



Wimberly Lawson
Seale Wright & Daves, PLLC

Attorneys & Counselors at Law

Briefly
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HERE COMES HEALTHCARE EXPANSION



Gary Wright

"There are many steps employers can begin taking between now and the effective date to ease compliance or generate cost savings."

On Christmas Eve, 58 Senate Democrats and 2 Independents passed healthcare reform legislation strictly along party lines, the Patient Protection and Affordable Care Act, nearly 2,500 pages long. It is likely that the final version, which has to be reconciled with the House version which narrowly passed the House of Representatives 220-215 in November, will be signed into law by President Obama early in 2010. The President had hoped to sign the final bill before his State of the Union address and then turn to other issues, in a bid to boost support for Democrats in the 2010 elections, but the Senate/House Conference Committee was unable to report out a final bill in time. To appease moderate Democrats, the Senate Democratic Leadership abandoned a proposed government-run insurance program known as the public option and included stronger language to insure federal money is not used to pay for abortions. In general, Americans would be required to buy health insurance policies and government subsidies would be provided to help families afford coverage. The Senate bill would generally leave the existing employer-based health insurance system in its current form. However, employers would be required to pay a fee to the government if they did not offer affordable insurance to employees and if the employees later sought government help paying for insurance. If the Senate/House Conference Committee is unable to report out a final bill and the debate returns to the Senate, President Obama will face a more difficult challenge there with the Republicans winning the seat formerly held by the late Edward Kennedy of Massachusetts. In his State of the Union Address, President Obama chided the Republicans on their "lock step" opposition to all Democratic proposals and promised to hold them accountable if workable solutions are not found.

More specifically, all Americans, except for a few exemptions, would be required to have coverage by 2014 or would be fined \$95 in 2014, \$495 in 2015, and \$750 in 2016. Higher earners would pay 2% of their income up to \$2,250 per family. Employers with more than 50 employees would have to offer health coverage or pay a fine up to \$750 per employee if any employee obtains federal subsidies for coverage. To cover employees or persons not on other health insurance coverage, and small business, there would be various private plans offered in each State under a health insurance exchange. A sliding scale subsidy would be available to individuals earning less than \$33,320 and a family of three earning less than \$73,249 a year. Insurers must cover all applicants, including those with pre-existing medical conditions, and would be limited to how much extra they can charge older persons.

Regarding health benefits, a minimum package of benefits would be required and the basic plan would cover 60% of the cost of the benefits. The exchanges would offer three other benefit plans, covering 70-90% of costs.

Small businesses that qualify could get a tax credit to help pay for employee coverage. The legislation would also allow small businesses to band together to seek coverage at costs similar to those of larger companies.

The Congressional Budget Office (CBO) has estimated that the gross cost of the coverage provisions of the bill total \$871 billion during the 2010-2019 period. Also, according to CBO, the bill would reduce the federal budget deficit by \$132 billion over ten years, and would expand insurance to 31 million more people or 94% of all legal residents under age 65.

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Our Firm Wimberly Lawson Seale Wright & Daves, PLLC is a full service labor, employment and immigration law firm representing management exclusively. The firm has offices in Knoxville, Morristown, Cookeville and Nashville, Tennessee and maintains its affiliation with the firms of Wimberly, Lawson, Steckel, Schneider & Stine, P.C., Atlanta, Georgia; and Wimberly Lawson Daniels & Fisher, LLC, Greenville, South Carolina.

NEW LAW EXTENDS COBRA SUBSIDY AND REQUIRES NEW NOTICES



Jerry Pinn

"In addition to providing defense and other appropriations, the Act extends the eligibility period for the federal COBRA premium subsidy created by the American Recovery and Reinvestment Act of 2009."

On December 19, 2009, President Obama signed the 2010 Department of Defense Appropriations Act. In addition to providing defense and other appropriations, the Act extends the eligibility period for the federal COBRA premium subsidy created by the American Recovery and Reinvestment Act of 2009. The law takes effect immediately and includes new COBRA subsidy notice requirements.

