The House also voted to repeal this funding, which was criticized for not having enough specificity in the statute for the purposes it could be spent for. House Republicans want all public health funding to be specifically authorized by Congress.

**Grants for School Health Centers:** At the same time the funding above was axed, the House voted to eliminate a grant program for construction of school-based health centers.

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## Health Care Reform in Vermont

As of May 4, Vermont's legislature was finalizing H. 202, this year's health care reform bill. Both supporters and detractors agree on one thing: the bill doesn't really do much more than authorize more studies, plans and pilots. But it does set in motion some planning in a very specific direction: toward a single payer.

At the FJG seminar in June, we'll be presenting an overview of the new law, the new taxes imposed on your health plans (to balance the state budget), and the new benefit mandates that also passed this year. So sign up as soon as you receive the announcement.

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