

## 'OBAMA CARE' & FAMILY LAW

**INTRODUCTION:** The cost of medical insurance coverage (and the uncovered expenses) is an VERY integral part of any families budget; when a marriage is dissolving how family members are going to be insured for medical expenses and the costs of that insurance becomes even more critical to the discussion and to the “amount of income left” to meet all other expenses.

The “PATIENT PROTECTION and AFFORDABLE CARE ACT” (PPACA) was signed by the President on March 23, 2010. More commonly known as “Obama Care”, this legislation will directly impact these medical insurance deliberations and decisions.

However, let me start with this caveat: I AM NOT A HEALTH CARE EXPERT AND DO NOT OFFER THIS AS A “GURU OF OBAMA CARE” (and do not choose to be known as such or even believe that there is in fact a Guru of this Legislation). I am just a guy that became fascinated with the enormity of the scope of reach of the proposed legislation; I read the initial House version, read most of the Senate version, and have read multiple summaries of this Act. This document is provided simply as an ‘Introductory Summary’ of the Law and as a ‘**Heads-Up**’ for the practitioner. [NOTE: Editorial comments from either side of the political spectrum have not been included.]

Under the Law, MULTIPLE new programs and MULTIPLE new agencies are established; while the Law is over 1,500 pages itself, MUCH – **if not MOST-** of the actual impact will be determined by the many new Rules and Regulations that are yet to be written and be promulgated, the large majority of those coming from Department of Health & Human Services (HHS), but also several other cabinet Departments being involved. Also, there are MULTIPLE “words of art” throughout the Law, some defined in the Act and others yet to be defined by those Rules and Regulations. [And Yes, many provisions call for funding in the next few years, funding which may or may not happen. [**PRACTICE NOTE:** REALIZE that what health insurance will be available at what cost and subject to what regulations is VERY MUCH ‘yet to be determined’. Also, REALIZE that each time your client goes through an “enrollment period”, the discussion regarding health insurance cost and coverage needs to be had.]

Generally, this new Law will impact access to health insurance coverage and the cost of that coverage. However, for one in the Family Law arena there are some provisions that might impact your practice and the advice you provide to your clients, or at least should be considered in giving that advice.

PHASE-IN: If you have watched the news at all you know that some provisions of the Law went into effect on September 24, 2010. This was in fact the second of several ‘phased-in’ effective dates between now and 2014. A review of the Phased-In provisions that I believe might impact the practice of Family Law are detailed below. [NOTE: Many specific changes in the coverage and costs of Medicare – Parts A, B, and D – are not included here]:

- I. July 1, 2010: Tanning Bed Tax – 10% tax on amounts paid for tanning Services [NOTE: If your client is in this business, the After-Tax income just went down.]
  
- II. July 10, 2010 – Secretary of HHS was required to establish a web site to assist people to identify affordable health insurance options. That web site is [www.healthcare.gov](http://www.healthcare.gov). [NOTE: A summary visit to this site finds it to be a “work-in-progress” and not the most user-friendly. However, it does appear to consolidate a lot of information into one site.]  
  
[NOTE: Effective upon enactment States were eligible for grants to establish health insurance consumer assistance programs. Whether the State of Georgia has received Such a grant is not known.]
  
- III. July 21, 2010: HIGH-RISK POOL: Access to insurance for uninsured individuals with a pre-existing condition is available by entering into a temporary high-risk pool (which will be superseded by the health care exchange in 2014). [NOTE: If your client is facing those high ‘COBRA’ costs, I would suggest that the client investigate this option.]

