

## Say, pay, play

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*By Marjorie M. Glover*

In response to one of our nation's greatest economic downturns in history, there have been unprecedented changes to the laws governing executive pay and new proposals that will significantly affect the way executives are paid.

While most of these proposals relate directly to executive pay, one proposal that does not relate specifically to executives may have an even greater impact: healthcare reform.

In 2009, we saw an increased focus on accountability and transparency in corporate governance and executive pay. Last year's mandates ranged from legally mandated pay caps for executives of distressed financial institutions to new proxy disclosure rules. In addition, numerous bills were introduced in Congress to further regulate corporate governance and executive pay, including proposed legislation calling for mandatory shareholder "say on pay" votes, independent compensation committees, majority voting and separation of chair and CEO positions. While no one knows what form these final laws will take, it is widely expected that some form of mandatory say-on-pay law will be enacted within the next year. The fate of healthcare reform is far less certain.

Before January's Senate election in Massachusetts, the passage of healthcare reform looked all but assured. Now it is anyone's guess whether healthcare reform will be enacted this year and, if so, what it will entail.

By the end of last year, the House of Representatives and the Senate had each passed comprehensive (and quite voluminous) healthcare bills. Although the details of these bills vary significantly, each provides for some form of individual mandate, major insurance reform, national or state-level insurance clearinghouses or exchanges, and, perhaps most importantly for companies, a "pay or play" mandate. And while

many agree that some form of healthcare reform is needed, few agree on what it should include or how to pay for it.

The proposed legislation would have a significant impact on companies and their employees, including executives. Both the House and Senate bill would impose a pay or play mandate requiring companies to offer employer-subsidized coverage for employees or pay a penalty to the government. Both bills would set standards for the types and levels of benefits provided by company-sponsored health plans.

The bills would also require automatic enrollment, limit medical flexible-spending-account contributions, deny coverage for over-the-counter drugs under medical FSAs and other health-related accounts, require employers to report plan enrollment and impose taxes on Medicare Retiree Drug Subsidies.

These changes may have a particular impact on executives, who typically receive more generous healthcare packages. Executives may also be affected by how Congress decides to pay for healthcare reform. The House bill would impose a surtax on adjusted gross income of 5.4% for joint filers earning \$1 million or more and single filers earning \$500,000 or more. The Senate bill would impose a 40% tax on premiums under "Cadillac" health plans that exceed \$8,500 for individuals and \$23,000 for families. Higher thresholds would apply to retirees and certain individuals in "high risk" professions. A temporary exception could apply to union-sponsored plans.

If the Cadillac tax is enacted, many companies will likely reduce health insurance coverage to avoid paying the tax. Another change that may have a particular impact on executives is the Senate's proposal to increase the threshold for itemized medical expense deductions from 7.5% to 10%.

In the wake of the January Senate race, Congress is regrouping to determine how to approach healthcare reform. On Feb. 7, President Obama announced a healthcare reform summit to be held on Feb. 25. The healthcare summit will bring together Republicans and Democrats in an effort to reach some common ground on reform.

At this time, it remains unclear whether healthcare reform will be enacted this year and, if so, whether it will take the form of comprehensive or more modest reform. What is clear is that healthcare reform has the potential to become one of the most significant new laws affecting companies and their employees, retirees and executives.

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