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Health Care Legislation: What HR Professionals Need to Know in 2011

Many HR professionals are undoubtedly still trying to comprehend the sweeping changes that emerged from the Patient Protection and Affordable Care Act of 2010. Several provisions of the law took effect in late 2010, and more have now arrived in 2011. These provisions will add to the tasks of benefits specialists and other HR professionals. The new rules in 2011 may increase health care costs for some employers, creating a potential need to expand coverage options this year and beyond. Other changes resulting from the law will require those in the HR function to keep a closer eye on tax-free savings accounts, the overall coverage eligibility of workers and their children, certain medical procedures, and other aspects of their employers' health care offerings.

What's to come in 2011

Some of the more noticeable changes in 2011 include:[1]

- **Changes to tax-free savings accounts.** These plans, which include health reimbursement accounts and flexible spending accounts, allow workers to set aside part of their paychecks in tax-free accounts, which can be used for health care expenses. Starting in 2011, these accounts cannot be used for over-the-counter drugs unless accompanied by a prescription from a doctor. Currently, there is no statutory maximum annual employee contribution (the maximum contribution is set at the employer's discretion). Starting in 2013, the statutory maximum employee contribution will be $2,500 per year.
- **Coverage for young adults.** This provision technically went into effect in 2010, but since most employers' new health plans start in 2011, it is expected to have more of an impact this year. Under the new law, young adults will be allowed to stay on their parents' health plans until the age of 26. Previously, most plans could remove young adults from their parents' coverage when they turned 19 or when they lost their college student status. This could have a significant impact on HR professionals' selection of health plans going forward, considering the increased costs that may be absorbed by having more participants on the plans. Perhaps more importantly, HR departments may need to ramp up their

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auditing of employees and their families to ensure proper eligibility for coverage.

- **Pre-existing conditions, preventive care and lifetime limits.** Again, these rules took effect in 2010, but are expected to have a greater impact on coverage in 2011 and beyond as HR professionals determine who will provide health care for their workers. Children under the age of 19 can no longer be denied coverage for pre-existing conditions; this will be expanded to include all individuals in 2014. Insurers must also now provide 100% coverage for preventive care, and they will be prohibited from placing lifetime dollar limits on essential health care benefits, such as hospital stays.
- **Government provided long-term care insurance (National Social Insurance for Long-Term Care Coverage).** HR professionals will need to get versed on the Community Living Assistance Services and Support (CLASS) Act plan. This portion of the health care law is designed to give employees a chance to prepare for future long-term care needs. Under the CLASS Act plan, all premium costs can be charged to participating employees. Employers that choose to participate in the CLASS Act program will be required to permit employees to make their premium payments by means of payroll deduction. The U.S. Department of Health and Human Services is developing the details of the CLASS Act program in 2011, but the agency has until October 2012 to decide on most of its parameters, and it will need a final approval by Congress.
- **Controlling costs at insurers.** Although the federal government will be responsible for monitoring this particular aspect of the law, a codicil designed to control costs at insurance carriers is worth watching when selecting insurers for coverage. It requires that 85% of all premium dollars collected by insurance companies for "large employer" plans—the definition of which varies from state to state, but often refers to companies with 51 or more or 101 or more workers—are spent on health care services and health quality improvement. This figure drops to 80% for plans sold to individuals and small employers. If insurers do not meet these goals because their expenses or profits are too high, they must provide rebates to consumers.

Communication plans still tentative

Considering that the insurance industry is regulated on a state level, many of the new health care provisions will vary depending on an organization's location. Perhaps the biggest challenge for HR professionals right now is absorbing the wealth of material that is included in the new law and developing an effective education and communication plan for all levels of their companies, whether it involves senior executives, hourly workers, union members or other groups of employees.

