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In This Issue

PRESIDENT SIGNS FINAL HEALTH REFORM LEGISLATION

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A little more than a week after the House of Representatives passed the Patient Protection and Affordable Care Act (the "PPACA"), President Barack Obama has now signed the Health Care and Education Reconciliation Act of 2010, containing the changes to the Senate's health care reform bill requested by the House. This final piece of the health reform legislation is now in place, and employers can better determine how the health reform legislation will affect them in the years to come.

Below are some of the significant changes brought to the PPACA by the Reconciliation Act:

• **Employer Mandate – "Play or Pay"** – The Reconciliation Act increased the penalties to be paid by employers if they fail to offer qualifying health coverage. Employers with more than 50 employees that do not offer group health coverage and have at least one full-time employee who receives a premium tax credit will be assessed a penalty of $2,000 per full-time employee if the employers fail to offer qualifying health coverage. Employers with more than 50 employees that offer group health coverage but have at least one full-time employee receiving a premium tax credit will pay the lesser of $3,000 for each employee receiving a premium credit or $2,000 for each full-time employee. A penalty will not be imposed for the first 30 full-time employees when calculating the penalty. These provisions are effective beginning in 2014.

• **Waiting Period Restrictions -** Employers are prohibited from imposing a waiting period of more than 90 days. This provision is effective beginning in 2014..

• **Individual Mandate** – The PPACA requires individuals to purchase qualifying health coverage. The Reconciliation Act increased the penalties to be paid by individuals not purchasing coverage. Those without coverage would be required to pay a penalty tax of the greater of $695 per year up to a maximum of three times that amount ($2,085) per family or 2.5% of household income. These penalties are phased in beginning in 2014.

• **Changes to Health Care Spending Accounts** – The PPACA contains a change in the definition of "qualified medical expense" that affects reimbursements and withdrawals under all types of health care accounts, such as flexible spending accounts, health reimbursement arrangements, health savings accounts, and Archer medical savings accounts. Over-the-counter medications will no longer be a "qualified medical expense" beginning in 2011. Additionally, the amount employees may contribute to health care flexible spending accounts will be capped at $2,500 in 2013. The Reconciliation Act also increases the penalty on withdrawals from health savings accounts from 10% to 20% for reasons other than the reimbursement of qualified medical expenses.

- **Elimination of Lifetime Caps** – The PPACA eliminates lifetime caps on essential benefits provided under group health plans. This prohibition on lifetime caps is effective six months after enactment of the bill (September 23, 2010). Additionally, the PPACA places restrictions on annual limits that may be imposed upon plan participants.

- **Preexisting condition exclusions** – Effective 2014, group health plans may not impose preexisting condition exclusions. Group health plans may not impose preexisting condition exclusions for children under the age of 19 for plan years beginning on or after September 23, 2010. These requirements will make substantial changes to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") portability requirements affecting group health plans.

- **Dependent Coverage** – The Reconciliation Act makes substantial changes to dependent coverage under group health plans. Beginning September 23, 2010, group health plans must offer coverage to adult children up to age 26 regardless of whether they qualify as the employee's tax dependent. The child must not be eligible for coverage under another employer's health plan until 2014, when that restriction will expire.

- **Subsidies for Small Employers** – The PPACA provides gives small employers (fewer than 25 employees) tax credits for purchasing group health insurance for their employees. The subsidies shrink as an employer's size and average pay increase. The subsidy is phased in beginning this year.

- **Automatic Enrollment -** Employers with more than 200 employees will be required to automatically enroll their employees in their group health plans. Employees will then have the option of opting out of their employers' plans.

- **W-2 Reporting -** Beginning in 2011, employers will be required to report the value of health coverage received by each employee on the employee's W-2.

- **"Cadillac-plan Tax" -** Beginning in 2018, the legislation will impose a 40% tax on the value of overly generous group health plans. Plans with individual premiums over $10,200 and family premiums over $27,500 will be subject to the tax.

For a more detailed review of the changes health care reform legislation will bring for employers, please join Dana Thrasher, David Pearson and Mike Malfitano for a two-hour, comprehensive webinar at 2 p.m. EDT Wednesday, April 7, entitled "Key Provisions of the Health Care Reform Act: What the Patient Protection and Affordable Care Act Means for your Business."

If you would like to discuss the impact of this important legislation on your benefit plans, please contact any member of Constangy's **Employee Benefits practice group**, or the Constangy attorney of your choice.