

The Fate of Health Reform:

Recent Court Cases & Congressional Action



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Camel's Nose in the Tent: Requirements Preceding Health Care Reform

Recent federal health care compliance measures affecting employers

(Note: Not an exhaustive listing)

- 1996
 - HIPAA (portability, nondiscrimination, standard electronic transactions, privacy, security, etc.)
 - MHPA
 - NMHPA
 - WHCRA
- 2003
 - MMA (HSAs and Medicare Part D)
- 2008
 - GINA
 - MHPA Amendments
 - Michelle's Law
 - MSP Reporting
- 2009
 - CHIPRA
 - ARRA (COBRA subsidy + HIPAA breach notification)
 - COBRA subsidy extension (does not seem to be in works again)

State Level Election Results: Impact on Current Health Reform Lawsuits

Before

- Governors
 - 28 Democrats
 - 21 Republicans
 - One Independent
- State Attorneys General
 - 32 Democrats
 - 18 Republicans

After

- Governors
 - 29 Republicans
 - 19 Democrats
 - Two Independents
 - **GOP gain of 8**
- State Attorneys General
 - 28 Republicans
 - 22 Democrats
 - **GOP gain of 10**

These state races continue to matter

- HCR provisions include rules that will be implemented at state level
- Governors will appoint State insurance commissioners
- Shape of the exchanges
- Insurance regulation
- Vitality of Medicaid programs

Impact of Court Cases

- Lawsuits in Virginia and Florida
 - Both Threw Out Reform Law as Unconstitutional
 - Cases Instigated in Virginia and Florida Joined by 20+ Other States
- Other Lawsuits
 - Upheld Reform Law as Within Congressional Power
- Recent Developments and Impacts
 - Supreme Court will not Hear on Expedited Basis
 - Opinion with reasons not issued
 - “Ripeness” likely reason
 - Pushes Back Supreme Court Decision
 - Mid-2012? Absolute earliest
 - Possibly Post-2014? Likely due to ripeness
- Will Some States Simply Not Implement Reform?
 - Implications for Employer Plans

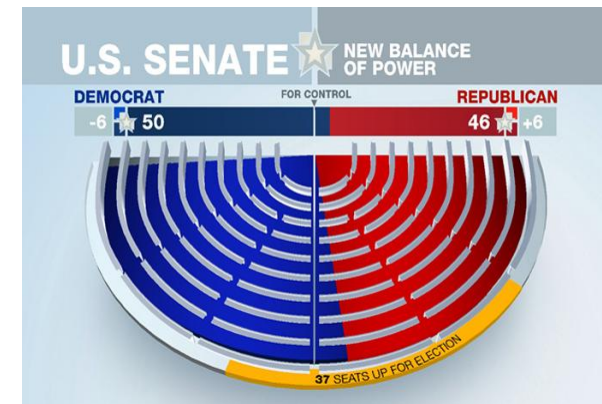
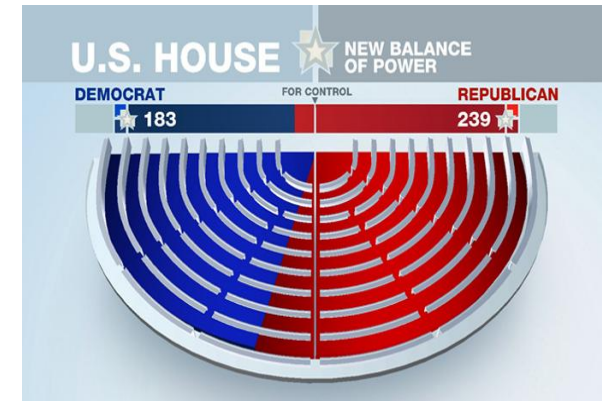
Repeal? Continuing Effects of Election

Before

- House
 - 254 Democrats
 - 177 Republicans
 - 4 Independents
- Senate
 - 57 Democrats
 - 41 Republicans
 - 2 Independents vote Democratic

After

- House
 - 196 Democrats
 - 239 Republicans
 - **Gain of 63**
- Senate
 - 51 Democrats
 - 47 Republicans
 - 2 Independents vote Democratic
 - **Gain of 6**



Looking to Continuing Election Impact

Since March 2010 (PPACA passed)

- Public has remained divided
- Presidents approval averages below 50%
- Approximately 60% of likely voters see country on “wrong track”
- Independent voters continue to favor GOP
- Electable GOP candidate identified?

Legislating through Regulatory bodies?

