STATE EMPLOYMENT LAWS

Health Care Reform

On March 23, 2010, President Obama signed into law a comprehensive health care reform bill, the Affordable Care Act (ACA). ACA includes numerous reforms aimed at improving the U.S. health care delivery system, controlling health care costs and expanding health coverage. ACA's reforms have staggered effective dates; some provisions are effective now, while others take effect in 2014 and later.

ACA is a federal law, which means that federal agencies, namely the Departments of Labor, Health and Human Services and Treasury, are primarily responsible for the law's overall enforcement. However, ACA also creates significant responsibilities for state governments. A number of ACA's key health care reforms will be carried out at the state level.

This Seubert & Associates Employment Law Summary provides a high-level overview of selected ACA reforms to be implemented by state governments, and highlights the progress being made in Pennsylvania.

HEALTH INSURANCE EXCHANGES

ACA requires each state to have a health insurance exchange (Exchange) to provide a competitive marketplace where individuals and small businesses will be able to purchase affordable private health insurance coverage, effective Jan. 1, 2014. According to the Department of Health and Human Services (HHS), the Exchanges will make it easier for individuals and small businesses to compare health plan options, receive answers to health coverage questions, determine eligibility for tax credits for private insurance or public health programs and enroll in suitable health coverage.

Individuals and small employers with up to 100 employees will be eligible to participate in the Exchanges. However, states may limit employers' participation in the Exchanges to businesses with up to 50 employees until 2016. Beginning in 2017, states may allow businesses with more than 100 employees to participate in the Exchanges. Enrollment in the Exchanges is expected to begin on **Oct. 1, 2013**.

States have three options with respect to their Exchanges. A state may:

- Establish its own state-based Exchange;
- Have HHS operate a federally facilitated Exchange (FFE) for its residents; or
- Partner with HHS so that some FFE Exchange functions can be performed by the state.

States that intend to pursue a state-based Exchange or a state partnership Exchange must submit a blueprint to HHS. The blueprint must contain a declaration letter signed by the state's governor and an application describing readiness to perform Exchange activities and functions. If a state does not move forward with its Exchange or select the partnership model, HHS will operate the FFE in the state.

On Dec. 12, 2012, Governor Tom Corbett announced that Pennsylvania will not set up a state-based Exchange and will not pursue a partnership Exchange for 2014. Instead, HHS will operate the FFE for the state's residents.

TEMPORARY HIGH-RISK INSURANCE POOL

ACA requires the establishment of a temporary high-risk health insurance pool to provide affordable health insurance coverage to uninsured individuals with pre-existing conditions. ACA's high-risk health insurance pool is called the Pre-Existing Condition Insurance Plan (PCIP). The PCIP will continue until Jan. 1, 2014, when individuals will be able to purchase health coverage through ACA's health insurance exchanges.

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Health Care Reform

HHS administers the PCIP in some states, while other states have requested to run their own PCIP. Pennsylvania administers its own PCIP, named PA Fair Care. More information on Pennsylvania's PCIP is available at: www.pafaircare.com.

INSURANCE RATE REVIEW

To help hold insurance companies accountable for their proposed rate hikes, ACA requires HHS to establish a process to review the reasonableness of certain premium increases.

Effective Sept. 1, 2011, insurers seeking rate increases of **10 percent or more** for non-grandfathered plans in the individual and small group markets must publicly disclose the proposed increases, along with justification for the increases. (After 2011, states may work with HHS to set state-specific thresholds for disclosure of rate increases, using data and trends that reflect cost trends particular to a state.)

The proposed increases must be reviewed by either state or federal experts to determine whether they are unreasonable. States with effective rate review systems will conduct their own reviews, but if a state does not have the resources or authority to conduct rate reviews, HHS will conduct them.

According to HHS, Pennsylvania has an effective system for reviewing insurance rates. In Pennsylvania, the Pennsylvania Insurance Department reviews rates for the individual and small group markets. However, HHS reviews rates individual and small group associations that are not sitused in Pennsylvania because the state does not have an effective rate review system for these products.

HEALTH INSURANCE REFORMS

ACA requires sponsors of self-funded and insured group health plans to make changes to their plans' design and administration over the next several years. For example, effective for plan years beginning on or after Sept. 23, 2010, ACA requires:

- Group health plans to extend dependent coverage up to **age 26**; and
- Non-grandfathered group health plans to follow minimum requirements for **external review** of claims appeals.

Dependent Coverage Requirements

Although ACA creates federal standards, the health insurance market is primarily regulated at the state level. Some states may have laws that go beyond the federal minimums established by ACA. For example, some states extend dependent coverage beyond age 26, which is the federal minimum.

In Pennsylvania, health insurers must allow employers to offer coverage up to **age 30** for unmarried children without dependents who are state residents or full-time students.

External Review Process

In addition, ACA requires insured plans to comply with their state's external review process if it includes certain minimum consumer protections. If a state's external review process does not include the minimum consumer protections, health insurers in the state must comply with a federal process for conducting external reviews, effective Jan. 1, 2012.

HHS has concluded that the Pennsylvania external review process does *not* include the minimum consumer protections. Unless Pennsylvania makes changes to its external review process, insured health plans in Pennsylvania must conduct external appeals in accordance with a federal external review process, effective Jan. 1, 2012.