

**Healthcare Reform Legislation
and
Legislative and Regulatory Updates
Parker, Smith & Feek
Employee Benefits Seminar**

Presented by:
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Change is Here

"The question we ask today is not whether our government is too big or too small, but whether it works – whether it helps families find jobs at a decent wage, care they can afford, a retirement that is dignified. Where the answer is yes, we intend to move forward. Where the answer is no, programs will end. And those of us who manage the public's dollars will be held to account, to spend wisely, reform bad habits, and do our business in the light of day, because only then can we restore the vital trust between people and their government."

President Obama's Inaugural Address
January 20, 2009



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Agenda

- Healthcare Reform
 - Overview of Legislative Process and Timing
 - Summary of Bill Status by Committee
 - Overview of Bills
 - Impact on Employers



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Agenda (cont'd)

Legislative and Regulatory Update

- H.R.1 – American Recovery and Reinvestment Act of 2009 ("ARRA") – COBRA Continuation Coverage Subsidy
- ARRA – Health Information Technology for Economic and Clinical Health (HITECH)
- ARRA – Increase in Transit Benefits
- H.R. 2 – Children's Health Insurance Program Reauthorization Act of 2009 ("CHIPRA")
- Section 111 of the Medicare, Medicaid SCHIP Extension Act of 2007 ("Medicare Secondary Payer Reporting Program")
- Mental Health Parity and Addiction Equity Act of 2008 ("Mental Health Parity")
- H.R. 2851 (2007 – 2008): "Michelle's Law"



Agenda (cont'd)

- Genetic Information Nondiscrimination Act of 2008 ("GINA")
- Renewable Energy and Energy Conservation Act of 2007 – Bicycle Commuter Act ("Bicycle Commuter Act")
- Washington Updates
 - Expansion of Domestic Partnership Law



Healthcare Reform - Legislative Process and Timing

- Two Senate Committees and three House committees are working on reform bills
- After August recess, the Senate and House will each proceed with hearings and mark-ups
 - Working to approve one bill in each chamber
- If approved in each, then the bill will go to a joint conference of House and Senate
 - To resolve differences between the two versions
- If and when compromise is reached, full House and full Senate must approve
- Then, to President for signature or veto



Healthcare Reform - Summary of Bill Status by Committee

- Senate Finance Committee
 - Announced 7/30/09 that it would not release or consider legislation before August recess
 - Small bipartisan group will start with the HELP version of bill and work towards a compromise measure
 - New deadline of 9/15/09
 - Proposal circulated by Max Baucus to Committee on Sunday, September 6, 2009
- Senate HELP (Health, Education, Labor, Pension) Committee
 - Approved Affordable Health Choices Act



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7

Summary of Bill Status by Committee (cont'd)

- House Education and Labor Committee
 - Approved the "tri-committee" bill, H.R. 3200 ("H.R. 3200"), and added three amendments
 - COBRA extension
 - Electronic health records
 - Waiver of ERISA preemption rules and permit state healthcare system
- House Ways & Means Committee
 - Approved H.R. 3200
- House Energy & Commerce Committee
 - Approved H.R. 3200



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8

Healthcare Reform - Overview of the Bills

- National Health Exchange
 - Senate – A national health insurance exchange offering private insurance choices and a government sponsored – "Community Health Insurance Option," run by the Department of Health and Human Services
 - House – Offer private health insurance choices and a public health insurance option to individuals without employer-sponsored coverage, and initially, to employers with 10 or fewer employees
- Individual Mandate
 - Senate – Would require individuals to obtain coverage
 - House – Would require most Americans to obtain coverage



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9

Overview of the Bills (cont'd)

- "Pay-or-Play" Mandate
 - Senate – Employers (with 25 employees or more) who do not offer adequate coverage will be assessed an annual fee of \$750 for each uncovered full-time employee and \$375 for each uncovered part-time employee
 - House – Employers would have the option of:
 - Providing qualified health insurance coverage for their workers and contributing at least 72.5% of the premium expense for self-only coverage and 65% for family coverage; or
 - Being subject to a tax of 8% of their payroll (lower penalties would apply for smaller employers)



Overview of the Bills (cont'd)

