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Spotlight on Health Care Reform

Large employers face health insurance mandate

by Douglas E. Lee

On March 30, 2010, President Barack Obama signed the Health Care and Education Act of 2010, which modified the Patient Protection and Affordable Care Act he had signed into law on March 23, 2010. Among the mandates in this massive piece of legislation is a requirement that larger employers either provide health insurance coverage or pay a substantial penalty for choosing not to do so.

Fully explaining the employer mandate would take more space than is available here. Generally, however, employers need to know the following:

- The mandate takes effect on Jan. 1, 2014.
- The mandate applies to employers that employ 50 or more full-time employees or 50 or more full-time equivalent employees. A "full-time" employee is one who works at least 30 hours per week, based on a monthly average. Hours worked by part-time employees also count toward determining whether the employee threshold is met. To determine the number of FTE employees, the employer must total the number of hours worked in a given month by all part-time employees and then divide that total by 120.
- Whether the mandate is triggered depends on the number of employees employed during the preceding calendar year. Therefore, an employer's employee population in 2013 will

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Small employers to receive tax credit for offering health insurance

by Emily R. Vivian

While the health care reform bill poses significant challenges for larger employers, it includes a tax credit for small businesses that offer health insurance to their employees.

If a small business contributes at least one-half of the total premium cost of group health insurance it offers to its employees, the business may qualify for a tax credit that can offset either the employer's regular tax or its alternative minimum tax. To qualify for the full amount of the credit, the employer must have no more than 10 full-time equivalent employees, and the employees must average annual full-time equivalent wages of less than $25,000. However, employers with up to 25 full-time employees still can qualify for a portion of the credit if the employees average annual full-time wages less than $50,000.

This credit is available in two stages. Initially, the credit is available for any tax year beginning in 2010, 2011, 2012 or 2013, as long as the coverage is purchased from an insurance company licensed under state law. However, for tax years beginning after 2013, the credit is available only if the small business purchases health insurance coverage through a state exchange, and the credit then is available for only two years.

The amount of the credit depends on the tax year. During the initial stage, the credit is generally 35 percent of the employer's nonelective contributions (that is, non-salary reduction contributions) toward the employees' premiums. For tax years beginning after

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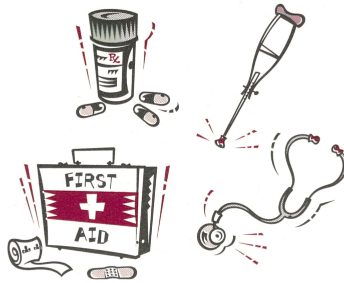
Dependents entitled to coverage under health bill

by Douglas E. Lee

One of the first provisions of the health care reform legislation to take effect is the requirement that group health insurers extend dependent coverage to children up to age 26. Accordingly, the federal government issued interim regulations regarding this requirement on May 13, 2010.

Under the reform law, all group health plans offering dependent coverage (including self-funded plans) must extend that coverage to all children up to age 26. This requirement takes effect on the first day of the plan year following Sept. 23, 2010. Thus, for calendar year plans, the requirement takes effect on Jan. 1, 2011.

Under the regulations, all children under 26 are eligible for dependent coverage, regardless of whether the participant provides financial support for the child, whether the child lives with the participant, whether the child is employed or whether the child is married. Moreover, benefit plans cannot vary the terms or cost of coverage based on a dependant's age, residency, employment status or marital status.



The regulations also clarify the rights of a child who is under 26 but who previously lost dependent status and coverage under a plan. Once the requirement takes effect, a plan must give all children under 26 at least 30 days to enroll (or re-enroll) in the plan. The plan must provide written notice of this opportunity (notice to the parent is sufficient) and must provide the enrollment opportunity immediately upon the requirement taking effect, regardless of when any other open enrollment period occurs.

The only exception to this requirement is for "grandfathered plans," which are not required to offer extended dependent coverage to children eligible for other employer-provided coverage. This exception expires on Jan. 1, 2014. Generally, a "grandfathered plan" is one that existed as of March 23, 2010. A plan loses its grandfathered status, however, if it significantly reduces benefits, increases by more than five percent the amount employees must contribute for premiums or increases participants' out-of-pocket costs for co-payments, co-insurance or deductibles.

Rumors overstate reform bill's tax on real estate sales

by Emily R. Vivian

Some have claimed that the health care reform bill imposes a new tax on real estate sales. The bill, however, does not directly impose such a tax. Rather, for certain individuals, it imposes a new 3.8 percent Medicare tax on "net investment income," which might result from a real estate sale. This tax takes effect on Jan. 1, 2013.

