

CHAPTER 1

INTRODUCTION

What does health care reform mean for employers? That is the simple and straightforward question which this book, the *Employer's Guide to Health Care Reform*, attempts to address. While the question may be simple and straightforward, the answer is not. Health care reform presents different opportunities and challenges for different types of employers. How an employer will react to health care reform depends on a number of variables, including:

- The size of the employer's workforce;
- The average income level of employees;
- The extent to which the employer's workforce is unionized;
- Whether the employer provides group health coverage to pre-Medicare and/or post-Medicare retirees;
- The types of group health plans provided to employees, including traditional indemnity, preferred provider organizations (PPOs), point-of-service (POS) arrangements, health maintenance organizations (HMOs), high-deductible and consumer-driven health plans, health reimbursement accounts (HRAs), health flexible spending accounts (Health FSAs), and health savings accounts (HSAs);
- Whether the costs incurred under those plans are "self-funded" by the employer out of its operating assets, or funded through insurance (or a combination of both);
- The design of the employer's group health plan and the terms and conditions of coverage;
- Whether the employer is for-profit or nonprofit; and
- The degree to which health benefits continue to be viewed as an important benefit for the recruiting and retention of employees in the employer's industry.

The health care reform effort is a once-in-a-generation overhaul of about one-sixth of the United States economy.¹ In its current form, health care reform could fundamentally alter the manner in which health care benefits are provided to Americans, potentially shifting from an employment-based system to an individual-based system run through "Exchange" marketplaces organized at the state level. Shortly after signing the health care reform law on March 23, 2010, President Obama said:

I said this once or twice, but it bears repeating: If you like your current insurance, you will keep your current insurance. No government takeover; nobody is changing what you've got if you're happy with it. If you like your doctor, you will be able to keep your doctor. In fact, more people will

¹ See Patient Protection and Affordable Care Act of 2010 § 1501(a)(2)(B) (finding that "[n]ational health spending is projected to increase from [\$2.5 trillion], or 17.6 percent of the economy, in 2009 to [\$4.7 trillion] in 2019"). See also Executive Office of the President, Council of Economic Advisors, *The Economic Case for Health Care Reform*, http://www.whitehouse.gov/assets/documents/CEA_Health_Care_Report.pdf, p. 1 (June 2009) (providing that health care expenditures represent almost 18% of GDP in 2009 and are projected to rise to 34% of GDP by 2040); Congressional Budget Office, *The Long Term Outlook for Health Care Spending*, <http://www.cbo.gov/ftpdocs/87xx/doc8758/MainText.3.1.shtml>, p. 3 (indicating the total spending on health care for 2007 equaled about 16% of the United States gross domestic product for that year).

keep their doctors because your coverage will be more secure and more stable than it was before I signed this legislation.²

While the new law does not force individuals to drop or change their coverage, it remains to be seen whether employers, through which many individuals currently have health insurance coverage, decide to continue to provide the same type of coverage in light of the health care reform changes. Because health care reform will be implemented in pieces over the next decade, subject to several intervening federal and state election cycles, it is difficult to predict what the health care system will look like in future years. Legislative changes, regulatory interpretations, and marketplace reactions all will serve to shape the manner in which health care reform is implemented.

The breadth and depth of the changes, along with the protracted and divisive political process that led to the changes, have created substantial confusion among the employers who will be affected by health care reform. This guide addresses employer concerns as follows:

- Chapter 2 provides the context for health care reform by describing the relevant aspects of the United States health care system prior to reform and explaining the objectives that health care reform is intended to address. It also discusses the legislative process that resulted in health care reform, the structure of the new law and how it relates to other laws affecting human resources and employee benefits, and how the changes in the new law will be enforced.
- Chapter 3 introduces some of the basic concepts of the new law and defines key terms used throughout the statute. Among other things, this chapter explains the subtle yet important differences between a “group health plan” and “health insurance coverage.”
- Chapter 4 describes in detail a key exemption from the health care reform requirements—grandfathered health plans—as well as the special grandfathered treatment afforded certain collectively bargained plans. Neither exemption will allow an employer to avoid all of the health care reform changes; employers will need to carefully consider whether they can or should take advantage of the exemption.
- Chapter 5 introduces health care reform changes that are designed to make health coverage more accessible and more affordable to Americans.
- Chapter 6 addresses the programs being adopted immediately to preserve, extend, or expand coverage to the demographic groups most likely to be uninsured: high-risk individuals, early retirees, employees of small business, and young adults. These programs include some of the very first issues that employers will need to tackle in implementing health care reform. Among the changes is an immediate opportunity for employers to receive reimbursements from the federal government for providing certain health coverage to retirees.
- Chapter 7 discusses the basic changes to health plan design that must be implemented prior to 2014 under the new law. Most of the design changes will be effective for 2011 (or earlier), and employers will need to amend their plan documents and communications materials to reflect the changes.
- Chapter 8 discusses additional changes to health plan design that must be implemented beginning with the 2014 plan year. Employers will have a bit more time to determine how to update their plan documents and communications materials to reflect these changes.
- Chapter 9 summarizes the transparency and accountability reporting that the 2010 Health Care Reform Act imposes on group health plans and health insurance issuers as well as the information that will become available to individuals about their health coverage options either directly from

² President Obama, remarks at the U.S. Department of the Interior, March 23, 2010; <http://www.whitehouse.gov/blog/2010/03?page=3>.

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their employer plan sponsor or through a United States Department of Health and Human Services (HHS) Web portal.

- Chapter 10 focuses on the “meat and potatoes” of the health care reform law, explaining the obligation of individuals to enroll in certain health coverage or pay a penalty, as well as the obligation of employers to provide certain health coverage or pay a penalty. It also describes the “Exchanges” created by the new law, and how certain individuals can obtain subsidized health insurance coverage through an Exchange.
- Chapter 11 explains operational changes in the new law that will have a direct or indirect effect on employers, including a series of changes that will affect the Medicare Part D retiree drug subsidy (RDS) payable to employers that offer certain retiree prescription drug coverage.
- Chapter 12 examines some of the new taxes and revenue-raisers that will have a direct or indirect impact on employers. Employers will need to amend certain plans, including Health FSAs, to reflect these changes.
- Chapter 13 summarizes the most relevant changes from different points of view. For example, it identifies which changes large employers should be considering and compares them to the changes in which small employers would be most interested. It also discusses the changes that are most significant for full-time and part-time employees, union and non-union groups, modest- and high-income employees, and self-funded and insured group health plans.