- Individual Health Insurance Reforms
 - Senate – Would require guaranteed issue and coverage of pre-existing condition limitations
 - House – Would require guaranteed issue, rating limits, minimum loss ratio requirements and network adequacy standards for provider networks established by health plans
- Biologic Drugs
 - Senate – Would protect biologic drug manufacturers from generic competition for 12 years
 - House – Same



Overview of the Bills (cont'd)

- Medicare Reforms, Miscellaneous
 - Senate – Numerous provisions addressing health care quality improvement, combating fraud and abuse, promoting wellness
 - House – Changes to reward quality, efficient care and authorize new tools to address waste, fraud and abuse within the entire health care system



Overview of the Bills (cont'd)

- Senate – specific
 - Long-term care – Voluntary coverage would provide disabled adults with a minimum of \$50 per day for living, educational and expenses in exchange for an upfront monthly premium of \$65
- House – specific
 - Advisory Committee – Would establish a new independent advisory committee to recommend a benefits package that will serve as the basic package for coverage in the exchange, and over time, will become the coverage standard for employer plans



Overview of the Bills (cont'd)

- House-specific (cont'd)
 - Individual Tax Credits – Sliding scale affordability credits (phasing out at 400% of the federal poverty level) to provide premium assistance for lower-income individuals who obtain health insurance coverage through a private or public plan offered through the health insurance exchanges
 - Medicaid Expansion – Expand Medicaid to individuals and families with incomes below 133% of the FPL (\$14,400 per year for an individual and \$29,300 per year for a family of 4)
 - Out-of-Pockets Caps – Federal caps on total out-of-pocket spending
 - Health Records – Direct Health Choices Commissioner to undertake a study to determine whether increased reimbursement rates should be used to increase use of electronic health records



Overview of the Bills (cont'd)

- House-specific (cont'd)
 - State Systems – Require Secretary of HHS to grant waivers of ERISA preemption rules in ERISA Section 514 (with limited exceptions) to allow states to implement a single payer system
 - Health Promotion – Expand community-based programs to deliver prevention and wellness services; expand data collection initiatives to better identify and address racial, ethnic, regional and other health disparities; increased funding to the national Health Services Corporation
 - Health Workforce – Outreach and education to individuals going into health professions, including primary care, nursing, public health



Healthcare Reform - Impact on Employers

- There will likely be a "pay-or-play" mandate
 - May not have direct impact if employer chooses to retain plans in current forms
 - But costs of healthcare will likely be affected, which could affect overall cost of employer plans
 - Watch Senate Finance Committee – considering an employer tax credit to encourage employers to provide coverage to all employees
- Tax Increases
 - Unclear how costs will be covered; mandate from the White House "revenue neutral"
 - Watch Senate Finance Committee – expected to address cost with tax measures
 - e.g., value of employer-provided healthcare coverage above a certain undetermined level may be subject to income tax; or
 - Employers providing coverage above a certain value may be required to pay a premium surcharge



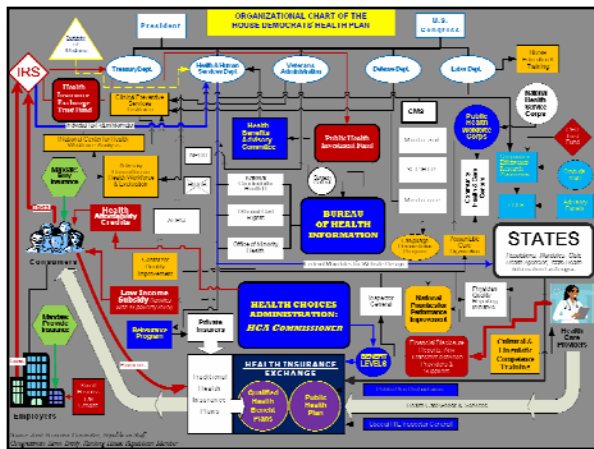
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Impact on Employers (cont'd)

- Cost Shifting
 - If attempts are made to "cap" costs or tie reimbursement rates of the national healthcare plan option to Medicare reimbursement rates, this would likely increase costs for employer-sponsored plans
- COBRA Extension
 - H.R. 3200 contains a provision to extend COBRA eligibility through at least 2013, when it is projected that a new national health insurance exchange will be up and running
 - Could result in a significant cost increase to employers (those who elect COBRA generally have disproportionately higher medical costs)
- Prescription Drugs
- "Pre-1974" Issues



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Legislative and Regulatory Update - ARRA – COBRA Continuation Subsidy

- Modified COBRA requirements to provide for a subsidy and a second election opportunity
 - For “assistance eligible individuals” only
 - For a period of up to nine months
 - Effective February 17, 2009



What Do Assistance Eligible Individuals Receive?