Before the reform bill was enacted, no Medicare tax was assessed on unearned income. Generally, unearned income consists of interest, dividends, annuities, royalties, rents and capital gains. While the reform bill will impose a Medicare tax on unearned income, the tax will not apply to income in tax-deferred retirement accounts such as 401(k) plans.

The Medicare tax will be equal to 3.8 percent of the lesser of (a) net investment income for the taxable year or (b) the excess (if any) of the modified adjusted gross income ("MAGI") for the taxable year over the threshold amount. Net investment income is the amount by which investment income exceeds deductions properly allocable to the income. The threshold amount is $250,000 for a taxpayer filing a joint return or for a surviving spouse, $125,000 for a married taxpayer filing a separate return and $200,000 in all other cases.

For example, suppose that in 2013, John, a single taxpayer, has MAGI of $220,000. Suppose further than he sells his principal residence, which results in a profit of $350,000 (after taking into account commissions and fees and the price he paid for the home). Because John is allowed to exclude $250,000 of gain from the sale of his principal residence, his net investment income from the sale of his house is $100,000.

Because John had MAGI of $220,000, however, he would be required to pay the Medicare tax only on $20,000, because $20,000 is less than his net investment income of $100,000. That is, the Medicare tax would be $760 ($20,000 x 3.8 percent).

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2013, the credit is generally 50 percent of the employer's nonelective contributions. However, the credit phases out as the number of full-time employees and the average wage increase. In addition to qualifying for the credit, an employer is entitled to an ordinary and necessary business expense deduction equal to the amount of the employer contribution minus the dollar amount of the credit.

For the credit, self-employed persons (including partners and sole proprietors), two percent shareholders of an S corporation and five percent owners of the employer are not treated as employees. In addition, a special rule exists to prevent sole proprietorships from receiving the credit for the owner and his or her family members.

Provisions in reform bill address long-term care issues

by DAVID W. BADGER

In health care reform, Congress tackled more than insurance and the cost of medical services. Congress also passed provisions designed to help elderly and disabled persons receive assistance at home, rather than in long-term care facilities.

The Community Living Assistance Services and Supports ("CLASS") portion of the health care bill, for example, establishes a national long-term care insurance program. In exchange for payment of a monthly premium (estimated to be $65), a covered person will be eligible to receive an average of at least $50 a day to purchase non-medical long-term care services and support necessary to allow him or her to remain at home, as well as payments for assisted living and nursing home care.

The CLASS program is to be offered primarily through employers, and the monthly benefit will vary based on the level of the person's disability. Payments under CLASS will not disqualify the person from receiving benefits under any other federal, state or locally funded assistance program and will be treated for tax purposes like qualified long-term care insurance contracts. The CLASS program is scheduled to begin in January 2011.

The health care reform bill also encourages states to develop programs to provide community services and support for persons who otherwise would require nursing home care. One such program is designed to encourage states to extend Medicaid coverage to community services and supports so that persons are not required to move to nursing homes in order to access Medicaid insurance.

The reform bill also closes the Medicare Part D prescription program coverage gap, often referred to as the "doughnut hole." Currently, the prescription program covers medication costs up to $2,830 a year and then does not pay again until the insured's out-of-pocket spending reaches $4,550 in the year. Through a phased-in program, the doughnut hole is phased out.

Significant public discourse has focused on the cost of the programs being offered through the new legislation. While benefits generally are being offered sooner than the provisions for payment are being imposed, some revenue enhancements take effect sooner rather than later. The most immediate is the provision reducing payments to Medicare Advantage Plans so that payments are equal (on average, per beneficiary) to payments through traditional Medicare. Those enrolled in Medicare Advantage Plans therefore are likely to see those plans drop some of the extras that have been offered, such as free eyeglasses and other incentives.

Revenue also will be raised through an additional 0.9 percent tax on earned income for households with income exceeding $200,000 for singles and $250,000 for married couples filing jointly and a 3.8 percent Medicare tax on the unearned income (interest, dividends, annuities, royalties, rents and capital gains) of such high-income households.

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determine whether the employer will be subject to the mandate in 2014.

- Independent contractors and leased employees will count as employees if they could be reclassified under federal law as employees of the employer.
- Common ownership rules will be used to determine whether an employer is subject to the mandate.
- An employer subject to the mandate must offer "minimum essential coverage" (a term not yet defined) to all full-time employees or pay a penalty for not doing so.
- The penalty for failing to offer "minimum essential coverage" will be $2,000 per full-time employee per year, although an employer's first 30 full-time employees will not be counted when determining the amount of the penalty.
- An employer that offers "minimum essential coverage" is still potentially subject to penalties. If a full-time employee turns down the employer's coverage and instead purchases his or her own coverage through a to-be-created taxpayer-subsidized exchange, the employer must pay a $3,000 per year penalty for each opting-out employee.

