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ERISA Group Benefits Alert

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What Does The Supreme Court Decision on Health Care Reform Mean to You?

On June 28, 2012, in a 5-4 decision, the U.S. Supreme Court upheld the individual mandate provision of the 2010 Patient Protection and Affordable Care Act (PPACA) and struck down the portion of the law which would have effectively required an expansion of State Medicaid requirements. In light of the Court's decision, employers, plan sponsors and plan administrators must be prepared to comply with the requirements of PPACA. This newsletter outlines the significant legal requirements that become effective in 2012 and subsequent years and action items that employers, plan sponsors and plan administrators should consider.

What Is the Law Now

A summary of the significant requirements of PPACA as it stands today is set forth below.

2012 Requirements

- **Summary of Benefits and Coverage**

Summaries of benefits and coverage (SBC) must be provided to plan participants and beneficiaries for employer sponsored group health plans, regardless of whether the plan is insured or self-insured. SBCs are four page (front and back) documents that are written using terminology understandable by the average person, and must contain "culturally and linguistically" appropriate language. SBCs must be provided to current participants on the first day of the open enrollment period that begins on or after September 23, 2012. For new enrollees, the SBCs must be provided to them on the first day of the first plan year that begins on or after September 23, 2012. The SBC requirements apply to health insurance issuers beginning for group and individual health insurance coverage.

For self-insured employer sponsored plans, the obligation to create and distribute SBCs falls upon the employer. In addition, if health plans are materially modified during the middle of the year, then advance notice must be provided to participants at least 60 days prior to the date the modification becomes effective. Certain "excepted benefits" are not required to comply with the SBC requirements. Excepted benefits generally include stand-alone dental and vision plans, most health flexible spending arrangements (FSAs) and retiree only plans.

For more information on the SBC requirements, [click here](#) to see our June 19, 2012 *ERISA News Alert, Health Care Reform - Summary of Benefits and Coverage*.

- **Form W-2 Reporting of Health Care Costs**

The cost of employer-sponsored health coverage provided to an employee must be reported on the employee's 2012 Form W-2 (i.e., to be filed in early 2013). The cost is generally based on the COBRA rate. Certain health care costs are exempt from the new reporting requirements. Exempted costs generally include dental and/or vision coverage costs that are not integrated into a group health plan, employee contributions to FSAs, contributions to health savings accounts, health reimbursement arrangements, independent hospital indemnity or fixed indemnity coverage paid for on an after-tax basis by the employer, and employee assistance programs, on-site clinics and wellness programs that do not charge a COBRA premium.

Transition relief is provided for small employers who filed fewer than 250 Form W-2s in 2011. Although these small employers are not required to file the report for year 2012, they must comply with the new reporting requirement beginning for year 2013, unless additional guidance is issued for further relief.

- **Comparative Effectiveness Research Fees**

Employers sponsoring self-insured plans (and insurers of fully-insured plans) must pay "comparative effectiveness research fees" to fund the Patient-Centered Outcomes Research Institute. The fees are \$2 per average number of enrollees/lives (and \$1 for the 2012 policy/plan years).

- **Medical Loss Ratio Rebates**

PPACA requires insurers to spend a minimum percentage of premium dollars each year on claims and activities to improve health care quality. Generally, the percentage for large group insurers is 85%, and the percentage for individual and

small group insurers is 80%. This percentage is called a Medical Loss Ratio. If the Medical Loss Ratio is not achieved, then insurers must provide rebates to policyholders. Plans receiving these rebates will need to decide how to handle these rebates as they may be plan assets subject to fiduciary requirements.

2013 Requirements

- **Cap on Health FSA Contributions**

Beginning January 1, 2013, employees' contributions to FSAs will be limited to \$2,500 per year, indexed for inflation increases.

- **Additional Medicare Payroll Taxes**

Beginning in year 2013, an additional 0.9% Medicare payroll tax is imposed on wages in excess of \$250,000 for joint return filers (\$200,000 for others). Employers are partially responsible for collecting and remitting these taxes.

- **Medicare Contribution Tax**

Beginning in year 2013, a 3.8% Medicare contribution tax is imposed on unearned income for joint return filers with modified adjusted gross income in excess of \$250,000 (\$200,000 for singles and \$125,000 for married filing separately). Unearned income generally means net investment income from interest, dividends, annuities, royalties and rents, and capital gains, as well as income from a business that is considered a passive activity, or a business that trades financial instruments or commodities.

- **Notice on Exchanges**

By March 1, 2013, employers must provide notices to employees regarding the upcoming exchanges.

2014 Requirements

Beginning in 2014, the following provisions will take effect:

- **Individual Mandate and Exchange**

The individual mandate requires most U.S. citizens and legal residents to have "minimum essential" health insurance coverage or to pay a penalty. State health

exchanges will be established in order to simplify insurance policy purchases for individuals and small employers of 100 or fewer employees. The exchanges will have a variety of insurance options to satisfy the individual mandate. For those states that fail to establish an exchange, the Federal government will step in and establish an exchange.

- **Employer Mandate**

The law does not require employers to offer health insurance coverage to their employees. However, large employers (generally, employers with 50 or more full-time employees) will be subject to a penalty beginning in 2014 if they do not offer coverage, offer coverage that is not affordable, or offer coverage that does not meet the "minimum essential" standard. Insurers (or, employers for self-insured plans) who provide minimum essential coverage to individuals will have the duty to report certain information to the Treasury and to such individuals.

- **Other Requirements**

In addition, beginning in 2014, plans must accept individuals with pre-existing conditions; plans must remove all annual limits on essential benefits; and employers and health insurance issuers may not apply more than 90-day waiting periods to begin coverage.

2018 "Cadillac Tax"

In 2018, insurers (plan administrators for fully-insured plans) of health plans will be subject to a 40% excise tax on the value of individual plans that exceed an annual amount of \$10,200 and on the value of family plans that exceed an annual amount of \$27,500 (these amounts will be adjusted for inflation).

Action Items for Employers, Plan Sponsors and Plan Administrators

Although the future of PPACA is unknown due to the upcoming election, the law is in place regardless of the ongoing political debates. Employers, plan sponsors and plan administrators must be prepared to comply with the law and should take the following actions:

- Ensure procedures are in place to gather, report and provide the cost of health care on 2012 Form W-2s.
- Update plans, summaries and open enrollment materials to reflect the reduction on health FSA limits.

- Employers must be prepared to withhold the increased Medicare payroll taxes.
- Finalize summaries of benefits and coverage.
- Review comparative effectiveness research fees requirements.
- Identify whether health insurance plans are affordable and available.
- Prepare to receive Medicare Loss Ratio rebate amounts for 2011 insured benefit coverage.
- Communicate with employees and plan participants.



Please note that this *Benefits Alert* only highlights the most significant changes in the law. The details of these changes are complex and beyond the scope of this Alert. We look forward to discussing these changes and how they may impact your plans with you. Please do not hesitate to contact any of the following members of our Employee Benefits and Executive Compensation Practice if you have any questions or if you would like additional information.



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