



SPECIAL REPORT

## HUMAN RESOURCES & EMPLOYEE BENEFITS

# The Big HEADACHE

### Wading through details of health reform legislation stressing employers

BY RANDY LANKFORD

Like most attorneys, Cox Smith's Joshua Sutin prefers to deal in facts rather than possibilities. But when it comes to how small businesses are going to deal with recent health care legislation, even an employee benefits expert like him has a lot more questions than answers.

Sutin's not the only person looking for answers. A series of informational seminars he's recently hosted for attorneys, insurance providers and business owners in San Antonio and the Rio Grande Valley has attracted more than 350 attendees eager to learn how changes to America's laws on employer provided health insurance are going to impact them and their businesses. The seminars have been so well-received Sutin keeps scheduling more to meet demand.

Sutin's seminars are designed to help small-business owners in South Texas understand what they must do to comply with the Patient Protection and Affordable Care Act. The seminars are aiming at a moving target since the act, passed on March 23 of this year, was almost immediately amended by the Health Care and



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Joshua Sutin with Cox Smith tells clients it's important to maintain their "grandfathered" status.

Education Reconciliation Act on March 30. And while the two pieces of legislation provide a framework of how Congress intends to reform the nation's health care system, they don't include a lot of detail.

**'WE'RE GOING TO BE LOOKING AT LOTS OF AMENDMENTS, LOTS OF REGULATIONS BEING DEVELOPED TELLING US HOW TO DO WHAT THE LAW INTENDED US TO DO.'**

**Jim Blakey**  
Partner and president, Catto & Catto

"You have to look at the two statutes together," Sutin explains. "If you had a group health plan, and think of group health plan as major medical, in effect March 23, 2010, then you're considered grandfa-

thered. And that's important because there are a lot of provisions in the new laws that will not apply to grandfathered plans.

"But," Sutin is quick to add, "Congress has done a very poor job of defining 'grandfathered.'"

"What I can tell you for sure is that if you were grandfathered on that date, you will not lose your grandfathered status even upon renewal, which is typically every year. You will not lose it when people fall off the plan or as new people come on the plan in the future. After that, it's all up in the air."

One of the issues still unclear is whether employers will be able to change their coverage levels when they renew their plans. Take, for example, a business considered grandfathered under current guidelines that wants to change its coverage levels.

"Let's say my renewal date is April 1,



Blakey

# HEADACHE: Health reform laws leave many questions unanswered for employers

after the March 23, 2010 grandfather date,” Sutin explains. “I have 50 employees and I need to cut costs so I’m going to pull back on some of the benefits I offer. Is that going to cost me my grandfathered status? I don’t know. I honestly can’t tell you.”

Nor is it clear whether an employer will lose grandfathered status if they switch carriers to provide the same level of benefits at a cost savings.

And that’s a big question for business owners since losing grandfathered status can add thousands of dollars to the cost of the health insurance they will be required to provide their employees.

“There are a number of reasons you want to be grandfathered,” Sutin says. “A concrete example is wellness programs. Starting at a certain time you will not be able to charge co-pays or deductibles for wellness programs. But if you are grandfathered you can continue to charge those. And starting in 2014 you won’t be able to charge any co-pays or deductibles for anything, but if you’re grandfathered, you’ll be able to continue to charge those co-pays and deductibles. When you think about it, that’s really where we’ve driven the cost of insurance down for business owners is by having a portion of those expenses moved over to co-pays and deductibles. So if you’re grandfathered and you’re able to continue doing that, it’s going to be a big advantage.”

Sutin and his Cox Smith associates are advising business owners not to do anything that might jeopardize their grandfathered status which, once lost, may not be reclaimable.

“Based on the information we have right now, we feel like if you amend your coverage to comply with the law, you’re going to be OK,” he says. “I tend to think that if you’re taking coverage away from people, that goes against the grain of what the government is trying to achieve. But, frankly, we just don’t have enough guidance.”

Regulations are pending, and while the Health and Human Services Department is being pressured to issue guidelines, due dates involving government agencies have been known to slip.

“Our advice, right now,” says Sutin, “is if you don’t have to, don’t do anything until we get more guidance.”

## Just the beginning

Sutin is not the only employee benefits expert trying to detangle the details of recent health care reform. All over San Antonio, benefits experts are wading through the 1,500-page health reform documents the two legislative actions produced.

The topic is so hot that The Center for Public Policy Priorities will present a “community forum,” sponsored by, among others, University Health System, The Greater San Antonio Chamber of Commerce, United Way and the San Antonio Non-profit Council, on June 28.

San Antonio’s David Young is a third party administrator, what he describes as a cross between an accountant and an attorney who specializes in helping employers comply with health care regulations. Many of his clients are confused about implementation timelines and dependent benefits.

“Many of the provisions of the new legislation will not impact employers until 2014,” he says. “And there are other provisions that will hit them regarding paying taxes on employees’ children who will now be covered until they’re 27.”

He, too, points to the lack of guidelines currently available.

“The passage of the legislation was really just the beginning of this process rather than the end,” adds Jim Blakey, partner and president of Catto & Catto, a San Antonio-based regulatory compliance consulting firm and insurance brokerage. “We’re going to be looking at lots of amendments, lots of regulations being developed telling us how to do what the law is intended to do. It’s a continuous process.”

## Too much information

It’s a process that he believes may cause some employers to simply give in to frustration.

Under the law, by 2014, individuals will be able to buy insurance on state

established exchanges. If they don’t purchase insurance, they will face penalties. Meanwhile, large employers will be mandated to provide insurance for their employees or face a tax. But many employers believe the cost to insure their employees will be greater than the tax, so they are already contemplating giving up insurance and preparing for penalties.

“What I see potentially happening here is that smaller businesses, under 50 employees, may just abandon the health care business and frankly, I see many of them just giving employees a stipend and telling them to just go buy insurance through one of the various state exchanges that will be set up,” Blakey adds.

“There’s just a lack of clarity right now. There are a lot of reporting requirements and employers are asking, ‘Where do I get the data? How am I going to file this report?’ and we just don’t have answers to those questions yet because the regulations haven’t been written yet,” Blakey says.

Sutin agrees. He argues that it is too early for employers to make a decision, and they should avoid being overwhelmed by the massive amount of information.

“What happens in that situation is people become emotional and their response to all that information is not necessarily logical,” he says. “And people in that position sometimes make decisions they later regret.”

“I urge everyone I talk to to become educated on this topic,” he continues. “And how do you do that? It doesn’t mean you have to sort through all this information yourself. Get help. Get a teacher. And, in my mind, that should be the people you’re already paying a fee to so you don’t have to spend anymore out of your pocket. For example, your insurance provider or your third party administrator. I think the insurance companies are trying to put information out there that is digestible and usable.”

Business owners need to prioritize, he says. “I wouldn’t be trying to buy my insurance based on what may happen years from now. I wouldn’t even think about 2014. In fact, I would just look at 2010-2011,” he says.