

EXHIBIT 78

The 2010 Affordable Care Act (ACA) will undeniably benefit non-Coal Act Patriot retirees. By implementing healthcare exchanges, expanding Medicaid, and strengthening Medicare, the ACA will enhance the quality, availability, and affordability of healthcare for retired and elderly persons. Indeed, the ACA's reforms will benefit both non-Coal Act early retirees—*i.e.*, Patriot retirees who are under the age of 65—and non-Coal Act retirees who are age 65 or older.

First, Patriot early retirees will have access to healthcare exchanges, which will open on January 1, 2014, and which will offer affordable healthcare plans containing safeguards to protect the interests of retired and elderly persons. Qualified plans on the exchanges must:

- accept all applicants;¹
- provide essential health benefits (e.g., coverage for emergency services, hospitalization, mental health, prescription drugs, rehabilitative and habilitative services, laboratory services, preventive and wellness services, chronic disease management);²
- not deny coverage based on pre-existing conditions;³
- not unjustifiably rescind coverage;⁴
- contain defined limits on variations in premiums based on age (*i.e.*, a maximum 3-to-1 ratio between insurance premiums for the oldest and youngest);⁵
- have no lifetime or annual limits on coverage;⁶

Based on such protections, the American Association of Retired Persons (AARP) has concluded that “implementation [of the ACA] promises to reduce the financial and health risks currently faced by millions of adults age 50 to 64.”⁷

Furthermore, contrary to the UMWA's suggestion, Patriot early retirees will not be categorically barred from receiving premium tax credits for purchasing qualified plans on the exchanges. Although the ACA expressly disqualifies “employees” who are eligible for an “employee-sponsored plan” from premium tax credits (unless the plan is not affordable or does not provide minimal value), the ACA does not expressly disqualify retirees who are eligible for a retiree-only VEBA.⁸ And assuming *arguendo* that Patriot's retiree-only VEBA is deemed to provide “minimum essential coverage,” the plain terms of the statute would nonetheless entitle certain retirees to premium tax credits. If a retiree's required contribution with respect to the plan exceeds 9.5% of the retiree's household income (meaning that the plan is not affordable), or if

¹ 42 U.S.C. § 300gg-1.

² 42 U.S.C. § 18022.

³ 42 U.S.C. § 300gg-3.

⁴ 42 U.S.C. § 300gg-12.

⁵ 42 U.S.C. § 300gg.

⁶ 42 U.S.C. § 300gg-11.

⁷ Gerry Smolka et al., *Health Insurance Coverage for 50-to-64-Year-Olds*, Insight on the Issues No. 59, American Association of Retired Persons Public Policy Institute, at 1 (Feb. 2012), http://www.aarp.org/content/dam/aarp/research/public_policy_institute/health/Health-Insurance-Coverage-for-50-64-year-olds-insight-AARP-ppi-health.pdf.

⁸ See 26 C.F.R. § 1.36B-2(a)(2) (stating that an individual eligible for “minimum essential coverage” is not entitled to a premium tax credit, but noting exceptions); *id.* § 1.36B-2(c)(1) (defining “minimum essential coverage” as coverage under “an employer-sponsored plan”); *id.* § 1.36B-2(c)(3) (stating that an “employee who may enroll in an eligible employer-sponsored plan” is “eligible for minimum essential coverage under the plan only if the plan is affordable and provides minimum value” (emphasis added)); see also 26 U.S.C. § 500A(f) (“The term ‘eligible employer-sponsored plan’ means, *with respect to any employee*, a group health plan or group health insurance coverage offered by an employer *to the employee*.” (emphasis added)).

the plan's share of the total allowed costs of benefits provided under the plan is less than 60% of such costs (meaning that the plan does not provide minimum value), then the retiree will be entitled to the tax credit—provided that the retiree's household income is between 100% and 400% of the federal poverty level (FPL) and the retiree is not eligible for Medicaid.⁹

Second, low-income early retirees will have access to Medicaid, which the ACA has expanded. Beginning in 2014, Medicaid will include individuals between age 19 and age 64 with incomes up to (effectively) 138% of FPL, regardless of whether they have dependent children.¹⁰

Third, the ACA will reform Medicare and thereby benefit Patriot retirees who are age 65 or older. As with early retirees under age 65, the AARP has advised that “[i]f you are 65 or older[,] the health care law benefits you in several ways.”¹¹ Since the ACA was enacted, for example, ACA reforms have saved more than 6.3 million people with Medicare over \$6.3 billion on prescription drugs. The ACA has made prescription drug coverage more affordable by gradually closing the so-called “donut hole”—that is, the gap in coverage where beneficiaries must pay the full cost of their prescriptions out of pocket. Medicare Part D enrollees received a \$250 check when the ACA was passed in 2010 and have continued to receive savings since then. In 2013, seniors in the donut hole are receiving a 52.5% discount on brand-name drugs and a 21% discount on generics. The savings on both brand-name drugs and generics will increase until the gap is closed in 2020.¹²

The ACA has not only made Medicare more affordable, but has also improved the program by expanding preventive care coverage. Seniors with Medicare Part B now have access to vital preventive services—such as annual wellness visits, mammograms, cholesterol checks, and cancer screenings—without having to pay deductibles or copayments.¹³ Additionally, under the ACA, enrollees in Medicare Advantage and Part D now have access to a wider range of high-quality plan choices, including more four- and five-star plans.¹⁴

⁹ See 26 U.S.C. § 36B(c); 26 C.F.R. § 1.36B-2(c)(3); see also Present Law and Background Relating to the Tax-Related Provisions in the Affordable Care Act Scheduled for a Public Hearing Before the Subcommittee on Oversight of the Committee on Ways and Means on March 5, 2013, Staff of the Joint Committee on Taxation, JCX-6-13, 2013 WL 865992 (I.R.S. Mar. 4, 2013).

¹⁰ See Medicaid Program: Eligibility Changes Under the Affordable Care Act of 2010, 76 Fed. Reg. 51149 (HHS Aug. 17, 2011) (to be codified at 42 C.F.R. pt. 435); see also Smolka et al., *supra* note 7, at 9.

¹¹ *Fact Sheet: What the Health Care Law Means for People 65+*, American Association of Retired Persons (Jan. 2013), http://www.aarp.org/health/health-care-reform/info-01-2011/the_new_health_care_law_what_it_does_now_for_people_65.html.

¹² *Seniors Saved Over \$6 billion on Prescription Drugs as a Result of the Health Care Law*, HHS Press Office (Mar. 21, 2013), <http://www.hhs.gov/news/press/2013pres/03/20130321a.html>.

¹³ See 42 U.S.C. § 1395x; Kathleen Sebelius, *Affordable Care Act at 3: Increased Savings for Seniors*, HHS HealthCare.gov (Mar. 21, 2013), <http://www.healthcare.gov/blog/2013/03/anniversary-savings-for-seniors.html>.

¹⁴ HHS Press Office, *supra* note 12.