

HEALTH LAW, INSURANCE AND TAX ALERT

April 20, 2010

UNITED STATES HEALTH CARE REFORM IMPACT ON PUERTO RICO

I. In General

The Patient Protection and Affordable Care Act of March 23, 2010 (“PPACA”), together with the Health Care and Education Reconciliation Act of March 30, 2010 (“Reconciliation Act”), (jointly “Health Care Reform”), are expected to reshape the delivery of health care in the United States.

PPACA is divided into ten titles dealing with the reform of the private insurance system, amendments to public health insurance programs, prevention of public disease and improving public health, reforming the health care workforce, ensuring transparency in the healthcare system, promoting assisted health care living facilities, and raising revenue to pay for the implementation of the Health Care Reform. The Reconciliation Act is comprised of two titles focusing on similar topics, in addition to higher education concerns.

II. Impact on Puerto Rico

The Reconciliation Act raises the caps for federal Medicaid funding for Puerto Rico during the period beginning July 1, 2011 and ending September 30, 2019. Puerto Rico’s Resident Commissioner in Washington, D.C., has reported that the Island will receive three times the funding it currently collects for its Medicaid program. This increase would bring the program’s funding up to a total of \$8.624 billion over the next nine years. The Government of Puerto Rico will have flexibility to determine the most effective use of these funds in order to improve services and expand coverage.

The Reconciliation Act affords each territory a one-time opportunity in 2014 to “opt-in” (elect to participate in) an insurance exchange. If Puerto Rico opts for the exchange, it will be treated as a state for payment purposes, and will receive approximately \$925 million as of the year 2014 to subsidize the cost of insurance for Puerto Rico residents who earn too much to qualify for Medicaid, yet do not have alternate health insurance coverage. If Puerto Rico chooses not to establish an exchange, it will instead be provided an increase in the dollar amount allocated to the Island under Sections 1108(f) and (g) of the Social Security Act.

Puerto Rico was exempted from certain Health Care Reform mandates, including the requirement that all individuals be insured. Likewise, a significant number of tax provisions in the Health Care Reform will not apply to Puerto Rican taxpayers. Health Care Reform mandates that will impact Puerto Rico include, but are not limited to:

- Providing preventive care without co-payments
- Eliminating lifetime and unreasonable annual benefit limits (annual limits will be altogether eliminated as of 2014)
- Prohibiting the exclusion of coverage for children due to pre-existing conditions (for adults, this prohibition kicks-in in 2014)
- Barring insurance companies from rescinding coverage in the case of seriously ill individuals
- Extending coverage for dependents until the age of 26
- In the case of persons making over \$200,000 (\$250,000 if married), an increase in the Medicare tax owed on their earned and unearned income

III. Effects of Health Care Reform to Puerto Rico by Topic

We will be issuing separate McV Alerts in connection with the effects of the Health Care Reform to Puerto Rico, focused on the areas of Health Law, Insurance and Tax. For information on the Health Care Reform's impact on employers, please refer to our Welfare Benefits and ERISA Litigation Law Alert of March 25, 2010.

For additional information on this matter, you may contact any of the attorneys listed below.

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