

# Rhode Island Business Group on Health

## Issue Brief

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**November 11, 2009**

## Health Reform Bill Passes in the House

On November 7, 2009, the U.S. House of Representative passed “The Affordable Health Care for America Act” ([H.R. 3962](#)) by a vote of 220-215. The House bill creates a new public health insurance option as part of a health insurance exchange and requires individuals to have health coverage or pay a penalty. It also requires employers (small employers with an annual payroll of less than \$500,000 are exempt) to offer insurance and pay 72.5% of the premium for individuals and 65% of the premium for families. The employer penalty for not offering coverage would be equal to 8% of average total wages paid annually. Salary reduction contributions to health flexible spending accounts (FSAs) would be limited to \$2,500 per year and reimbursements for over-the-counter medications would be prohibited. The bill also creates a grant program to help small and mid-sized employers create or enhance worksite wellness programs and includes reforms in Medicare that would reward the quality of care delivered. Tax credits to help small employers or individuals buy health coverage would also be available. A link to a more detailed summary of the bill and to a comparison with the Senate health reform bills can be found on the [RIBGH website](#).

## Emergency Paid Leave Bill Under Consideration

As a result of the growing number of cases of H1N1 flu virus, the “Emergency Influenza Containment Act” ([H.R. 3991](#)) was recently introduced and is scheduled for hearing by the House Education and Labor Committee on November 16, 2009. The bill would provide five paid sick days per 12-month period to employees with contagious diseases when their employers “instruct or advise” them to stay home. The bill applies to employers with 15 or more employees, and the leave protection would apply to part-time employees. If the bill is enacted, it would become effective 15 days after being signed into law but would sunset after two years. Given the government’s efforts to quell the flu outbreak, this bill might get approved quickly by the House. A similar bill is expected to be introduced in the Senate this week. Please watch for further RIBGH Issue Briefs on this and any other legislative proposals with paid leave provisions.

## Employer Obligations Under the Genetic Information Nondiscrimination Act (GINA)

[Final interim regulations](#) that apply to the Genetic Information Nondiscrimination Act (GINA) go into effect for plan years starting on or after December 7, 2009, and prohibit health insurance plans and insurers from increasing group premiums and contributions based on genetic information, requesting or requiring genetic testing, and prohibits employers from collecting “genetic information” (family medical history) either “prior to or in connection with enrollment” or for “underwriting” purposes. As a result, the prohibition on collecting genetic information for underwriting is not only limited to insurance rating and pricing activities, but also includes changes to deductibles and other cost-sharing plus discounts, rebates, in-kind payments and other methods of altering premiums as a reward (or punishment) for completing a health risk assessment or participating in a wellness program where “genetic information” is collected. The regulations clarify that offering reduced premiums or other rewards for providing genetic information (such as family medical history that often is a routine part of health risk assessments) would be impermissible “underwriting.” Collecting family medical history but not offering any reward would be allowed if the information is not collected prior to or in connection with enrollment in the wellness program. **Employers may need to review the language in any health risk assessments that are part of their open enrollment materials for changes to comply with GINA and will also be required to update workplace posters to reflect changes required by the employment provisions of GINA, which become effective November 21, 2009. The new Equal Employment Opportunity Commission (EEOC) poster can be found at <http://www.eeoc.gov/posterform.html>.**

## **National Defense Authorization Act Makes Changes to FMLA**

On October 28, 2009, President Obama signed the [National Defense Authorization Act for Fiscal Year 2010](#), which makes important changes to the Family and Medical Leave Act (FMLA). The changes include expansion of military caregiver leave, which may be used to care for veterans undergoing treatment or for recuperation or therapy for an injury as long as the veteran was a member of the Armed Forces, National Guard or Reserves within five years of requiring care. The amendments also expand military caregiver leave so that employees may use it to care for a covered service member’s serious injury or illness incurred because service on active duty aggravated an existing or preexisting injuries. Previously, law only allowed caregiver leave for serious illnesses or injuries incurred on active duty. **Employers should review their FMLA leave policies and make modifications to reflect these new changes.**

The legislation also expands the use of qualifying exigency leave. Under the new law, qualifying exigency leave will now cover family members of the regular Armed Forces deployed to a foreign country, in addition

to current coverage of family members of the Guard or Reserves. Finally, qualifying exigency leave is also extended to federal employees covered by Title II of the FMLA.

## **Results of RIBGH's Health Reform Survey**

Aggregate results from the RIBGH Health Reform Survey that was conducted in September, in collaboration with the RI Society for Human Resource Management (RISHRM) and the Small Business Association of New England (SBANE), were provided to members who attended the November 9 RIBGH/RISHRM breakfast meeting with Senator Sheldon Whitehouse, Lt. Governor Elizabeth Roberts, and RI Health Insurance Commissioner Christopher Koller. Key components of health care reform important to members included the provision of portability of coverage, inclusion of an incentive for employers who provide wellness programs, an individual mandate requirement, and a focus on individual/small group market reform. About 53% of the RIBGH members who responded favored a continuation of our current public-private balance in health care while 92% responded that cost containment was more important than ever as a goal in health care reform. A summary of the survey results can be found on the RIBGH website.

For further information on health care news and reform issues, please visit the RIBGH website and review our "[Breaking News](#)" and "[Health Reform Resources](#)" information.