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Many Implications for Employers in Senate Health Care Reform Bill

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In a 60–39 party-line vote, U.S. Senate Democrats voted last night to begin full debate on the Patient Protection and Affordable Care Act (H.R. 3590), a comprehensive 2,074-page health care reform bill. The legislation, which Senate Majority Leader Harry Reid (D-Nevada) unveiled on November 18, 2009, would have serious impacts on employers if enacted.

Employer fines and taxes

Unlike the [U.S. House of Representatives bill](#), the Senate’s proposal doesn’t require employers to provide health insurance to employees. If an employer with at least 50 full-time employees, however, has even one employee that receives a federal subsidy to buy health insurance through the new exchanges, the employer would have to pay a \$750 fine for each of its full-time employees. Also, certain large employers that have “extended waiting periods” (periods that exceed 30 days) before employees can enroll in coverage under employer-sponsored plans would have to pay fines for each full-time employee.

The legislation also would create a tax on employer-sponsored high-end “Cadillac” insurance plans. The tax would be 40 percent of the “excess benefit” of plans that exceed the thresholds of \$8,500 for individual coverage and \$23,000 for family coverage.

Immediate changes

The bill contains several provisions that would immediately affect employers by:

- Prohibiting [group health plans](#) and health insurance issuers from establishing lifetime limits or unreasonable annual limits on the dollar value of benefits;
- Barring group health plans and health insurance issuers from rescinding insurance plans or coverage in most circumstances;
- Requiring group health plans and health insurance issuers to provide coverage without imposing cost-sharing requirements for certain preventive health services; and
- Requiring certain group health plans and health insurance issuers to make dependent coverage of children available to unmarried young adults up to age 26.

These provisions would be effective for plan years beginning six months after the date the legislation is enacted. The bill also would establish a temporary reinsurance program that would reimburse participating employment-based plans for a portion of the cost of providing health insurance coverage to early retirees. This program would be established no later than 90 days after the bill was enacted and would continue until January 1, 2014.

More reforms in the near future

The Senate legislation also contains provisions that would affect employers and become effective in the next several years. Among many other things, the bill would:

- Prohibit group health plans and health insurance issuers from imposing preexisting-condition exclusions or discriminating in other ways based on health status;
- Bar group health plans and health insurance issuers from using waiting periods that exceed 90 days;
- Establish rules regarding which employers can participate in the new exchanges;
- Offer tax credits to certain small businesses to help them with the cost of purchasing health care insurance for their employees;
- Require employers with more than 200 full-time employees that offer health benefit plans to automatically enroll new full-time employees in one of the plans they offer;
- Require certain large employers to report the health insurance coverage they offer on a return;
- Direct certain employers to provide reasonable [break times](#) and appropriate places for nursing mothers;
- Require employers to report the cost of employer-sponsored health coverage on Form W-2s (effective for tax years beginning January 1, 2011);
- Limit distributions for qualified medicine under health savings accounts (HSAs), Archer medical savings accounts (MSAs), health flexible spending arrangements (FSAs), and health reimbursement arrangements (HRAs) to prescription drugs and insulin (effective for tax years beginning January 1, 2011);
- Increase the additional tax on distributions from HSAs and Archer MSAs that are not used for qualified medical expenses to 20 percent of the disbursed amount (effective for tax years beginning January 1, 2011);
- Limit employee salary reductions for purposes of coverage under health FSAs under [cafeteria plans](#) to \$2,500 for a taxable year (effective for tax years beginning January 1, 2011); and
- Establish simple cafeteria plans for small businesses (effective for tax years beginning January 1, 2011).

What's next

The bill will now move to the Senate floor for full debate and amendments. If the Senate passes a health care reform bill, it would have to be reconciled with the House legislation. If an identical bill were approved in both chambers, it would go to the president to be signed into law.

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