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Texas House Committee Sets Hearing to Review State's Arbitration Laws

The House Judiciary and Civil Jurisprudence Committee has scheduled a public hearing for January 27, 2010 at the State Capitol to review the state's arbitration laws and receive public testimony on arbitration's effect on the state's legal system. The review is the result of an interim charge the committee was given by Speaker Joe Straus to "study and make recommendations on the use of arbitration in Texas and the effect such practices have on state jurisprudence." Legislative committees typically consider and make recommendations on various issues during the months between sessions in preparation for their consideration as formal proposals.

Legislation that would have limited the use of arbitration by nonsubscribers was the topic of proposed legislation during the previous two sessions. The legislation failed after the Alliance and other business groups raised concerns about the proposals, citing increased legal costs and preemption by the Federal Arbitration Act.

Business organizations continue to monitor legislative developments regarding the state's arbitration laws in anticipation of future attempts to place limits on its use by Texas employers. Members of the Alliance are expected to testify at the hearing in January to express support for a business's right to continuing using arbitration as an alternative to litigation.

National Health Care Reform Debate Enters Final Phase

As the national health care debate enters its final phase, two proposals have emerged that will provide the framework for the final measure that will be considered. Ten members, five each from the U.S. House of Representatives and U.S. Senate, will work to resolve the differences between the two measures that passed their respective chambers. Following is a broad overview of key components of the two bills that have been adopted:

Individual Mandate	
Senate Bill (H.R. 3590)	House Bill (H.R. 3962)
<ul style="list-style-type: none"> • Requires individuals to obtain coverage or face penalty of \$95 in 2014, \$350 in 2015, and \$750 in 2016. The penalty amount will be indexed in subsequent years • Provides subsidies for individuals or families with incomes below 400 percent (\$88,200 for family of four) of federal poverty level who obtain coverage from a health plan in a health insurance exchange • Individuals may satisfy the mandate requirement by participating in an employer-based plan 	<ul style="list-style-type: none"> • Requires individuals to obtain coverage or pay a 2.5 percent tax on income in excess of their modified adjusted gross income • Provides a federal premium subsidy to individuals or families whose income is below 400 percent (\$88,200 for family of four) of the federal poverty level

Minimum Benefits	
Senate Bill (H.R. 3590)	House Bill (H.R. 3962)
<p>“Essential health benefits” package would include:</p> <ul style="list-style-type: none"> • Ambulatory patient services • Emergency services • Hospitalization • Maternity and newborn care • Medical and surgical care • Mental health and substance abuse • Prescription drugs • Rehabilitative, habilitative services and devices • Laboratory services • Preventive and wellness services • Pediatric services, including oral and vision care <p>No cost-sharing allowed for preventive services except in value-based health plans.</p> <p>Lifetime limits and “unreasonable”</p>	<p>“Essential health benefits” package would include:</p> <ul style="list-style-type: none"> • Hospitalization • Outpatient hospitalization and outpatient clinical services, including emergency services • Professional services of physicians and other health professionals • Services, equipment supplies necessary to a health care professional in the delivery of care • Prescription drugs • Rehabilitative and habilitative services • Mental health and substance abuse • Preventive services • Maternity care • Well baby and well child care, including oral, vision and hearing services for children up to age 21 <p>Creates the Health Benefits Advisory Committee of</p>

<p>annual limits prohibited.</p> <p>The minimum criteria that coverage must meet and the scope of essential benefits equal to those offered under typical employer plan to be determined by Secretary of HHS.</p> <p>Allows employers to establish premium discounts and incentives of up to 30 percent for participation in health promotion or disease prevention programs</p>	<p>stakeholders, including employers and insurers, to make recommendations on additional benefits to be covered.</p>
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Employer Mandate	
Senate Bill (H.R. 3590)	House Bill (H.R. 3962)
<ul style="list-style-type: none"> • Does not require coverage but subjects employers with 50 or more employees (individuals who work at least 30 hours per week) to a \$750 assessment per employee • Employers that do offer coverage would be subject to a nondeductible \$3,000 per employee penalty for each employee who opts out of the plan and receives an income-based tax credit for the purchase of coverage (assessments would be capped at \$750 times the total number of employees in the company's work force) • Employers with 200 or more employees would be required to enroll their employees in an employer-based plan with an opt-out option if the employee demonstrates they have coverage from another source 	<ul style="list-style-type: none"> • Provides for a penalty of 8 percent of average total wages paid by an employer if it does not offer qualifying coverage or contribute at least 72.5 percent for self-only coverage or 65 percent for family coverage based on the lowest cost plan option offered by the employer • After year two, would require an employer to pay a penalty of 8 percent of average total wages for each employee who opts out of the employer's plan and obtains coverage from a plan in the health insurance exchange • Requires employer to automatically enroll employee in lowest cost self-only coverage plan unless the employee opts-out of the plan within 30 days