- Deemed to have paid COBRA premium if they pay 35 percent of COBRA premium otherwise charged to QB
 - 65 percent is subsidized by federal government
 - If employer subsidizes all or part of COBRA premium, subsidy only applies to employee’s remaining portion
- Second election right if not currently covered, but otherwise meet criteria to be AEI
- Subsidized coverage:
 - Beginning on March 1, 2009
 - Ending on earliest of:
 - nine months after it started
 - end of COBRA period
 - QB becomes eligible for other coverage or Medicare



Recapture Subsidy

- For high income individuals (income exceeds \$145,000 (\$290,000 for a joint return)); phase-in of recapture between \$125,000 and \$145,000 (\$250,000 and \$290,000 for a joint return).
 - High income individuals can waive and notify-employer or plan of election
 - Employer or plan is only obligated to charge full COBRA premium if employer or plan receives waiver



What is Required of Employers?

- Determine AEIs:
 - Current AEIs – individuals who are current QBs and who were:
 - Involuntarily terminated on or after September 1, 2008,
 - Eligible for COBRA on or after September 1, 2008, and
 - Elected COBRA, which is still in effect
 - Potential AEIs – individuals who were QBs and who:
 - Involuntarily terminated on or after September 1, 2008, but did not elect COBRA,
 - Involuntarily terminated on or after September 1, 2008, and whose COBRA terminated early, or
 - Involuntarily terminated on or after September 1, 2008, and who were in their 60-day election period, but had not yet elected COBRA
- Coordinate with insurers, third-party administrators and COBRA service providers



What is Required? (cont'd)

- Provide notice of subsidy right and second election right
 - DOL provided model notice on March 19, 2009. Models include:
 - General Notice (full version)
 - General Notice (abbreviated version)
 - Notice in Connection with Extended Election Periods
 - Customize Notice in Connection with Extended Election Periods
 - Send to potential AEIs on or before April 18, 2009
 - Customize General Notice (abbreviated version)
 - Send to all current AEIs on or before April 18, 2009
 - Customize General Notice (full version)
 - Replace existing general Notices with Customized General Notice (full version) for QEs that occur before September 1, 2008 and December 31, 2009
 - Go back to General Notice used prior to ARRA on January 1, 2010



What is Required? (cont'd)

- Make up 65 percent or treat 35 percent as paid
- If employer, not plan –
 - Claim amount of subsidy against payroll taxes using Form 941 (revised)
 - Line 12(a) indicate the amount of subsidy claimed
 - Line 12(b) indicate number of AEIs for whom subsidy is claimed
- Be prepared to submit reports (in such time and manner as IRS requires)
 - Attestation of involuntary termination
 - Amount of subsidy credit claimed and estimate to be claimed next reporting period
 - Record of all SSNs of all covered employees, the amount of the subsidy reimbursed, and whether subsidy was for one or more individuals



What is Required? (cont'd)

- Retain documentation, including:
 - Information on the receipt, including date and amounts, of the AEI's 35 percent premium payment
 - If insured plan, copy of invoice or other supporting document from carrier and proof of timely payment of premium
 - If self-insured, proof of premium amount and proof of coverage provided to AEIs
 - Proof of AEI's eligibility for COBRA during period of September 1, 2008 through December 31, 2009
 - Any other documents necessary to verify correct amount of reimbursement



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Consequences of Non-Compliance

- Failure to implement subsidy or offer second chance election are COBRA violations = penalties
- Denials of coverage subject to expedited review by DOL in consultation with Department of Treasury
 - Query – what about group health plans not subject to ERISA?