In a SHRM poll from September 2010, 54% of responding HR professionals said they have had a request from senior management to provide an overview of the new health care law (see Figure 1). The poll also showed that larger organizations (those with 500 to 2,499 employees) were more likely to have received this request from senior management (63%) as opposed to smaller organizations (43%), or those with 100 to 499 employees.[2]

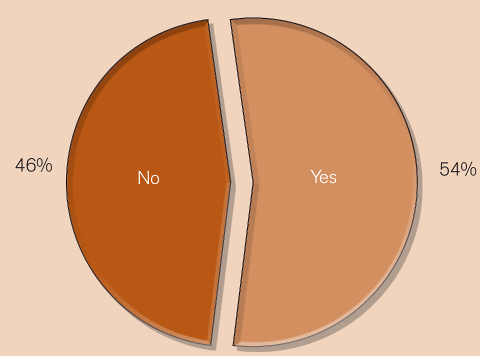
Another 46% of poll respondents said they had not received such a request from senior management. However, it appears many HR professionals are taking the initiative to get more familiar with the lengthy health care legislation. According to a poll released in February 2011 by SHRM, a combined 62% of respondents said they were comfortable with their knowledge of the law (54% agreed they were comfortable, and 8% strongly agreed). This represented a 14% increase from July 2010, when a combined 48% of respondents said they were comfortable with their knowledge of the law (45% agreed and 3% strongly agreed).[3] These data are illustrated in Figure 2.

However, there are elements of the legislation that remain puzzling to many HR professionals. The aforementioned CLASS Act—which, if ultimately approved by Congress, will not start paying actual benefits to enrollees until 2018—is a current source of confusion. When asked if they were comfortable with their level of knowledge of the CLASS Act, a combined 86% of HR professionals disagreed (58% disagreed and 28% strongly disagreed), according to the February 2011 SHRM poll.

Even as many HR departments are processing the contents of the law, others continue to evaluate whether to continue coverage. The new rules allow businesses to pay an "opt-out fine" if they decide to eliminate health care for employees, and many businesses are giving this scenario some serious consideration.

As recently as the spring of 2010, some of the country's largest companies conducted feasibility studies of dropping employer-sponsored benefits, according to an article published by CNNMoney.com.[4] AT&T, for example, revealed that it spends $2.4 billion annually on coverage for its 300,000 workers; that number would fall to $600 million if AT&T canceled coverage and paid the government's opt-out fine. Caterpillar estimated it could save $25 million a year in a similar situation. None of the companies cited by CNNMoney.com indicated an actual intent to remove coverage, and none have done so since the bill passed in 2010.

Figure 1 | In your organization, has senior management asked HR to provide an overview of the implications of the new health care law?



Source: Society for Human Resource Management (2010)

Sentiment among HR professionals and their employers is shifting toward keeping coverage in 2011, according to the February 2011 SHRM poll. More than one-half of organizations (51%) have decided not to drop health care for employees as a result of the new law, compared with 46% that were polled in June 2010. A total of just 2% of respondents in December 2010 said they would drop coverage, unchanged from June 2010.

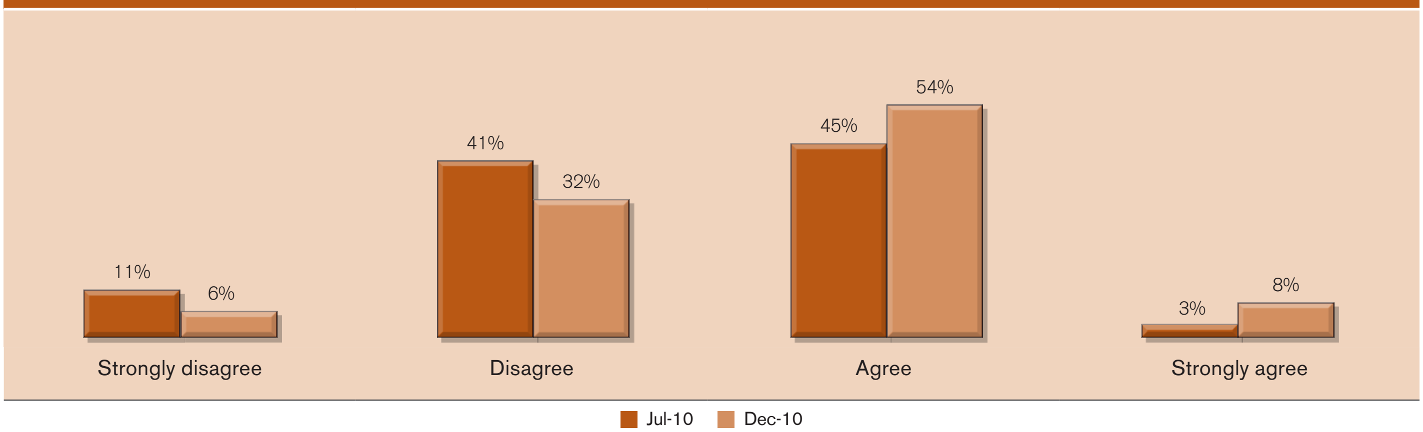
Debate still active on how to distribute costs