Small Employer Tax Credits	
Senate Bill (H.R. 3590)	House Bill (H.R. 3962)
<ul style="list-style-type: none"> • Provides temporary tax 	<ul style="list-style-type: none"> • Provides temporary tax

credits to small employers with no more than 25 employees and average annual wages of \$50,000 that provide coverage	credits to small employers with no more than 25 employees and average annual wages of \$40,000 that provide coverage
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Insurance Exchanges	
Senate Bill (H.R. 3590)	House Bill (H.R. 3962)
<ul style="list-style-type: none"> • Establishes health insurance exchanges to offer qualified health insurance plans at four levels (platinum, gold, silver and bronze) with the plans covering 90, 80, 70 and 60 percent of annual health care costs for individuals in the non-group and small group markets • Requires states to have insurance exchanges operational by 2014 or the Secretary of Health will establish one for the state • Coverage may be obtained by all legal U.S. residents through an exchange • Small employers (100 or fewer employees) may offer coverage through an exchange • Beginning in 2017, large employers (more than 100 employees) may be allowed to purchase coverage in the exchanges • States will have the option of defining small employers as those with 50 or fewer employees 	<ul style="list-style-type: none"> • Establishes health insurance exchanges to facilitate the offering of qualifying health insurance plans. The exchanges would be maintained by the federal government if a state fails to establish one • The exchanges would not be available to individuals enrolled in certain public programs or a qualifying employer-sponsored plan • Exchanges are to be established by 2013 • Allows small employers to begin participating in exchanges in 2013 and subsequent years depending on number of employees

ERISA	
Senate Bill (H.R. 3590)	House Bill (H.R. 3962)
<ul style="list-style-type: none"> • Retains state regulation of insured health plans and federal oversight of self-insured plans • Provides states broad authority to seek waivers to certain federal laws, other than ERISA laws, in 	<ul style="list-style-type: none"> • Prohibits reductions in retiree benefits unless the same is made for current employees • Would apply state law remedies for insurance obtained through health insurance exchanges

the pursuit of their own health reform initiatives	<ul style="list-style-type: none"> • Would apply numerous new federal requirements to ERISA after five-year grace period
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Public Health Option	
Senate Bill (H.R. 3590)	House Bill (H.R. 3962)
<ul style="list-style-type: none"> • Does not include public managed option • Allows for the purchase of a national plan to be offered by the same office (Office of Personnel Management) that manages the health care for federal employees and members of Congress 	<ul style="list-style-type: none"> • Establishes a public health insurance plan that would be available through health insurance exchanges

Misc. Provisions	
Senate Bill (H.R. 3590)	House Bill (H.R. 3962)
<ul style="list-style-type: none"> • Includes rating limits for variations in premiums related to areas, age and tobacco use • Prohibits preexisting conditions exclusions starting in 2014 • Prohibits rescission of coverage • Creates minimum loss ratios of 80 percent for group coverage and 75 percent for individual coverage • Requires guarantee issue and guaranteed renewability • Prohibits establishment of eligibility rules based on health status • Requires coverage for dependents up to age 26 • Establishes temporary reinsurance program for qualified employers for certain retirees until health insurance exchanges are established • Prohibits illegal immigrants from receiving government subsidy to purchase insurance or from 	<ul style="list-style-type: none"> • Expands COBRA • Prohibits preexisting conditions exclusions starting in 2013 • Places additional requirements on health plans for network adequacy, transparency of policy information, grievance procedures and claims payments • Establishes temporary reinsurance program for qualified employers for certain retirees until health insurance exchanges are established • Prohibits lifetime limits on coverage • Prohibits illegal immigrants from receiving government subsidy to purchase insurance but permits them to use their own money to purchase coverage offered in an insurance exchange • Creates minimum loss ratio of 85% to be enforced through a rebate to consumers

