June 29, 2012

Impact of Supreme Court Affordable Care Act Decision on Group Health Plan Sponsors

In a 5-to-4 decision yesterday, the United States Supreme Court upheld President Barack Obama's signature legislation on healthcare reform, the Patient Protection and Affordable Care Act ("PPACA"). What does this mean for plan sponsors? As a result of this decision, plan sponsors must continue to administer their group health plans to comply with PPACA. Outlined below are the PPACA requirements that require plan sponsor action now, because they are effective either this year or early in 2013, as well as recommended action steps: *Action Needed Now*

1. Summary of Benefits and Coverage ("SBC") - Plan sponsors of group health plans will be required to provide an SBC to all participants and beneficiaries enrolling or re-enrolling during open enrollment this year if the first date of their open enrollment period is on or after September 23, 2012. Plan sponsors that do not offer open enrollment or that permit certain individuals, such as new hires, to enroll outside an open enrollment period will be required to provide an SBC to all participants on the first day of the plan year after September 23, 2012 (for most plan sponsors this means January 1, 2013). Employers should have legal counsel review the SBC before it is distributed to participants and beneficiaries even if the employer is not drafting the SBC (i.e., it is being prepared by insurance providers for employers with insured group health plans or third-party administrators for employers with self-insured group health plans). In addition, employers that plan to distribute the SBC electronically should make sure that they are in compliance with the electronic delivery rules.
2. Form W-2 Reporting- Employers will be required to report the total cost of employer-sponsored health coverage on Forms W-2 for the 2012 calendar year. However, there is currently an exception for small employers (those that were required to file fewer than 250 Forms W-2 for 2011). Employers who think they may fit within the small employer exception should confirm they satisfy the small employer exception requirements. In addition, employers should consult with legal counsel to determine the plans that must be included and the available methods to calculate the aggregate cost that will be reported on Form W-2.
3. Comparative Effectiveness Fee - Insurers and plan sponsors of self-insured group health plans for plan years ending after September 30, 2012, and before October 1, 2013, will be required to pay a fee equal to $1 multiplied by the average number of covered lives. This fee increases to $2 the following year and is then indexed for inflation through to plan years ending before October 1, 2019. This fee is used to fund the Patient-Centered Outcomes Research Institute, which was established by PPACA. ***Employers with insured group health plans are not responsible for paying this fee.*** Plan sponsors of self-insured group health plans should confirm they are using one of the approved methods in calculating the average number of covered lives.
4. Flexible Spending Account Limits - Health FSA contributions will be limited to $2,500 in 2013 and indexed thereafter. For more details please see our prior alert dated June 7, 2012, at #. Employers should make sure that their plan documents have been amended to comply with the new Health FSA contribution limits.
5. Additional Medicare Tax - Effective January 1, 2013, an additional 0.9 percent Medicare tax will be imposed on wages and self-employment income for individuals who make more than $200,000 ($250,000 in the case of a joint return). Employers are required to withhold the additional Medicare tax only on the portion of the employee's wages in excess of $200,000 ($250,000 in the case of a joint return). Employers may also disregard the wages received by

an employee's spouse. Employers should begin reviewing their payroll systems to ensure that they are updated to capture these additional withholdings effective January 1, 2013.

In addition, the following items are due to be effective in 2013.

1. Quality of Care Reporting - Nongrandfathered group health plans and insurers will be required to submit to the Department of Health and Human Services annual reports that measure the quality of care. PPACA required HHS to issue regulations by March 23, 2012; however, we are still waiting for guidance from HHS.
2. Administrative Simplification - Beginning in 2013, health plans will be required to adopt and implement uniform standards and business rules for the electronic exchange of health information in order to reduce paperwork and administrative burdens and costs.
3. Retiree Drug Subsidy Deduction - Effective in 2013, plan sponsors that provide prescription drug coverage for retirees will no longer be able to deduct the federal retiree drug subsidies on their corporate tax returns.
4. Exchange Notices - No later than March 1, 2013, employers will be required to provide written notice to current employees and new hires about the existence of the state insurance exchanges. This notice must also provide that if the employer's share of the total allowed costs of benefits provided under its plan is less than 60 percent, the employee may be eligible for a premium credit. We are waiting for additional guidance on this provision, including whether a model notice will be issued.