- HHS, IRS, DOL serve Executive Branch
- Concern that Administration will counter efforts to change law through regulations

Judicial activity looms

- Numerous legal challenges pending
- Individual mandate
- Challenges to broad regulatory authority deemed to HHS
- States resisting cost shifting to Medicaid programs

“Will Congress Repeal Health Reform?”

Remember – Law Has Some Positive Effects

- Proposal to Completely Repeal
 - House Will Pass & Senate Will Not Pass
 - What if Senate Passes Bill to Repeal Reform?
 - Presidential Veto
 - 2/3 Supermajority to Override Veto
 - Political Fodder: “What Have You Offered Instead?”
- Chipping Away is Trend
 - Elimination of Vouchers (detail on next slide)
 - Impact on Employer Plans
 - Affordability Standard Remains
 - Reduces Employer Costs
 - Protects Membership
 - Possible Refusals to Fund
 - More Incremental Changes Expected

Budget Bill Kills Vouchers

- Vouchers would have been effective in 2014
 - Employer would have provided voucher amounts to the exchanges relating to certain employees who:
 - Were eligible under plan AND
 - Whose employee share of the premium was between 8% and 9.8% of household income AND
 - Total household income was under 400% of Federal Poverty Level (\$88,000 for a family of four)
 - Voucher would have been used toward the purchase coverage other than the employer's plan
 - Employee would have retained any excess amount (taxable)
 - The voucher amount would have equaled the amount the employer provided toward the plan option to which it paid the greatest proportion of the cost
 - No other health reform penalties applied to employees receiving vouchers

Current Administration's Approach

- Greater Federal Involvement Evident
 - Promotion of New Law Continues
- Guidance-to-Date
 - All Guidance Released as Needed for 2010/2011
 - None Issued Yet for Future / 2014
 - “Essential Plan” Rules -- expected mid-2012
- Agencies “Legislating” by Allowing Delays
 - Requests for Input: Implied Further Delays?
 - IRS floats some potential eligibility rules for 2014 with “measurement” and “stability” periods
 - Form W-2 & Implementation Date After Delay
 - Track in 2012 and report in January 2013
 - Special Rule if under 250 Forms W-2 Filed -- Track in 2013 and report in January 2014
 - Nondiscrimination for Fully-Insured Delayed
 - 2012 Plan Year is Likely Effective Date

Overview of 2014

What Obligations Remain In Place



2014 Health Reform Rules

- Employers with over 50 full-time employees must:
 - Offer coverage to all full-time employees (over 30 hours/week average in month after 90-day waiting period)
 - If not, \$2000 penalty on employer times number of full-time employees minus 30
 - Automatically enroll all eligible employees if over 200 employees
 - Make coverage affordable to employee (and perhaps family) by not charging employee more than 9.5% of household income
 - Can't ask household income
 - If not affordable, \$3000 annual penalty on employer

2014 Health Reform Rules

- Individual Impacts
 - Person must pay penalty in 2014 if he does not have coverage
 - \$95 increasing to greater of \$695 or 2.5% of adjusted income
 - Employee may not want to be enrolled automatically or in exchange
- Federal Impacts
 - Approximately 35% to receive federal assistance with health plan costs
- Practical Impacts
 - Assumption: Employee waives coverage or dis-enrolls
 - Likely to enroll in exchange?
 - Likely to trigger penalty?
 - Likely to enroll in employer's plan next year?

Points of Frustration: Tune into Upcoming Webinars!

- New definition of “full-time” status based on actual work hours of 30 or hours/week on average in month
 - Hard to monitor or to keep hours consistent for some employees
 - Prepare to defend against the “I’m really eligible” part-timers by tracking time actually worked
- Staffing / employee leasing firms: unknowns
- Fear of broad scope of “essential plan”
- Penalties and so much more are uncertain
 - Based on employee’s household income
 - Don’t / Can’t Ask
 - \$2000 penalty is really less than cost of coverage
 - \$3000 may cost less than making coverage affordable
 - Uncertain if family coverage must be affordable
 - Enrollment impact, exchanges undefined, expanded administrative duties

Unpopular Health Reform Rules

Possible political actions and inactions?

- Slow implementation at the state level?
- Republican Congress to withhold funding from implementation programs?
- Individual mandate – Will the IRS Really Collect Individual Penalties?
 - Greater of \$95 or 1% of adjusted income in 2014
 - Greater of \$325 or 2% of adjusted income in 2015
 - Greater of \$695 or 2.5% of adjusted income in 2016 and beyond
- Fear of different or higher taxes as the Cadillac tax and other revenue raisers fail to fully fund health reform

Discussion



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