purchasing coverage offered in an insurance exchange	
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Financing	
Senate Bill (H.R. 3590)	House Bill (H.R. 3962)
<ul style="list-style-type: none"> • Individual mandate penalties • \$2.3 billion annual fee on pharmaceutical industry • \$2 billion annual fee on medical device manufacturing industry • Annual fees on the health insurance industry starting at \$2 billion in 2011 • Limits deductibility of executive compensation to \$500,000 for health insurance providers • Imposes a tax of 10% on the amount paid for indoor tanning services • Imposes excise tax on insurer of employer-based health plans with aggregate values that exceed \$8,500 for individual coverage and \$23,000 for family coverage • Increases the threshold for itemized deduction for unreimbursed medical expenses from 7.5% to 10% of adjusted gross income • Increases tax on distributions from health savings accounts not used for qualifying medical expenses • Increases the Medicare Part A tax rate on wages by 0.9% on earnings over \$200,000 for individual taxpayers and \$250,000 for married couples • Limits the amount of contribution to flex 	<ul style="list-style-type: none"> • Individual mandate penalties • Imposes a tax of 5.4% on individuals with modified adjusted gross income exceeding \$500,000 and family incomes exceeding \$1,000,000 • Imposes a 2.5% tax on the first taxable sale of any medical device • Limits reimbursement from health savings account for medication to prescribed drugs • Increases tax on distributions from health savings accounts not used for qualifying medical expenses • Limits contributions to a flexible spending account to \$2,500 per year • Reforms payment structure for Medicare program and implement other reforms to increase efficiency and eliminate waste

<p>spending account for medical expenses to \$2,500 per year</p> <ul style="list-style-type: none"> • Reforms payment structure for Medicare program and implements other reforms to increase efficiency and eliminate waste 	
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Sources for health bill summary:

- 1) American Benefits Council
- 2) Kaiser Family Foundation
- 3) BusinessWeek

Texas Near Top in Business-Friendly Index

According to the Small Business and Enterprise Council's "2009 Small Business Survival Index," Texas ranked as the third most entrepreneur-friendly state up from sixth place in 2008.

The "Small Business Survival Index" is a comprehensive measure of which states are truly friendly to small business and which are not in terms of public policy decisions. Key factors included in the Index are taxes, various regulatory costs, government spending, property rights, health care, and energy costs.

The 2009 Index has been expanded to cover 36 major government-imposed or government-related costs affecting small businesses and entrepreneurs. The measures are added together for an overall rating. The report is available at www.sbecouncil.org.

In terms of their policy environments, the top ten entrepreneur-friendly states under the "2009 Small Business Survival Index" are: 1) South Dakota, 2) Nevada, 3) Texas, 4) Wyoming, 5) Washington, 6) Florida, 7) South Carolina, 8) Colorado, 9) Alabama, and 10) Virginia. In contrast, the bottom ten are: 42) Hawaii, 43) Minnesota, 44) Massachusetts, 45) Rhode Island, 46) Maine, 47) Vermont, 48) New York, 49) California, 50) New Jersey and 51) District of Columbia.

Swine Flu Update

There is good news for Texans who want to get the H1N1 vaccine. Texas's supply of vaccines has finally caught up to demand, and distribution is no longer limited to high risk populations. Texans who want to get vaccinated can find a provider by visiting the Department of State Health Services' Vaccine Locator, which is available at <http://www.dshs.state.tx.us/txflu/flu-locator.shtm>. As of early December, Texas health officials had ordered more than 6 million doses of the H1N1 vaccine, and they expect to receive more than 13 million doses by

January.

The CDC is warning people to be on the alert for fraudulent e-mails telling recipients that they must create a Personal H1N1 Vaccination Profile on the CDC's website. In fact, there is no such requirement, and anyone who clicks on the link embedded in the e-mail risks having malicious or harmful software installed on their computers. For more information on these e-mails, visit http://www.cdc.gov/hoaxes_rumors.html.

In mid-December, the CDC reported the majority of patients screened for the flu tested positive for the H1N1 strain. On a positive note, the CDC is reporting that visits to doctors for flu-like symptoms, hospitalizations for the flu, and flu-related deaths had all declined. Additionally, the number of flu-related deaths fell below the "epidemic" level for the first time in 11 weeks. While this is all good news, the CDC cautions that both the seasonal flu and the H1N1 virus are unpredictable, and these number could change. If they haven't already, people are encouraged to get both the vaccine for the seasonal flu and the H1N1 strain. For weekly updates on H1N1 numbers, visit <http://cdc.gov/h1n1flu/update.htm>.

Federal legislation being monitored by the Alliance is listed below:

HR 635 by Rep. Baca (D-CA)

Description: Establishes the National Commission on State Workers' Compensation Laws.