Almost no one expects these provisions to remain unchanged until 2014. Larger employers, however, hardly can count on or predict such changes. Especially if employers are near the 50-employee threshold, they should begin preparing for the mandate no later than 2012.

Uninsured motorists' coverage should not be overlooked

by Douglas E. Lee

While the health care reform bill has left many feeling as though they have lost control of their health insurance, one aspect of health-related coverage that remains within everyone's control – but often is overlooked – is uninsured and underinsured motorists' ("UIM") coverage.

Purchased as part of an automobile insurance policy, UIM coverage is intended to protect the policy owner if he or she is injured in an accident caused by someone who is uninsured or who does not have sufficient coverage to fully compensate the injured party. A person with $100,000 in UIM coverage, for example, can recover up to that amount from his or her own insurer if the at-fault driver has less than $100,000 of insurance.

Unfortunately, the $100,000 per person UIM coverage carried by most people often is inadequate.

If an injury requires surgery or a brief hospital stay, for example, it is not uncommon for the medical bills to exceed $50,000. If health insurance is available, that insurance will pay those bills. Increasingly, however, health plans seek reimbursement for what they have paid from a liability or UIM insurance recovery. While health plans used to be satisfied to recover one-third of what they paid (leaving two-thirds for the injured party and any lawyer), many plans today include language that allows them to claim a much higher percentage – and sometimes even all – of a UIM recovery.

Given these rights to reimbursement, it often is difficult for an injured party to receive fair compensation from a $100,000 policy. Rather, a party will be lucky to recover his or her other out-of-pocket expenses, such as co-pays, lost wages and travel. All too frequently, an injured party is forced to settle a claim worth several hundred thousand dollars for the $100,000 available through his or her UIM coverage.

UIM coverage is especially important in these economic times, when unemployment and other factors cause many drivers to drive with no or minimal liability coverage. If a person is unfortunate enough to be injured by such a driver, his or her only recourse is UIM coverage. Because more UIM coverage usually is not prohibitively expensive, we urge our clients and friends to periodically evaluate their UIM needs.

In Print and At the Podium

Mrs. Considine and **Mrs. Vivian** were honored as members of Sauk Valley Newspaper's "40 Under 40," which recognized persons under 40 years of age who are succeeding professionally and making significant community contributions . . . **Mr. Lee** recently was interviewed by the Illinois News Network about the First Amendment problems associated with seating an anonymous jury in ex-Gov. Rod Blagojevich's trial. The story quoting **Mr. Lee** was broadcast on several radio stations across the state, including WBBM in Chicago . . . **Mr. Gehlbach** and **Mrs. Vivian** were featured in the Spring 2010 edition of Illinois Lawyer Now, a publication of the Illinois State Bar Association. They are believed to be the first father and daughter to serve together on the ISBA's Real Estate Section Council . . . The Spartanburg (S.C.) *Herald-Journal* recently featured a commentary written by **Mr. Lee** in its package celebrating Sunshine Week . . . The Illinois Institute for Continuing Legal Education recently published its 2010 practice handbook, *Illinois Mortgage Foreclosure Practice*, in two volumes. **Mr. Gehlbach** served as one of two general editors for this publication, and **Mrs. Vivian** and **Mr. Gehlbach** authored the "Seller Financing and Forfeiture of Installment Agreements" chapter . . . In his most recent commentary for the web site of the First Amendment Center, www.firstamendmentcenter.org, **Mr. Lee** analyzed an Illinois Appellate Court opinion requiring an Ottawa newspaper to reveal the identities of persons who posted comments on its web site.

Deals and Decisions

Mr. Ehrmann has two major cases pending in the Illinois Appellate Court, one of which could reach the U.S. Supreme Court . . . The Lee County Board has entered into a letter of intent for the possible development of a truck plaza at the intersection of Interstate 39 and U.S. Route 30. **Mr. Gehlbach** is representing the County, which is negotiating the terms of a definitive agreement with the developer . . . **Mr. Lee** successfully represented a client before the Illinois Appellate Court, defeating the adverse party's claim for a new trial and increased damages . . . **Mrs. Considine** is representing the Village of Sublette in its efforts to construct a new water tower . . . Mr. **Gehlbach** represented Mainstream Renewal Power Limited, a private company headquartered in Ireland, in obtaining special use permits for wind energy conversion systems in Lee County.