COBRA Subsidy Extension

The law extends the eligibility period for the federal COBRA subsidy for an additional two (2) months, through February 28, 2010. Thus, employees (and their dependents) who were otherwise eligible for federal COBRA and who were involuntarily terminated between September 1, 2008 and February 28, 2010 will be eligible for the subsidy. The law also extends the maximum period an eligible individual may receive the COBRA subsidy from 9 to 15 months. Eligible individuals whose COBRA subsidy periods had previously expired or who are presently receiving the COBRA subsidy will be eligible for the extension.

"Transition" individuals whose COBRA coverage ended because they stopped paying their premium at the time the original subsidy expired must be given the opportunity to retroactively pay COBRA premiums at the subsidized rate, up to a total of 15 months. To continue their coverage, they must pay the COBRA premium cost at the 35% subsidized rate by the later of February 19, 2010 or 30 days after they receive notice of the subsidy extension. "Overpayment" individuals who maintained COBRA coverage after expiration of the original subsidy period must be reimbursed for the difference between the amount paid and the subsidized COBRA amount via either a refund or credit toward future COBRA premium payments.

New COBRA Notices

By February 17, 2010, "transition" and "overpayment" individuals must receive notice that they are eligible either to reinstate their coverage retroactively by paying the subsidized premiums or to receive a credit or refund for premiums paid. Also by February 17, 2010, notice of the COBRA subsidy extension must be provided to anyone who was an "assistance eligible individual" on or after October 31, 2009, or who was terminated from employment on or after October 31, 2009. Finally, for all qualifying events that occur after the law's December 19, 2009 passage, COBRA notices must include information about the subsidy extension. A fact sheet on the new law is available at <http://www.dol.gov/ebsa/newsroom/fsCOBRAPremiumreduction.html>.

What Employers Should Do

Employers should compile a list of employees and their eligible dependents who must receive notice of the COBRA subsidy extension. Employers acting as plan administrators must also prepare or obtain COBRA subsidy extension notices and make sure the notices are delivered to the appropriate employees and their eligible dependents. Finally, employers must ensure that COBRA notices for all employees terminated on or after December 19, 2009 contain the correct information about the new COBRA subsidy extension.

The 2009 Wimberly Lawson Labor and Employment Law Update Conference Manual

If you would like to purchase a Manual from our 2009 Conference, please contact Bernice Houle at bhoule@wimberlylawson.com or (865) 546-1000.



JOE LYNCH CHOSEN FOR 2010 TBA LEADERSHIP LAW CLASS



Joe Lynch

The Firm is pleased to announce that T. Joseph Lynch, III ("Joe") has been chosen as one of thirty-two emerging leaders in the Tennessee legal community to make up the 2010 Tennessee Bar Association Leadership Law class. The class was selected from an original pool of 700 nominations.

Joe is a Senior Associate in the Knoxville, Tennessee office of Wimberly Lawson Seale Wright & Daves, PLLC, which he joined in 2004. Joe received his Bachelor of Arts in English, cum laude, from Carson-Newman College and

his law degree from the University of Tennessee School of Law. He is a deacon and member of Covenant Presbyterian Church. Joe is also a member of the Knoxville Bar Association.

This year the TBA Leadership Law class kicked off its 2010 program with a retreat held at Montgomery Bell State Park on January 21st through January 23rd. The retreat included day-long programs on policy and politics, the courts, community leadership, and leadership in action. Graduation will take place during the 2010 TBA Annual Convention in Nashville in June.