STATUS: Referred to the House Committee on Education and Labor on January 22, 2009.

HR 991 by Rep. Gutierrez (D-IL)

Description: *Consumer Fairness Act of 2009* - Amends the Consumer Credit Protection Act to treat as an unfair and deceptive trade act or practice under federal or state law any written provision in a consumer transaction or contract that requires binding arbitration to resolve a controversy arising out of or related to the transaction or contract, or the failure to perform any part. Declares such a provision unenforceable. Permits a written agreement to determine an existing controversy by binding arbitration if the parties agree after the controversy has arisen.

STATUS: Referred to the House Committee on Financial Services on February 11, 2009.

HR 1020 by Rep. Johnson (D-GA)

Description: *Arbitration Fairness Act of 2009* - Declares that no pre-dispute arbitration agreement shall be valid or enforceable if it requires arbitration of: (1) an employment, consumer, or franchise dispute, or (2) a dispute arising under any statute intended to protect civil rights.

Declares, further, that the validity or enforceability of an agreement to arbitrate shall be determined by a court, under federal law, rather than an arbitrator, irrespective of whether the party resisting arbitration challenges

the arbitration agreement specifically or in conjunction with other terms of the contract containing such agreement. Exempts from this Act arbitration agreements in collective bargaining agreements.

STATUS: Referred to the Subcommittee on Commercial and Administrative Law on March 16, 2009.

HR 1237 by Rep. Sanchez (D-CA)

Description: *Fairness in Nursing Home Arbitration Act* - Provides that a pre-dispute arbitration agreement between a long-term care facility and a resident (or anyone acting on the resident's behalf) shall not be valid or specifically enforceable.

STATUS: Referred to the House Committee on Judiciary on February 26, 2009.

Referred to the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law and the Subcommittee on Crime, Terrorism, and Homeland Security on July 23, 2009.

Referred to the Subcommittee on Commercial and Administrative Law on March 16, 2009.

HR 3590 by Rep. Rangel (D-NY)

Description: *Patient Protection and Affordable Care Act* - This is the vehicle for the version of the health care reform proposals that will be debated in the Senate.

STATUS: Passed Senate with an amendment and an amendment to the Title by 60-39 vote on December 24, 2009.

HR 3962 by Rep. Dingell (D-MI)

Description: *Affordable Health Care for America* - House proposal for health care reform.

STATUS: Read the second time. Placed on the Senate Legislative Calendar under General Orders. Calendar No. 210.

S 512 by Sen. Martinez (R-FL)

Description: *Fairness in Nursing Home Arbitration Act* - Provides that a pre-dispute arbitration agreement between a long-term care facility and a resident (or anyone acting on the resident's behalf) shall not be valid or specifically enforceable.

STATUS: Read twice and referred to the Committee on the Judiciary on March 3, 2009.

Important Compliance Information for Nonsubscribers

State law requires employers in Texas that do not carry workers' compensation insurance to file DWC Form-5 with the Texas Department of Insurance-Division of Workers' Compensation (TDI-DWC). Additional information on DWC Form-5 is available at:

<http://www.tdi.state.tx.us/forms/dwc/dwc005nocov.pdf>

Nonsubscriber employers with four or more employees are also required to use form DWC Form-7 to report each work-related injury resulting in more than one day of lost time, all occupational diseases of which the employer has knowledge (regardless of lost time), and all fatalities occurring during the calendar month. The completed form reporting all such injuries that have occurred during a calendar month must be filled with the TDI-DWC no later than the 7th day of the following month. For more information on DWC Form-7 go to: <http://www.tdi.state.tx.us/forms/dwc/dwc7.pdf>.

Failure to comply with either requirement is an administrative violation and could result in administrative penalties. The Alliance encourages its members and all nonsubscribers to comply with these requirements.

Links to DWC-Forms 5 and 7 are available on the Alliance Web site at: www.nonsubscriberalliance.org.

Future Board Meetings (All calls are 1:00 p.m. CST)

- **January 20, 2010 – Conference call**
- **March 17, 2010 – Conference call**
- **May 19, 2010 – Conference call**
- **July 21, 2010 – Conference call**
- **September 15, 2010 – Conference call**
- **October 15, 2010 – Annual meeting in Dallas**



The Texas Alliance of Nonsubscribers

An employer-driven, nonprofit trade association dedicated to ensuring that nonsubscription interests are better prepared, more cohesive, and strategically proactive in preserving their choice to manage occupational injury claims.

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