



EMPLOYEE BENEFITS PRACTICE

# ALERT

## PRESIDENT OBAMA ADDRESSES PROBLEM OF UNAFFORDABLE HEALTH INSURANCE PREMIUM INCREASES; UNVEILS NEW ‘PATIENTS’ BILL OF RIGHTS’

By Harvey M. Katz and Daniel N. Kuperstein

### Rising Insurance Premiums

On June 22, 2010, President Obama met with top executives from some of the nation’s largest health insurance providers and seven state insurance commissioners to address the sharply increasing medical insurance premiums, in an effort to halt such increases while the new health insurance reform law takes effect. After the meeting, the President promised relief from unaffordable premium increases and other insurance industry practices through new regulations and various federal and state initiatives.

### Recent Studies on Rising Rates

The President’s primary concern is that insurance companies are using the new law as an excuse for unjustifiable increases – citing one California insurance company that raised premiums for 800,000 customers by as much as 39 percent. Studies have confirmed that many recent premium increases across the country are inconsistent with increases in costs, such as a Kaiser Family Foundation study finding premiums for recently purchased insurance for individuals increased by an average of 20 percent, and a Millman Inc. study, called the “Millman Medical Index,” showing medical costs from 2009 to 2010 increasing between 7 and 8 percent.

The President discussed how the federal government

would address the problem. Kathleen Sebelius, the Secretary of Health and Human Services, followed by answering relevant questions in a webcast available at [www.whitehouse.gov](http://www.whitehouse.gov). Both the President and the Secretary indicated that the federal government will stand behind state investigations of insurance company price gouging and require CEOs of insurance companies to publicly justify unreasonable premium increases on their company web sites and the law’s new web site—[www.healthcare.gov](http://www.healthcare.gov).

### The Affordable Care Act’s “Patients’ Bill of Rights”

The President also unveiled the Affordable Care Act’s “Patients’ Bill of Rights” – new regulations designed to protect consumers from discriminatory insurance practices; end lifetime limits on coverage and restrictive annual limits; ban unjustified coverage revocations; eliminate barriers to choosing primary care physicians; and prohibit insurance companies from requiring prior approval for emergency care. However, the “Patients’ Bill of Rights” regulations do not expressly establish any federal complaint mechanism or avenue for relief from unaffordable premium increases. The Secretary does not currently have the authority to deny unreasonable increases in insurance premiums under the new law. (A separate piece of legislation, introduced by

Senate Democrats, seeks to give the Secretary such authority).

Despite the Secretary's lack of power to directly curtail unaffordable premium increases, those affected may make complaints on the Secretary's comment line at 202.205.5445. In addition, relief through other provisions of the health care reform law and state law may be available, depending on the circumstances of the increase. Some examples include:

- **The 80/85 Percent "Care" Requirement** -

Provisions of the health care reform law will require, beginning in January 2011, that individual insurers spend at least 80 - 85 percent, of premium dollars on direct medical care and efforts to improve the quality of care. Insurers falling short will be required to provide rebates to consumers for the amount less than the designated percentage.

- **"Anti-Dumping" Provisions** - The new law prevents insurers from effectively transferring participants to the newly established high-risk insurance pool program for persons with pre-existing conditions. Insurers that unreasonably raise premiums for participants with high risks in order to discourage them from staying insured, thus forcing such a transfer, may violate these provisions.

- **Relief Under State Law - New York's "Governor's Program Bill No. 278"** - This measure, signed into law last month, grants the New

York State Insurance Department authority to pre-approve all premium increases taking effect on or after October 1, 2010.

California, Pennsylvania, Maine and Massachusetts are also conducting investigations into insurance premium price gouging and other insurer practices. To assist these states with their investigations and to implement the new law, the President created an agency under the Department of Health and Human Services - the Office of Consumer Information and Insurance Oversight. More information is available at [www.hhs.gov/ociio/](http://www.hhs.gov/ociio/). Information about relief for individuals with pre-existing conditions is available at both [www.dhhs.gov](http://www.dhhs.gov) and state insurance department web sites.

The attorneys at Fox Rothschild are available to assist in all matters involving the new health care reform law. We are also available to assist in filing complaints with state agencies and/or counseling or representation with respect to insurance and insurance company practices. For more information, please contact Harvey M. Katz at 212.809.7976 or [hkatz@foxrothschild.com](mailto:hkatz@foxrothschild.com), Daniel N. Kuperstein at 973.994.7579 or [dkuperstein@foxrothschild.com](mailto:dkuperstein@foxrothschild.com) or any member of the Fox Rothschild Employee Benefits & Compensation Planning Practice Group.



Fox Rothschild LLP  
ATTORNEYS AT LAW

Attorney Advertisement

© 2010 Fox Rothschild LLP. All rights reserved. This publication is intended for general information purposes only. It does not constitute legal advice. The reader should consult with knowledgeable legal counsel to determine how applicable laws apply to specific facts and situations. This publication is based on the most current information at the time it was written. Since it is possible that the laws or other circumstances may have changed since publication, please call us to discuss any action you may be considering as a result of reading this publication.