Clearly, the increased costs associated with the new law, whether real or anticipated, are at the forefront of HR professionals' minds at the moment. As illustrated in Figure 3, a total of 64% of respondents said there was some degree of likelihood in 2011 that they would pass onto employees any increased costs connected to the legislation (41% said it was likely, and another 23% said it was highly likely), according to a June 2010 SHRM poll. Others (a total of 40%) have determined that employees will get a break and perhaps see lower costs for health care in 2011 (30% of HR professionals said it was likely that their organization would lower costs for workers, and another 10% said it was highly likely).[5]

In the same poll, respondents were asked to name their two primary reasons for keeping health care coverage, even if the decision to drop the benefit and pay the opt-out fine would be economically sound. The responses show an overwhelming majority of concern for workers: 41% of respondents said dropping coverage would lower employee morale and satisfaction, 33% said eliminating health care would make the organization non-competitive when recruiting new employees, and another 28% said such a move would show that the organization did not value the health of its employees (see Figure 4).

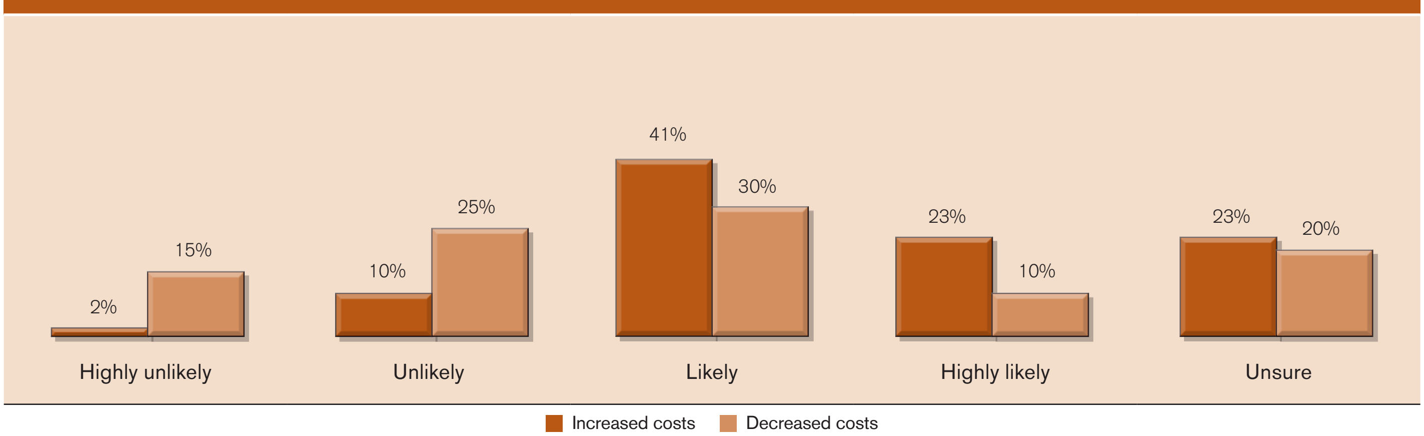
If that is not enough for HR professionals to consider, they may also want to keep an eye on Capitol Hill. Following a movement by Republican lawmakers, the U.S. House of Representatives voted to repeal the health care law in January, but the likelihood of that scenario coming to completion was considered very limited. However, given the balance of power in Congress, some elements of the legislation could be repealed in the future and forthcoming regulations may alter some aspects of the law. Given these circumstances, it seems likely that HR professionals will need to continue to study the law and implement its provisions as new aspects come into effect over the coming years.