IV. September 23, 2010:

- a. CHILDREN'S PRE-EXISTING CONDITION \*: Elimination of pre-existing condition exclusion for children – i.e., individuals under the age of 19.
- b. LIFE TIME LIMITS \*: Elimination of lifetime limits on benefits.
- c. DEPENDENTS UNTIL 26 \*: Any policy providing dependent coverage must now make that coverage available until the child turns age 26 [NOTE: Could this lead to many policies not covering dependents? Make sure your client knows the answer.] The adult child does not have to live with you to have coverage, but the child cannot be covered if eligible for health benefits at the child's employment.
- d. LOSS of COVERAGE DUE TO ILLNESS \*: Prohibition of dropping insureds when they get sick or because an unintentional mistake was made on the insurance application.
- e. NEW PLANS: All “new” group and individual Plans must provide coverage for certain preventive services with restrictions on charges for co-pays and deductibles.

[NOTE: Whether a Plan is a “New” Plan or is a “Grandfathered Current Plan” is a VERY significant determination but not one easy to make. Some summaries expect that only about a 1/3<sup>rd</sup> of the “Current Plans” (a/k/a/ keeping one's current insurance) will be in effect by 2014; the “New Plans” are subject to the provisions of the PPACA and its mandated healthcare contract provisions – e.g., the annual out-of-pocket expenses are limited to \$5,950 for an individual and \$11,900 for a family (reduced for those below 400% of the Federal Poverty Level). Generally, a Current Plan will lose its “Grandfathered” status if “significant” changes are made that reduce benefits or increase costs – i.e., cannot

**“significantly”** (i) cut or reduce benefits, (ii) raise co-payments, (iii) raise deductibles, (iv) lower employer contributions, or (v) add or tighten annual limit on what the insurer pays, **and**, cannot change insurance companies.]

“\*”: Those provisions marked with the asterisk apply to ALL health insurance Planes, whether “Current /Grandfathered” or “New”.

- f. **SMALL BUSINESS CREDITS:** If the Employer is a “Eligible Small Employer” – i.e., an employer with less than 25 ‘Full-Time Equivalents’ (FTEs) – a tax credit is available to cover some of the cost of the medical insurance offered to those employees. [NOTE: 1. This credit is optimized at the level of 13 FTEs and tops-out at about \$36,000. 2. Also, this credit is somewhat of a moving-target in that the amount of the credit or the percentage of the medical insurance cost which can be a credit changes after 2014. [**PRACTICE NOTE:** If your client runs a “small business”, there may be some funds available to reduce the costs of medical insurance and thereby increase the “disposable income” of the business.]

V. January 1, 2011:

- a. **LONG-TERM CARE:** Provides new, voluntary options for Long-Term care insurance
- b. **TAX-EXEMPT SAVINGS ACCOUNTS:** “Standardizes” the definition of “Qualified Medical Expenses” for HSAs, FSAs, and HRAs (and similar such accounts), to conform with the definition used for the itemized deduction.
- c. **MEDICAL EXPENSE WITHDRAWALS:** Increases the tax for withdrawals from a HSA (and other similar type accounts) for “non-qualified medical expenses” –i.e., generally any medical expense not prescribed by a physician, thereby denying reimbursement for all ‘over-the-counter purchases - from 10% to 20%.

**[PRACTICE NOTE:** If your client uses a HSA to get pre-tax money to pay medical expenses, the definition of “qualified expenses” is changed and narrowed, imposing an increased tax on “non-qualified” withdrawals.]

- d. **1099s:** 1009s must be issued to any vendor (including corporations) of services or rental property to which more than \$600 is paid during the year; there are several exceptions including merchandise, telephone, and payment of rent to real estate agents. **[PRACTICE NOTE:** Getting the 1099s may be a “nice to have” in discovery to verify expenses of a business.] **[NOTE:** **In your practice, this means that you must issue these 1099s; check with your accountant as to which vendors this provision applies.]**

