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How Will Health Care Reform Affect Your Bottom Line?

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The recently passed health care reform legislation will have a significant impact on food and agriculture companies and organizations, and it could inflict meaningful and material damage on the bottom line if not assessed, analyzed, and addressed in a thoughtful, timely, and constructive manner.

The important calendar benchmarks for the new health care measure are:

- **2010**—All new or renewed large employer health plans (those with more than 50 full-time-equivalent [FTE] employees) beginning on or after September 23 must cover dependents up to age 26. The definition of dependent is primarily age-driven, and children can be married and live separately from their parents. These plans will also have to comply with the minimum essential health benefits, which may make them more robust than current plans. Existing plans may be grandfathered; however, many extensive requirements still apply.
- **2011**—All employers will have to report the complete and aggregate value of provided health care on an employee's W-2. Also, over-the-counter drugs will no longer be qualified expenses.
- **2012**—Form 1099 reporting must now include payments made to all corporations, other than tax-exempt organizations, if total payments exceed \$600.
- **2013**—Large employers must prepare an information return that contains certification that they've offered employees the option to enroll in minimum coverage, the number of FTEs by month, and information identifying each employee. In addition, health care flexible spending accounts will now have a \$2,500 annual cap.
- **2014**—All employers must openly and transparently communicate with their workforce about available coverage choices. Employers with more than 200 employees must automatically enroll new hires in their health plan.
- **2018**—Insurers will be subject to a 40 percent excise tax if the value (premium) of plan coverage exceeds certain limits. Responsibility for determining this value falls on the employer and will likely be passed through as additional premium. If an employee is self-insured, he or she becomes the insurer and must pay the tax directly.

The intent of the reform legislation is to provide comprehensive health care to all. That's why, in addition to taking on a possible administrative burden, beginning in 2014 an employer could be required to pay a penalty of up to \$2,000 annually for each FTE employee if an employee isn't offered coverage at all. If any employee receives a subsidy through a health care exchange, the company will be penalized on every FTE employee in excess of 30. Employees qualify for a subsidy if they earn less than four times the federal poverty level (approximately \$88,000 for a family of four), which means most meet the threshold. This applies to employers with more than 50 FTE employees.

The legislation also assumes most large employers will provide health care insurance. But employees can opt out of their employer's coverage and get insurance through an exchange if the employer's coverage isn't affordable or fails to meet the minimum essential requirements. In this case the employer would have to pay the lesser of \$3,000 annually for each employee entitled to a premium tax credit or cost-sharing subsidy or \$2,000 annually for all FTE employees in excess of 30. If the employer cost to insure the employee is less than \$3,000, this too could be an expensive proposition for employers.

The legislation doesn't allow employers to change the definition of an employee or redefine the nature of an outside contractor's role and responsibilities. As a result of the penalties, certain employers could theoretically reduce wages to cover or offset some of the penalty costs noted above. But the new legislation anticipates this, and the Department of Labor will be monitoring vigilantly. More important, if there are abuses in this area, you can expect additional legislation to enforce wage integrity.

Wages will come into play in another way too. On the positive side, the legislation allows companies to qualify for a tax credit if they're

considered small businesses. To be a small business and obtain the credit, a company must employ fewer than 25 FTE employees, with an average annual wage of less than \$50,000. Seasonal workers must be included in this count if they work more than 120 days per year. As for the tax credit, it's currently 35 percent of the employer contribution to the employee health care plan. In 2014 the credit rises to 50 percent. Of course, the 35 percent tax credit can be phased out based on the number of employees and the wages they're earning.

There will be additional reporting and coverage requirements with real tax implications when it comes to the employer penalties mentioned above. In fact, for many companies, it may be easier to simply pay the penalty than to try to work through the thicket of accompanying rules and regulations. In the end, it's a business decision, and large and small companies will approach this issue very differently.

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Companies will have vastly different views about outsourcing jobs too. Outsourcing enables businesses to gain the productivity and labor they need, but it may help avoid the tangled web of health care reporting requirements, since these will be left to the outsourcing firm itself. The decision to outsource should be based on a rigorous cost-benefit analysis undertaken by employers contemplating this possibility.

Many of the new health care reform rules don't become effective until 2014. But because they're so complex and have such profound financial consequences, companies should consider starting a strategic planning process now to make sure they're set up to comply properly.