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Resources

- Resources
 - DOL website on COBRA and ARRA
<http://www.dol.gov/ebsa/COBRA.html> or 1.866.444.3272
 - Quick links to fact sheet, FAQs, posters and fliers (includes Spanish versions).
 - Allows subscription to updates of page.
 - Watch for issuance of additional guidance
 - IRS website at
http://www.irs.gov/newsroom/article/0_id=204505_00.html
 - News release dated February 26, 2009 with information for employers
 - Revised Form 941 and instructions
 - Q&A on how to administer the subsidy for former employees
 - American Recovery and Reinvestment Act (ARRA)
<http://www.recovery.gov/>



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ARRA - HITECH

- Imposes significant new HIPAA privacy and security requirements on –
 - Health plans
 - Business associates
 - Vendors of personal health records
- Included appropriations for –
 - Health Information Technology (HIT)
 - New HIT requirements for the government sector (or businesses that have government contracts)
- Various effective dates



HITECH Requirements

- Extension of HIPAA privacy and security rules to business associates ("BA")
 - Effective February 17, 2010, BAs will be directly responsible for the requirements that apply to covered entities ("CE")
 - Subject to same penalties as CEs
 - An entity that provides data transmission in services to CE is now a BA
- Duty to notify
 - Currently, if a privacy or security breach, CE must mitigate harmful effects
 - Effective 30 days after department of Health and Human Services ("HHS") issues guidance, CE must notify individual if protected health information ("PHI") is breached
 - Specific requirements
 - BA specific requirements must notify CE if breach by BA
 - Including identities of individual and other specific requirements



HITECH Requirements (cont'd)

- Duty to notify (cont'd)
 - Will only apply where CE or BA has "unsecured PHI"
 - On Aug. 24, 2009, HHS issued final rules relating to technologies and methodologies for rendering PHI secure for purposes of duty to notify
 - Two acceptable methods for securing PHI –
 - Encryption
 - Destruction
- Accounting for treatment, payment and health care operations disclosures
 - Currently, individuals allowed to request an accounting of disclosures of their PHI for the previous six years, subject to some exceptions



HITECH Requirements (cont'd)

- Accounting (cont'd)
 - New law requires CE that maintains an "electronic health record" ("EHR") to -
 - Include routine disclosures for treatment, payment, health care operations in accounting list
 - Effective dates:
 - For EHR acquired as of January 1, 2009, effective date is January 1, 2014
 - For EHR acquired after January 1, 2009, effective date is January 1, 2011, or if later, the date EHR is acquired
 - Right to request disclosures for payment and health care operations
 - Currently, individuals are allowed to request that a CE not disclose PHI, but CE does not need to agree
 - Effective February 17, 2010, CE must agree to the restriction when an individual requests restriction, where services have been paid out of pocket in full
 - Effective February 17, 2009 (increase monetary penalties) and February 17, 2011 (Mandatory HHS investigation and penalty for violations due to willful neglect)



HITECH Requirements (cont'd)

- Additional provisions
 - Minimum necessary standard
 - Use of PHI for marketing
 - Sale of PHI



CHIPRA

- Brief background of Children's Health Insurance Program ("CHIP")
 - Shared federal-state program that provides health insurance coverage to pregnant women and children
 - Formerly known as "State Children's Health Insurance Program" ("SCHIP")
 - Lower-income pregnant women and children who do not qualify for Medicaid, but fall within 300% of the federal poverty level ("FPL") (previously 200%) are eligible
 - CHIP is effective April 1, 2009
 - Reauthorizes and expands CHIP, formerly SCHIP, through 2013
 - Increased taxes on tobacco to pay for expansion
 - Raises state minimum allowable eligibility standard to 185% of FPL for pregnant women, 200% for children under age 19 and sets cap at 300%
 - Increases coverage for dental care and permits children covered by a group health plan with no dental care to receive CHIP dental care
 - Imposes new obligations in employers and plans



CHIP Impact on Employers and Plans

- Allows, but does not require, states to provide premium assistance for qualifying children to pay employer group health plan premiums
- Creates new 60-day special enrollment period for employees and dependents when –
 - They lose Medicaid or CHIP eligibility, or
 - First become eligible for state premium assistance



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CHIP Impact on Employers and Plans (cont'd)

- Employers and plans must:
 - Allow qualifying employees and their dependents to enroll or drop employer-sponsored coverage within 60 days (not within 30 days as with other HIPAA special enrollment rights)
 - Notify employees of these new special enrollment rights before the time to enroll in plan
 - Likely means revision to current special enrollment rights notice
 - Amend cafeteria, or Internal Revenue Code Section 125, plans
 - If special enrollments are allowed as a mid-year change



