

# Health and Welfare—U.S.

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## Contact



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The health reform train continues to careen down the tracks. Where it'll stop—and what it'll look like when it enters the station—is still anyone's guess, but as this Market Update went to press several common threads were emerging from the various proposals. Many would impact employers. Indeed, a recent survey found nearly nine of 10 employers intend to reevaluate their health plan offerings in the wake of the federal reform effort.

Here's a peek at some of what might emerge from Congress by year's end. We've confined this article to proposals that could significantly affect employers.

### Employer “Play or Pay” Mandate

All of the proposed bills would require employers to offer—and subsidize a substantial portion of the cost of—some minimum level of comprehensive health insurance to their employees, or pay a penalty. There would be exceptions for small employers (likely, up to 25 or perhaps 50 employees). Employers who sponsor qualifying group coverage might be required to auto-enroll employees into the employer's plan. Employees could opt out if they prove they have other coverage elsewhere.

The proposals would require employers to subsidize between 60 and 72.5 percent of the cost of an employee's coverage.

In these proposals, employers who decline to “play” must instead “pay.” Proposed penalties for not offering and adequately subsidizing employee coverage range between a flat fee of around \$60 per month for full-time employees not offered

coverage (half that for part-timers), to 8 percent of covered payroll. It's possible that no penalty would be assessed where an employee is offered adequate coverage at an affordable cost and declines to enroll.

One of the Senate proposals offers a “play or pay” mandate with a twist: The penalty kicks in if the employer declines to offer adequate coverage to employees at an affordable cost, and an employee instead obtains taxpayer-subsidized coverage through one of the new health insurance “exchanges.” These exchanges would be one-stop health insurance purchasing marketplaces that are authorized by all the proposals. In that case, the employer could be fined a flat amount multiplied by the total number of employees, regardless of how many employees actually receive subsidized coverage through an exchange.

Many employers already meet the proposed “play” requirements. Those that don't meet the minimum—but come close—might increase their benefit offerings to avoid the “pay” penalty. Other employers might choose to drop their group coverage and pay the penalty—even though paying the penalty offers no direct value to their employees. Other employers might choose to “play” with respect to some employees, and “pay” with respect to others. Still others might incur a tax or fine, but pass it on to their employees as part of the premium charge under the employers' group plans.

A decision to “pay” rather than “play” might compel an employer to reassess other aspects of compensation to make up for the loss of employer-provided health coverage.

### Taxes and Their Implications

The proposed bills include a variety of taxes and similar assessments that would directly or indirectly increase employer costs. Most troubling is a proposed 35 percent excise tax on insurers and self-insured plan sponsors that would apply to the extent the value of all health benefits provided to an employer's employees exceeds \$8,000 for single coverage, or \$21,000 for family coverage. (Health benefits supplied by many employers already exceed these thresholds.)

If the excise tax survives the debate, it may lead many employers to ratchet down benefit offerings to avoid the tax.

The proposals also include a variety of taxes or fees against insurers, third-party administrators, medical device and drug manufacturers, and clinical laboratories. These entities would certainly pass the additional costs on to group plan sponsors and other consumers unless the final version of the legislation prohibits passing through the costs.

### Other Provisions Affecting Employer Plans

The proposals also include a variety of other provisions that employers would find appealing or, in some cases, troubling. These include provisions:

- ❖ Enhancing HIPAA's wellness program rules to allow employers to significantly increase incentives for health behaviors;
- ❖ Eliminating taxability for coverage provided to domestic partners and other non-dependents;
- ❖ Allowing extended COBRA coverage to 2013;
- ❖ Capping health FSA benefits at \$2,000 per year and prohibiting nontaxable reimbursement of over-the-counter medications;
- ❖ Repealing the business deduction for an employer's Medicare Part D drug subsidy payments;
- ❖ Requiring the employer to report on Forms W-2 the value of health benefits provided to employees;
- ❖ Prohibiting employers from reducing retiree health care benefits unless concomitant reductions are made to the plans covering active employees; and
- ❖ Eliminating ERISA preemption in some states and subjecting some fully-insured employers to state law actions by health plan enrollees.

### Conclusion

The health reform debate will twist and turn many times before it is resolved; nothing was settled as this Market Update went to press. Even if comprehensive reform is enacted, most of its provisions won't take effect for years. In order to help your business understand and adapt to any changes, Lockton has created the Health Reform Advisory Practice. Additionally, we will continue to keep you apprised of legislative developments as they unfold.