

SB 562 - HEALTHY CALIFORNIA ACT: CURRENT STATUS AND POSSIBLE HEALTH CARE CHANGES IF PASSED

Much attention has recently been given to potential changes to health care coverage on a national level with the House of Representatives' passage of the American Health Care Act and the Senate's closed-door deliberations on its version of a repeal and replacement of the Affordable Care Act (ACA). Less attention has been paid to recent efforts of some in the California legislature to re-make the landscape of health care coverage in the Golden State.

On June 1, 2017, SB 562, the "Healthy California Act," was passed by the California Senate. The bill would create a universal, single-payer health care coverage system in California, called "Healthy California" in the bill. Under the bill, Healthy California would cover every resident of California, including undocumented Californians and current Medi-Cal beneficiaries, with no enrollee premiums or cost-sharing. Health insurance carriers would be prohibited by law from providing coverage for any of the list of services covered by the program, a list that includes all of the essential health benefits under the ACA and adds additional benefits like adult dental and vision.

Other than an intent to maximize existing federal and other funds that could help pay for this new system, there is no language in the bill that explains how California would pay for a single-payer system. The Senate Appropriations Committee noted that cost estimates are subject to enormous uncertainty, due to the enormity of the task of completely rebuilding the California health care system from a multi-payer system into a single-payer, fee-for-service system. Nonetheless, the Committee estimated that the total annual costs would be about \$400 billion per year, of which existing federal, state and local funding could offset about \$200 billion. That would leave \$200 billion in additional tax revenues that the state would have to collect to fund the program. (For some perspective on the size of that number, the entire state budget for the 2016-2017 fiscal year was \$167 billion.) The Committee noted that, assuming the funds were raised through a payroll tax, the additional payroll tax rate would be about 15% of earned income. (The current marginal personal income tax rate ranges from 1%-13.3%, depending on income.) Obviously, any tax or group of taxes that would raise \$200 billion a year would have an enormous impact on the California economy.

The bill provides that it will not become operative until the state has revenues to fund the cost of implementation. California's budget cycle ends every June, with the passage of a new budget by June 15th and the end of each fiscal year on June 30th. This means that, even if the bill were to pass this year, it would be at least a year until there was any funding mechanism in the state budget. Moreover, throughout his tenure, Governor Brown has required a tax of that magnitude to be approved by the voters in a ballot measure. The earliest statewide ballot would be in November of 2018. Therefore, if enacted, this bill would likely not take effect until 2019.

Right now, the bill faces an uncertain future in the Assembly and many question whether a seemingly skeptical Governor Brown would sign the bill, if it were to reach his desk. Nonetheless, many employers have asked what impact the bill would have on their employee benefit plans, if it were enacted. As noted above, the bill would prohibit insurers from offering health, dental and vision coverage in the state of California. This would effectively end all fully-insured employer-provided health, dental and vision plans in California. To the extent

that California employers employ persons who reside outside of California, employers could still purchase insurance coverage for those individuals. The bill would also establish a Healthy California system board which would, among other things, be tasked with developing proposals for all of the following:

- Accommodating employer retiree health benefits for retirees who move out of the state;
- Long-term care coverage; and
- Coverage of health care services currently covered under the workers' compensation system.

Additionally, the impact of the bill on employer self-funded health plans is unclear. The bill provides that it “does not create any employment benefit, nor does it require, prohibit, or limit the providing of any employment benefit.” This seems to indicate that, to the extent an employer offers a self-funded health plan to its employees, it would not be prohibited from continuing to do so. In fact, under ERISA, the state would likely be preempted from prohibiting employers to offer health coverage to employees. However, as a practical matter, many employers could choose to cease offering any coverage to California-based employees.

As noted above, this legislation has not yet been debated in the Assembly. If it is to pass, the same version of the bill must be passed by both the Senate and the Assembly by September 15, 2017. The Governor would then have until October 15, 2017 to sign or veto the legislation.

Keenan will continue to watch this legislation every step of the way and brief clients on important developments as they occur. Meantime, employers should continue to administer their employee benefit plans under the provisions of current state and federal laws.

Please contact your Keenan HealthCare Account Manager for questions regarding this *Briefing*.

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