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Medicare Secondary Payer Reporting Program

- Brief background
 - Medicare secondary payer program generally makes employer group health plans the primary payers for employees and family members that have Medicare
- The Medicare, Medicaid SCHIP Extension Act of 2007 added new mandatory reporting requirements for group health plans
 - Reporting began on January 1, 2009
 - Designed to ensure that Centers for Medicare & Medicaid Services receives the information necessary to determine Medicare status
 - Insurers, third-party administrators and group health plans are responsible for reporting
 - Employers may be asked for information so that plans can report



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26

Mental Health Parity

- Expanded parity rules for mental health and substance abuse benefits
 - Prohibits group health plans from
 - Having separate cost-sharing or treatment limits for covered mental health and substance abuse benefits than for medical and surgical benefits
 - Imposing more restrictive financial requirements or treatment limits for mental health and substance abuse benefits than for medical and surgical benefits
 - Effective for plan years beginning after October 3, 2009 (January 1, 2010 for calendar year plans)
 - Current parity rules on annual or lifetime limits now permanent
 - Employers with 50 or fewer employees are not subject to the new rules
 - Regulations expected in 2009



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27

Michelle's Law

- Amended ERISA and Public Health Services Act
 - Group health plan are required to extend coverage when a dependent child loses student eligibility because of a medically necessary leave of absence
 - Coverage must continue for up to one year, unless coverage would end for another reason
 - Plans that require verification of student status must provide notice as to how and when coverage extension is available
 - Effective for plan years beginning after October 9, 2009 (January 1, 2010 for calendar year plans)
 - Regulations expected in 2009



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28

GINA

- Prohibits employer's use of an individual's genetic information for certain group health plan and employment-related purposes
 - Contains two titles:
 - Title I: applies to plans and addresses the use of genetic information in health insurance
 - Title II: applies to employers and prohibits the use of genetic information in employment, the intentional acquisition of genetic information about applicants and employees and imposes strict confidentiality requirements
 - EEOC issued proposed rules on March 2, 2009



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29

GINA – Title I

- Effective for plan years starting after May 21, 2009 (January 1, 2010 for calendar year plans) group health plans are prohibited from –
 - Requesting family medical history or other genetic information prior to plan enrollment
 - Using family medical history or other genetic information to adjust premiums or contributions
 - Requesting family medical history or other genetic information to determine:
 - Eligibility rules
 - Compute premium
 - Contribution amounts
 - Apply pre-existing condition exclusions or limitations
 - Conduct underwriting activities
 - Regulations expected in 2009



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Bicycle Commuter Act

- Bicycle commuter benefit added to Internal Revenue Code Section 132(f)
- Starting January 1, 2009, employers may offer a tax-free benefit of up to \$20 per month to:
 - Reimburse an employee's cost towards a bike's purchase, improvement, repair and storage
- Bicyclists must regularly use a bike for a substantial part of their commute to receive the benefit
 - Cannot be combined with other transportation fringe benefits
- Employees cannot use pretax salary reductions to pay for the benefit



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Washington State Updates

- Domestic partner laws
 - E2SSB 5688 – various effective dates
 - Expands the rights and responsibilities of state registered domestic partners, AKA the "Everything But Marriage Bill"
 - Referendum 71
 - Seeks to repeal E2SSB 5668
 - As of today, will be on the November ballot



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PS&Fs Notes

How Will Health Care Reform Change Worksite Wellness?

Debi Jefferson, RN, BSN
Health Management Consultant
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PS&Fs Notes

Current Points on Wellness

- More than 81% of US Businesses with 50 or more employees have some form of health promotion program
- 2009 increasing employer interest in funding wellness programs
- For every \$1 spent on wellness programs, employers can expect to save \$3 in health care cost
- Sedentary jobs have increased 83% since 1950

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What Leading Employers are Currently Doing?