VI. January 1, 2012: Various provisions primarily aimed at improving primary healthcare.

VII. January 1, 2013:

- a. **CONTRIBUTIONS INTO FSAs:** Limits annual contributions to FSAs to \$2,500 per year; this is currently unlimited. **[PRACTICE NOTE:** Remember earlier that the withdrawals for medical expenses are to be generally restricted to prescribed medications. And again, if your client was contributing more than this dollar amount on a pre-tax basis to reduce income tax, that tax liability just increased.]
- b. **MEDICAL EXPENSES ITEMIZED DEDUCTION:** Itemized deduction threshold for medical expenses is increased to 10% of Adjusted Gross Income from 7.5%
- c. **NEW SURTAXES: HIGH INCOME Earners:** Increases the Medicare tax rate by 0.9% on wages over \$200,000 for individuals (\$250,000 for couples filing jointly, but only \$125,000 for couples filing separately). Also, this tax is expanded to impose a 3.8% tax on ‘net investment income’ (or ‘unearned income’) – i.e., interest, dividends, capital gains, annuities, royalties, and rent (excluding tax-exempt

interest and retirement account distributions). And finally, formerly self-employed people had been able to deduct 1/2 of the Medicare Tax paid; this deduction is not allowed against the 'net investment income'.

**[PRACTICE NOTE:** If your client's income exceeds this limit - or the \$125,000 if the couple files separately - be sure that you include these new surtaxes when determining After-Tax Income.]

#### VIII. January 1, 2014:

- a. **ADULT PRE-EXISTING CONDITION:** Pre-Existing condition exclusion becomes effective.  
[Contemporaneously I believe that the high-risk insurance available from the State will be curtailed if not eliminated.]
- b. **ANNUAL LIMITS OUT:** Eliminates imposition of annual limits on the amount of coverage an individual may receive
- c. **EXCHANGES:** Health Insurance Exchanges are required to be established in every State; individuals who pay more than 9.5% of income on insurance. ???
- d. **INSURANCE CREDITS:** Provides Health Care Credits for persons with incomes between 100% and 400% of the Federal Poverty Level but below 400% of poverty (appx. \$11,000 to \$44,000 for individual and \$22,000 to \$88,000 for family). **[PRACTICE NOTE:** How this provision impacts or compliments Medicaid and PeachCare / WellCare is not known at this time.]
- e. **INSURANCE REQUIRED:** Requires MOST individuals to obtain "acceptable" insurance coverage; failure to obtain coverage will result in a penalty – i.e., greater of \$95 up to 1% of income for 2014 increasing to the greater of \$695 or 2.5% of income in 2016. Families have a cap of \$2,250 per family. **[PRACTICE NOTE:** The actual cost of insurance for the children may become difficult to determine; remember, the Child Support Law provides that if the actual incremental cost for insuring the child / children cannot be

determined, then divide the total insurance cost by the number of individuals being insured.

- f. Employers with 50 or more employees must offer coverage or pay a penalty of \$2,000 per full-time employee (not counting the first 30). [**PRACTICE NOTE**: If your client is such an employer, this will directly impact the bottom-line.]
- g. **EMPLOYER TAX CREDIT**: Employer with less than 25 employees that offers insurance receives a tax credit
- h. **MEDICAID ACCESS**: Access to Medicaid will be increased to 133% of Federal Poverty Level.

IX. January 1, 2018 – All “existing” insurance plans must cover “approved” preventive care and checkups without co-payments.

**CONCLUSIONS**: My review of this Law raises MANY more questions than answers provided. As a practitioner in the Family Law Arena, I end this review with these observations and comments:

1. The cost of whatever health insurance that will be available will be VERY REAL MOVING TARGET for some time.
2. Make sure your client is well-informed on the specifics of the costs and the coverage.
3. If the case goes through one or more “enrollment periods”, BE SURE to return to the specifics of health insurance.
4. If your client has pre-existing conditions and if COBRA is simply too costly, check into the State’s ‘High-Risk’ coverage.
5. Use the HHS web site as a research tool.
6. If your client’s income exceeds the stated limits, make sure that the After-Tax income is after the surtaxes are deducted.

7. Filing separate returns is sometimes considered to avoid the joint liability; however, if this action leaves a client with income over \$125,000, then the surtaxes come into play.