Key Health Reform Issues for Large Employers Under the Senate Bill and President's Proposal

In advance of the upcoming bi-partisan health care summit on February 25th, the President has issued an outline for the health care reform agenda being advanced by his administration. The President's Proposal closely follows the Senate bill that recently passed, with some material changes. The assumption is that where the President's Proposal does not address an issue, the policy would follow the Senate bill. Below is an overview about major issues of concern, as well as the positive features that were included in the Senate health reform bill (H.R. 3590) and how and whether the President's Proposal addressed these issues. (Please note that detailed language is not yet available.)

Troubling Provisions in Senate Bill

- **"Cadillac" Tax on High Cost Employer-Provided Health Plans**. The Senate bill would include a 40 percent excise tax on high cost employer-sponsored health plans above a maximum threshold (not in House bill)

  President's Proposal: Delays and modifies the excise tax by changing the effective date from 2013 to 2018 for all plans without a carve out for union plans. It also raises the amount of premiums that are exempt from the assessment from $8,500 for singles to $10,200 and from $23,000 for families to $27,500 and indexes these amounts for subsequent years at general inflation plus 1 percent. To the degree that health costs rise unexpectedly quickly between now and 2018, the initial threshold would be adjusted upwards automatically. The Proposal includes an adjustment for firms whose health costs are higher due to the age or gender of their workers, and no longer includes dental and vision benefits as potentially taxable benefits. The Proposal maintains the Senate bill's higher threshold for high-risk occupations such as "first responders."

- **Pay or Play Mandate/"Free Rider" Penalty**. The Senate bill would impose a penalty on employers who offer coverage when certain workers opt out of the employer's plan and get insurance through an exchange, and would impose a penalty on employers who do not offer coverage when one or more employees receives a tax credit and gets coverage through an exchange (not in House bill which has stronger pay-or-play mandate)

  For employers who offer coverage, the Senate bill would impose a penalty on the employer when an employee turns down employer-based coverage deemed unaffordable and receives a tax credit through a health insurance exchange. The penalty is the lesser of $3,000 for each employee who gets a credit or $750 times the number of full-time employees. For

employers who do not offer coverage, the Senate bill would impose a fine of $750 per full-time employee when even one employee receives a tax credit and gets coverage through a health insurance exchange.

President's Proposal: Includes the free rider penalty under the Senate bill and increases the penalty for firms that do not offer coverage from $750 per employee to $2,000 per employee when one or more employees gets a tax credit and receives coverage through an exchange. It appears that the Proposal would follow the Senate bill and apply only to full-time employees, not part-timers, as provided under the Senate bill.

- **Definition of Full-Time Worker**. Under the Senate bill the definition of full-time worker does not make exception for seasonal workers (House bill applies to part-time workers as well)

  President's Proposal: Issue not addressed in Proposal

- **Mandates Prohibiting Annual and Lifetime Limits**. The Senate bill would prohibit annual and lifetime limits for all health insurance plans, but some grandfathered employer plans may be exempt from the requirement (also in House bill)

  President's Proposal: May weaken grandfathering provisions under the Senate bill and strengthen other benefit requirements for plans. The President's Proposal would require plans to cover adult dependents up to age 26, prohibits rescissions on benefit coverage decisions, mandates that plans have a stronger appeals process, and requires State insurance authorities to conduct annual rate reviews for fully insured plans, backed up by the oversight of the HHS Secretary. When the exchanges begin in 2014, the President's Proposal adds new protections that prohibit all annual and lifetime limits, ban pre-existing condition exclusions, and prohibit discrimination in favor of highly compensated individuals. Beginning in 2018, the President's Proposal requires "grandfathered" plans to cover proven preventive services with no cost sharing. It is unclear whether the plan requirements in the President's Proposal would apply to self-insured and/or ERISA plans.