KNOW YOUR ATTORNEY

RONALD G. DAVES



RONALD G. DAVES is Managing Member of Wimberly Lawson Seale Wright & Daves, PLLC. He practices in the areas of labor and employment law, including litigation of employment discrimination lawsuits, union/management issues, EEO/ADA compliance and personnel policies and procedures. He is a member of the Litigation Section and the Labor and Employment Law Section of the American Bar Association and Tennessee Bar Association, serving as Chairman of the Labor and Employment Law Section of the Tennessee Bar Association, 2002-2003. Listed as Tennessee Supreme Court Approved Mediator and approved Mediator in the United States District Court for the Eastern District of Tennessee. Prior to entering private practice, Ron was Vice President - Personnel for Pilot Freight Carriers in Winston-Salem, North Carolina and served as Chairman of the Personnel Practices Subcommittee of the American Trucking Associations, Washington, D.C. He also served as an investigator for the Tennessee Human Rights Commission. He received his Doctor of Jurisprudence degree from the University of Tennessee in Knoxville where he was recipient of the American Jurisprudence Award for excellent achievement in the study of labor law and recipient of the Robert L. McKnight memorial scholarship in labor law. He served in the United States Marine Corps from 1962 to 1965.

THE 2010 LABOR EMPLOYMENT UPDATE CONFERENCE

November 18 & 19, 2010



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**“HERE COMES
HEALTHCARE EXPANSION”
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The bill would increase Medicare payroll tax from 1.45% to 2.35% for individuals earning more than \$200,000 per year, and would cut Medicare and other federal programs by \$483 billion over ten years.

Grading the Senate Bill

Most commentators believe any reconciliation will have to defer to the Senate bill, inasmuch as all the crucial compromises and “deals” were made in the Senate to generate the 60 votes necessary to avoid a filibuster - a more difficult task now with the Republican win in Massachusetts.

The Senate bill gets high marks for expanding healthcare coverage, and Democrats argue that the bill does not add to the federal deficit. In fact, Democrats project that the federal deficit will be actually lower. The main criticism of the bill will undoubtedly be that not only does it impose new bureaucratic federal mandates, it also does little or nothing to lower healthcare costs. The chief actuary at the U.S. Department of Health and Human Services reported in late October that over ten years, the total national spending on healthcare will rise more under the proposed system than without it.

Small employers in particular worry that a series of new taxes and fees to pay for expanded health coverage will push up premiums, particularly for smaller employers. There is some support in history for this concern. Before Medicare and Medicaid were created in 1965, healthcare inflation was a little ahead of overall inflation. Since then, medical inflation has grown 2.3 times as fast as other cost increases in the economy. Medicaid is now reported to cost 37 times more, adjusting for inflation, than when it began. Medicare ended up costing almost 400% more from what it was projected to cost.

Thus, some commentators conclude that since the current legislation does not address healthcare delivery and payment systems, those costs will continue to climb at compounding rates owing to greater coverage and a larger patient base.

How Employers Will Have To Adjust

It appears that most of the healthcare provisions do not have an effective date before 2013 or 2014. However, there are many steps employers can begin taking between now and the effective date to ease compliance or generate cost savings. For example, employers can begin to redesign health plans to adjust annual and lifetime benefit caps and to extend coverage to certain preventive care costs, as those mandates will later be required. At the same time, however, employers may want to eliminate unwanted coverage items, to avoid any possibility of being locked into such versions after the healthcare bills take effect.

To come into compliance, flexible spending plans will have to be overhauled to provide for caps of no more than \$2,500 per year and barring reimbursements for the purchase of over-the-counter drugs. Under the bill, retiree drug coverage will become more expensive, as federal subsidies for providing such coverage will be taxed.

It is a little unclear if any collective bargaining agreements are going to be grand-fathered until contract termination, but the Senate bill may do so. Thus, if there is certain grand-fathering, employers will have to consider adjusting the length of their collective bargaining agreements to take advantage of the grand-fathering. Other employers may choose to do just the opposite, and to insist upon certain “re-opener” provisions at such time as healthcare legislation comes into effect.

After the legislation takes effect, employers will have to assign a value to their healthcare benefits, and report such value on employees’ W-2 forms. If the plans are too “rich,” the government will impose a levy. If the plans are not “rich” enough, employers will have to calculate and pay certain penalties and fees. For example, employers who do not offer coverage will need to assess how many of their low and middle income workers will get federal subsidiaries for the insurance they will buy on the new private insurance exchange. The employers will also have to deduct premiums from and forward them to the exchanges.