- Controlled pharmaceutical costs
- Co pays & deductibles
- Creative benefit design with premium incentives
- Focus on promoting prevention services
- Using data to drive wellness initiatives
- Culture of health that permeates the company
- Worksite wellness efforts have become a vital business strategy

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PS&Fs Notes

Wellness Related to Current Washington State Law

- The expense of an employer provided wellness program may be tax deductible as a business expense.
- **HB 2160 – Wellness Programs & HIPAA** - effective July 26, 2009
 - Carriers may offer wellness programs that comply with the requirements of the HIPAA nondiscrimination rules without violating rebating and illegal inducement laws. (see HB 2160 apps.leg.wa.gov/documents/billdocs/2009-10/Pdf/Bills/Session%20Law%202009/2160-S_SL.pdf)
- **SB 6019 – Small Group Wellness**- effective July 26, 2009
 - Permits a health insurance carrier to provide a wellness discount of up to 20% for small employers (2-49 employees) that develop and implement a wellness program that improves employee health and wellness.
 - The premium reduction may be requested after the program has been in place for three years. (apps.leg.wa.gov/documents/billdocs/2009-10/Pdf/Bills/Session%20Law%202009/6019-S_SL.pdf)

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Health Reform-Getting back to the basics

- The Guide to Clinical Preventive Services 2007
 - Evidence-based recommendations help decision-makers develop disease prevention policies that are based on those program with the proven effectiveness
 - 29 preventive services were recommended or strongly recommended

* U.S. Preventative Services Task Force

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PS&Fs Notes

Highest Ranking Preventive Services for US Population

- Smoking cessation advice and help to quit - adults
- Discuss daily aspirin use - men 40+, women 50+
- Childhood immunizations
- Alcohol screening and brief counseling - adults
- Colorectal Cancer screening- adults 50+
- Hypertension screening and treatment - Adults 50+
- Influenza immunization- adults 50+
- Vision screening- adults 65+
- Cervical Cancer screening - women
- Cholesterol screening and treatment - men 35+, women 45+
- Pneumococcal immunization – adults 65+
- Breast cancer screening - women 40+

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Health promotion provisions in current health care reform legislation

1. S1001, HR2354: Health Promotion FIRST Act (Funding Integrated Research Synthesis and Health Training)
2. S803/HR1879 Healthy Workforce Act
3. Senate HELP Affordable Choices Act
Title III- Improving the Health of the American People

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PS&Fs Notes

S1001, HR2354: Health Promotion FIRST Act

- National Health Promotion Plan
- NIH basic Research Agenda
- Allocation of NIH research funds based on burden of disease
- CDC Applied Research Agenda
- Remove restrictions on groups eligible to apply for research grants
- Seek perspectives from diverse, non traditional groups in planning
- Nurture rather than compete with existing business, experts

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PS&Fs Notes

S803/HR1879 Healthy Workforce Act

- National Campaign to employers on health and financial benefits of health promotion programs
- Certified by the Secretary of HHS
 - Consistent with research and best practices
 - Encourages health literacy
- Tax Credit:
 - 50% tax credit up to \$200/per/employee, \$200 for first 200, \$100 balance
 - Cap at 10,000; 5,000:2,500 employees qualify for credit
 - For profit, not for profit and governmental
 - Must include at least three components of a comprehensive health promotion program
- Cost: \$1 billion/year

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Healthy Workforce Act Program Components:

1. Health Awareness: health education and health screen employee
2. Engagement: committee to actively engage employees and tracking of employee participation
3. Behavioral Change Programs: counseling, seminars, online programs or self help materials about tobacco, obesity, stress management, etc.
4. Supportive Environment: on-site policies, participation incentives, and employee input

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PS&Fs Notes

Senate HELP Affordable Choices Act
Title III- Improving the Health of the American People

- Subtitle A - Modernizing Disease Prevention of Public Health System
- Subtitle B - Increasing Access to Clinic Prevention Services
- Subtitle C - Creating Healthier Communities
- Subtitle D - Support for Prevention and Public Health Information

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PS&Fs Notes

Legislative Priorities of Health Promotion Advocates

- Likely Case and Worse Case
 - Development national health Promotion plan
 - Enhanced Health promotion research
 - National campaign to promote worksite health promotion
 - Assistance to evaluate programs
 - Best practices research
 - Surveys on program prevalence and components
 - Grants or tax credits for programs
 - Increasing portion of health plan premium tied to lifestyle factors

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Questions

- Health Care Reform?
- Worksite Wellness?