- **Requirement for Employers to Provide Vouchers to Employees Opting Out of Coverage**. A provision included in the Senate bill would require employers to give certain employees the option to opt out of employer sponsored coverage and receive a voucher from their employer to get coverage through an exchange (not in House bill)

  President's Proposal: Not addressed

- **External Appeals**. Rules added in the Senate bill would create new external appeals requirements for group plans, including requirements that they comply with state-specific rules, or new federal standards in states that do not meet minimum requirements (similar provisions in House bill)

  President's Proposal: Requires plans to have stronger appeals processes, but unclear if new mandates apply to ERISA and/or self-insured plans

- **Benefit Mandates**. The Senate bill would require all health plans to cover clinical trials for experimental procedures and treatments for cancer and life-threatening illnesses (some grandfathered employer plans may be exempt from mandates under Senate bill, requirement not in House bill)

  President's Proposal: Issue not addressed in Proposal

- **Employer Taxation of Retired Drug Subsidy**. The Senate bill would eliminate the deduction for employers receiving the retiree drug subsidy from the federal government for providing qualified retiree drug coverage under Part D, resulting in increased employer costs and FAS 106 obligations that require reporting the impact on companies' financial statements (also in House bill)

  President's Proposal: Would eliminate the deduction of the RDS subsidy and, but would push the effective date back to 2012 from 2011

- **Medicare and Medicaid Cuts**. The Senate bill would impose cuts in fees paid to Medicare providers and expansion of Medicaid eligibility resulting in increased cost-shifting to employers and other private payers (also in House bill)

  President's Proposal: Consistent with Senate bill

- **Taxes to Fund Comparative Effectiveness Research**. The Senate bill would impose premium taxes on full and self insured plans to fund comparative effectiveness research (also in House bill)

  President's Proposal: Not addressed

- **Fees on Health Care Supply Chain**. The Senate bill would include fees on health insurers, device and drug manufacturers that are likely to be passed on to private payers (under Senate bill, fees on health insurers would not apply to third party administrator agreements, not in House bill)

  President's Proposal: Would increase fees on brand name pharmaceuticals, which are $23 billion in the Senate bill, by $10 billion over 10 years. It also delays the implementation of these fees by one year until 2011. The Senate bill includes a $67 billion assessment on health insurers over 10 years; the President's Proposal delays the assessment until 2014 to coincide with broader coverage provisions, and provides

limited exemptions for plans that serve critical purposes for the community. This includes exemptions for non-profits that receive more than 80 percent of their income from government programs targeting low-income or elderly populations, or those with disabilities, as well as exemptions for voluntary employees' beneficiary associations (VEBAs) established by unions, but not for those established by employers.

- **Caps on FSAs**. Annual caps on health care flexible spending accounts (FSA) contributions of $2,500 (Senate bill indexed cap to consumer inflation, also in House bill)

  President's Proposal: Maintains the $2500 cap on FSA contributions

- **Lack of Medical Malpractice Reforms**. The Senate bill fails to include serious medical malpractice reform (also omitted in House bill)

  President's Proposal: Provides competitive grants for states to encourage demonstration projects to develop alternatives to traditional medical malpractice lawsuits

- **Executive Compensation Limits for Health Insurers**. The Senate bill would limit the tax deductibility of executive compensation at certain health insurance companies (not in House bill)

  President's Proposal: Consistent with Senate bill

- **Required Auto Enrollment for Employees**. Auto enrollment requirement for full-time employees and fines for waiting periods (Senate bill imposed fines after 60-day waiting period, auto-enrollment included in House bill)

  President's Proposal: Appears to eliminate any fines for waiting periods of up to 90-days

- **Expand and Increase Medicare Hospital Insurance (HI) Tax**. The Senate bill would increase by 0.9 percent on earnings above a specific threshold for a total employee assessment of 2.35. The employer's share of the tax would not be affected.

  President's Proposal: Adopts the Senate bill approach and adds a 2.9 percent assessment on income from interest, dividends, annuities, royalties and rents, other than such income derived in the ordinary course of a trade or business which is not a passive activity (e.g., income from active participation in S corporations) on taxpayers with income above $200,000 for singles and $250,000 for couples filing jointly.

