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## PPACA and Long-Term Care Insurance

# An Option, Not a Mandate — At Least For Now

By John J. Hess

While health care is the focus of the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act (collectively known as PPACA), enacted in March 2010, employers are facing many related questions regarding the impact of the act, if any, on other types of employee benefits. A prime example is whether the act affects the rights or obligations of employers to offer long-term care insurance to some or all of their employees.

The answer is that, except in one possible circumstance, PPACA does not affect an employer's provision of long-term care insurance to any of its employees. If an employer wishes to offer this benefit, it is free to do so; if the employer has no interest, it has no obligation. This does not mean, however, that PPACA, the most comprehensive health care reform law in our history, has no provisions at all regarding long-term care. It has a few. For example, there are incentives within PPACA for states that offer home- and community-based services as long-term care alternatives to nursing homes. There also are provisions that aim toward improving the quality of long-term care hospitals and improving staff training in long-term care facilities.

> "PPACA **does not affect** an employer's provision of long-term care insurance to any of its employees."

In addition, PPACA includes the Community Living Assistance Services and Support Act (CLASS Act). The CLASS Act is a voluntary, federally administered, worker-financed long-term care insurance program, designed to go into effect around 2012. Even when effective, however, the CLASS Act should not affect an employer's ability to provide long-term care insurance to one or more of its employees.

The one exception to keep in mind regarding long-term care insurance is whether such insurance might eventually be viewed as a "Cadillac" benefit subject to additional taxation, especially for employers who offer it to some employees but not others. PPACA provides for Section 4980I of the Internal Revenue Code to impose a 40% excise tax beginning in 2018 on insurance companies, or employers who self insure, on the cost of health

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insurance in excess of $10,800 for individual coverage or $27,500 for family coverage (indexed for inflation).

At least at present, all indications are that long-term care insurance will not be calculated as part of this excise tax. In determining whether such excess cost exists, Code Section 4980I(d)(1)(B)(i) expressly provides that any coverage "for long-term care" shall not be included in this calculation. But employers who choose to offer long-term care insurance should keep in mind that 2018 is a long way off. Many things can change between now and then and the details of this excise tax are certainly among them.

The prudent course is for employers to keep one watchful eye on the statute as it phases in over the next seven years and another watchful eye on the implementation regulations.

# Tax Aspects of 2010 Health Care Legislation

By Mary E. McGuire

In March 2010, President Barack Obama signed both the Hiring Incentives to Restore Employment (HIRE) Act and the Patient Protection and Affordable Care Act (PPACA). These two acts have produced a myriad of changes applicable to the health care and insurance industries, but they also make many modifications to the tax world. These tax changes are scheduled to phase in through 2018.

## 2010 Changes

A child who is under the age of 27 will now be treated as a taxpayer's dependent for many health coverage-related purposes. Thus, if a taxpayer's child would satisfy the taxpayer's dependency requirement except for the child's age, the child can still be covered under the taxpayer's medical insurance policy until age 27. Twenty-seven is the minimum age mandated by federal law. Other states, such as New York, which requires insurance companies to allow coverage until age 29, may be more generous.

The adoption credit available for the expenses of adopting a child under age 18 or a person with special needs has been increased by $1,000 to $13,170, and this amount will be adjusted for inflation in later years. Similarly, if adoption assistance is received from an employer, the amount excludable from the employee's taxable income has also increased to $13,170.

Business property can continue to be expensed up to $250,000 of qualifying property placed in service. This amount is reduced, but not below zero, by the amount by which the cost of qualifying property exceeds $800,000. This is an extension of earlier law which contained this special provision only for years 2008 and 2009.

A federal excise tax of 10% (much like a sales tax) is imposed on patrons of indoor tanning salons. This provision applies to services performed on or after July 1, 2010. This tax is due from the person receiving the service, and must be collected and forwarded by the provider.

For 2010 through 2013, small employers (defined as those having 25 or fewer employees with an average annual compensation of not greater than $50,000) can claim a tax credit of up to 35% of their contributions for the payment of health insurance premiums for their employees if they make non-elective contributions that pay at least one-half the cost of health insurance premiums. In 2013, the percentage increases to 50%. This credit is scheduled to expire on December 31, 2015.

## 2011 Changes

The original bill provided that starting with reporting for the 2011 year, the information employers are required to report on From W-2 will expand to include information relating to group health insurance, and an employer must disclose the cost of providing group health insurance to the employee. This requirement has now been extended to the 2012 year for W-2 forms issued in 2013.

## 2012 Changes

If, in the course of a trade or business, a taxpayer makes payments in any tax year of $600 or more to a single payee, the taxpayer is generally required to report that payment to the IRS (normally by using a Form 1099). Payments to corporations have been exempt from this reporting requirement, but this exemption is eliminated for payments made after December 31, 2011. This has created a great deal of consternation on the part of small businesses, who now wonder if they must send a Form 1099 to each utility provider because the annual payments to each provider exceed $600.

## 2013 Changes

Currently, a taxpayer can deduct the cost of medical care if the total costs exceed 7.5% of adjusted gross income. For 2013 and later years this threshold will increase to 10%. Beginning in 2013, if the taxpayer is at least 65 years of age before the end of the year, then the increased threshold will not apply and that taxpayer can continue to deduct medical expenses in excess of 7.5% of adjusted gross income. In 2017 all taxpayers, even those over 65 years of age, will be subject to the 10% threshold.

Currently, both the employer and employee must pay 1.45% Medicare tax on an employee's wages. Starting in 2013 high-income employees will be required to pay more in Medicare taxes. Under the new rule, the employee's tax rate remains at 1.45% for the first $200,000 of wages but increases to 2.35% for wages in excess of $200,000. If the employee is married, the increased Medicare tax applies to the combined wages of the employee and spouse, and the threshold at which the higher rate applies increases to $250,000. The employer's 1.45% portion of the Medicare tax remains the same.

Until now, the Medicare tax has only been imposed on wages and net earnings from self-employment. This will no longer be the case after 2012. A 3.8% unearned income Medicare contribution tax applicable to unearned income of high-income taxpayers will be imposed on the lesser of net investment income or any excess of modified adjusted gross income over $200,000 ($250,000 in the case of joint filers and $125,000 in the case of married taxpayers filing separately).

Estates and trusts will also be required to pay the

3.8% unearned income Medicare contribution tax on the lesser of their undistributed net investment income or any excess of their adjusted gross income.

Starting in 2013, contributions to a flexible spending arrangement will be limited to $2,500 per year. This of course will reduce the availability of additional tax-free dollars to cover medical expenses.

By 2018 there will be a tax increase on particularly generous health plans, known as "Cadillac" health plans.

As always, readers should be sure to consult their tax advisors.