Figure 2 | Are you, as an HR professional, comfortable with your knowledge of health care reform law?



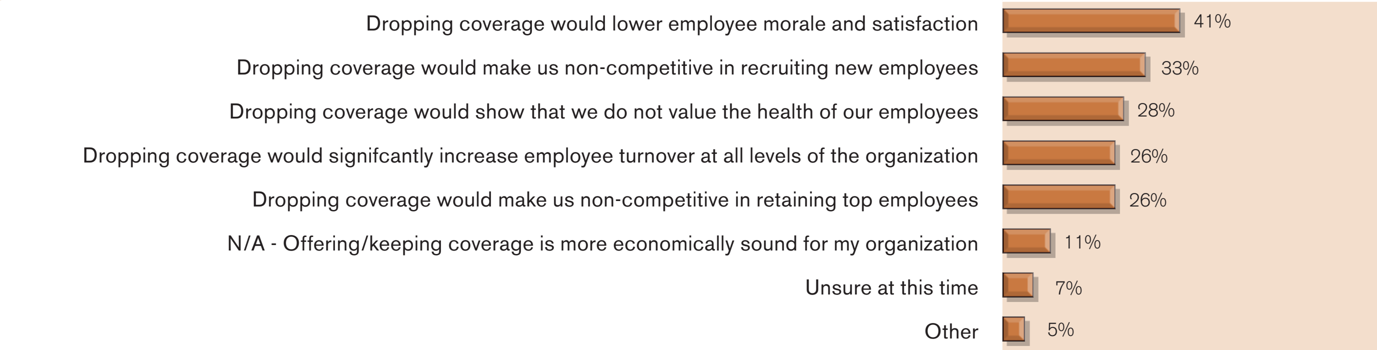
Source: Society for Human Resource Management (2011)

Figure 3 | Will your organization pass onto employees any increased or decreased health care coverage costs in 2011?



Source: Society for Human Resource Management (2010)

Figure 4 | Even though it may be economically sound to drop coverage and pay the opt-out fine, what would be your reason for keeping coverage?



Source: Society for Human Resource Management (2010)

Endnotes

1. U.S. Department of Health and Human Services. (2011, January). Retrieved January 10, 2011, from www.healthcare.gov/law/about/order/byyear.html.
2. Society for Human Resource Management. (2010, September). SHRM poll: Organizations' response to health care reform—senior management's requests. Retrieved January 10, 2011, from www.shrm.org.
3. Society for Human Resource Management. (2011, February). SHRM poll: Health care reform. Retrieved February 7, 2011, from www.shrm.org.
4. CNN Money. (2010, May). Documents reveal AT & T, Verizon, others, thought about dropping employer-sponsored benefits. Retrieved January 10, 2011, from http://money.cnn.com/2010/05/05/news/companies/dropping_benefits.fortune/
5. Society for Human Resource Management. (2010, June). SHRM poll: Organizations' response to health care reform. Retrieved January 10, 2011, from www.shrm.org.

For More Information

- Society for Human Resource Management Health Care Reform Resource Page—www.shrm.org/hrdisciplines/benefits/Articles/Pages/HealthCareReform.aspx
- The White House Health Reform in Action—www.whitehouse.gov/healthreform
- U.S. Department of Health and Human Services—www.healthcare.gov/
- The Henry J. Kaiser Family Foundation Health Reform Gateway—http://healthreform.kff.org/

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