Favorable provisions in Senate Bill

- **ERISA Preemption**. The Senate bill appears to maintain the ERISA preemption framework enabling employers to offer multi-state benefits plans under uniform regulation (some issues of concern to watch added to Senate bill, some state regulation of employer provided plans offered through exchanges included in House bill)

  President's Proposal: Appears to continue to maintain ERISA preemption framework

- **Flexible Grandfathering Provisions**. Grandfathering provisions that exempt existing employer plans from some benefits mandates under the bill (the House bill has grandfathering provisions for a limited time and even then they would likely have limited value to employers if they make any significant changes to their existing plans)

  President's Proposal: May subject grandfathered plans to benefits mandates that would have been excluded under Senate proposal, but language unclear as to whether mandates would apply to self-insured and ERISA plans

- **Government Health Insurance Plan**. The Senate bill did not include a public option or Medicare buy-in (public plan in House bill)

  President's Proposal: Consistent with Senate bill

- **No Maintenance of Effort Requirement for Retiree Benefits**. Senate bill did not include a prohibition against post-retirement reductions in benefits to existing retiree health benefit plans (prohibition in House bill)

  President's Proposal: Issue not addressed in Proposal

- **Health Insurance Market Reform**. The Senate bill included reforms that would require insurers to accept applicants without regard to preexisting coverage and establish health insurance exchanges (also in House bill)

  President's Proposal: Consistent with Senate bill

- **Strengthening Workplace Wellness Programs**. The Senate bill included incentives for participation in workplace wellness programs (also in House bill)

  President's Proposal: Issue not addressed in Proposal

- **Individual Mandate**. The Senate bill would require everyone to maintain health insurance or face a penalty except in certain hardship cases (inadequate penalties were strengthened modestly in Senate bill, also in House bill)

President's Proposal: Adopts the Senate approach of setting a penalty for failure to maintain coverage as a flat dollar amount or percentage of income, whichever is higher (although not higher than the lowest premium in the area), but lowers the flat dollar assessments, and raises the percent of income assessment that individuals pay if they choose not to become insured. Specifically, it lowers the flat dollar amounts from $495 to $325 in 2015 and $750 to $695 in 2016. The President's Proposal raises the percent of income that is an alternative payment amount from 0.5 to 1.0 percent in 2014, 1.0 to 2.0 percent in 2015, and 2.0 to 2.5 percent for 2016 and subsequent years.

- **Release of Medicare Claims Data**. The Senate bill would require the release of Medicare claims data for use in measuring health care provider performance (not in House bill)

  President's Proposal: Issue not addressed in Proposal

- **Strengthening Primary Care**. Provisions to strengthen primary care (also in House bill)

  President's Proposal: Consistent with Senate bill

- **Temporary Reinsurance for Employer-Based Early-Retiree Coverage**. The Senate bill included resources to establish a temporary reinsurance program to assist employers who provide early retiree coverage with high cost plans (also in House bill);

  President's Proposal: Issue not addressed in Proposal

- **Medicare Commission**. The Senate bill would establish an independent Medicare commission to examine cost containment (not in House bill)

  President's Proposal: Includes an independent group of doctors and health care experts tasked with presenting ideas to improve the quality of Medicare and to reduce beneficiary costs, but prohibits ideas that would "ration care, raise taxes or beneficiary premiums, or change Medicare benefit, eligibility, or cost-sharing standards"

- **Modest Payment Reform**. Modest steps to reform health care provider payments and move from fee-for-service (strengthened in Senate bill, some steps included in House bill)

  President's Proposal: Appears consistent with Senate bill

- **Assistance to Help Low-Income People Purchase Coverage**. The Senate bill included sliding scale subsidies to help low-income people buy health insurance (also in House bill)

  President's Proposal: Provides more generous subsidies to help low-income people afford coverage

- **Research to Compare Effectiveness of Treatments**. The Senate bill included comparative effectiveness research that would facilitate informed decision making about treatment options (in the Senate bill research funded by premium taxes on employers that is opposed by Association, also in House bill)

  President's Proposal: Appears to be consistent with Senate bill, but does not address source of funding for research