

## HEALTH LAW UPDATE

May 13, 2010

### HEALTH REFORM

#### Implementation -- Key Developments; Early Progress

##### *Baker Hostetler Hosts Director, HHS Office of Health Reform*

The Reform Legislation has generated many questions about implementation, especially regarding some of the most immediate reforms. The Office of Health Reform was created within HHS to manage the department's health reform efforts and to coordinate closely with the White House Office of Health Reform. Both offices were created by Executive Order of the President on April 8, 2009. For more information, please see the [April 16, 2009, issue of the Health Law Update](#).

The HHS Office of Health Reform relies on a number of key players, including its Director, Jeanne Lambrew, Ph.D, who sits at the crossroads of implementation. On May 4, 2010, healthcare industry clients assembled in Baker Hostetler's Washington, D.C., offices for a special presentation by Dr. Lambrew who offered a substantive overview of the implementation process going forward followed by an interactive discussion of the new law with those in attendance.

According to Dr. Lambrew, HHS intends to follow a decentralized administration process due to the comprehensive nature of the Reform Legislation, which requires substantial cross-disciplinary work. As a result, the lead for developing policy will be assigned to the agency(ies) charged with administering the policy (e.g., HHS, CMS, Labor, Treasury, OPM, etc.). Cross-agency groups have been formulated and they are collaborating closely on drafting rules and regulatory guidance. Noting that the process was "not a pass off to the agencies," Dr. Lambrew underscored that HHS and the White House Offices of Health Reform will remain "very much involved" in the administration of the Reform Legislation. To ensure that

implementation remains "open, transparent and accountable" and provides for "adequate public input," Dr. Lambrew indicated that HHS will establish an Office of External Affairs to disseminate information and to interact with the public on programs, projects, strategies, partnerships and initiatives relating to the Reform Legislation. In addition, much of the implementation by HHS will be administered by the department's regional offices already in existence.

#### *Secretary Sebelius Reports to Congress*

In correspondence sent to Congressional leaders on May 10, 2010, HHS Secretary Sebelius outlined the Administration's progress on implementing the Reform Legislation's early provisions, including:

- An interim final rule implementing the \$5 billion temporary early retiree reinsurance program [75 Fed. Reg. 24450 (May 5, 2010)] under which participating employers and plan sponsors will be reimbursed 80 percent of the costs associated with providing health benefits to early retirees.

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- A rule to extend coverage to young adults by allowing them to stay on their parents' healthcare plan until age 26 [75 Fed. Reg. 27122 (May 13, 2010)]. A [FAQ sheet](#) issued by the U.S. Department of Labor includes the list of insurance companies that have agreed to cover young adults prior to the September 23 implementation deadline.
- Recent IRS guidance on federal income tax credits to eligible small employers that make non-elective contributions toward their employees' health insurance premiums [Revenue Ruling 2010-13].
- Accelerated administrative activity on the new law's medical loss ratio provisions that require large group plans to spend 85 percent of premium dollars (80 percent in the small group market) on clinical services and activities that improve healthcare quality, including an agreement by the National Association of Insurance Commissioners (NAIC) to speed up its timeline for submitting uniform definitions and methods for calculating medical loss ratios to the Secretary from December 31, 2010 to June 1, 2010. HHS has published a request for comments (due May 14, 2010) from insurers and others on how various types of spending by large and small group plans should be classified [75 Fed. Reg. 19297 (April 14, 2010)].

With regard to transitional coverage for adults with pre-existing conditions, the Secretary reports that 30 states have elected to administer their own temporary high risk pools while 18 have opted to rely on the federal pool option for covering this population in their states. The program begins July 1, 2010, and will end when the individual state exchanges become operational in 2014. According to the Secretary's letter, a rule to administer the prohibition against exclusion of children with pre-existing conditions from health insurance coverage will be issued soon.

Other areas of progress cited by the Secretary include an announcement by the insurance industry to terminate rescission practices effective immediately and the issuance of an initial wave of \$250 rebate checks to Medicare beneficiaries who have reached the "donut hole" in prescription drug coverage on June 15, 2010. According to the Secretary's letter, CMS projects that approximately four million beneficiaries will receive a rebate check in 2010 -- about 80,000 of them in the June 15 mailing.

Baker Hostetler's health reform task force continues to monitor health reform activity in the tax, employee benefits and healthcare arenas. For key details and a practical analysis of the critical issues at play, please consult our [Healthcare Policy website](#).

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