

## HEALTH CARE REFORM U.S. SUPREME COURT UPHOLDS AFFORDABLE CARE ACT

Yesterday, June 28, 2012, the U.S. Supreme Court announced its historic decision upholding the federal health care law passed in 2010, known as the Affordable Care Act (ACA.) Significantly, the Court's ruling leaves in place all ACA provisions that affect employee benefit plans.

In its decision, the Court held that the individual mandate, which beginning in 2014 imposes a tax penalty on individuals who do not obtain health insurance coverage, was constitutional as an exercise of Congress' power to levy and collect taxes. The rest of the law's provisions with regard to employee benefit plans, provider payment reforms and the vast majority of the ACA are therefore upheld. However, the Court did limit Congress' power to require an expansion of Medicaid spending by the states. The effects of this second part of the decision is to give states more flexibility in whether to expand Medicaid without putting in jeopardy their existing federal Medicaid funding.

With the constitutional questions settled, we expect federal regulatory agencies to continue implementing the law. Upcoming compliance items for employer-provided health plans include the following:

- **Summary of Benefits and Coverage:** The ACA required all health plans to provide insureds and enrollees with a uniform Summary of Benefits and Coverage (SBC), for plan years beginning on or after September 23, 2012. The most recent guidance on the SBC is summarized in the following Q&A *Briefing*:

[http://www.keenan.com/news/brief/2012/BRF\\_20120309\\_SBCRequirements\\_KA.pdf](http://www.keenan.com/news/brief/2012/BRF_20120309_SBCRequirements_KA.pdf)

- **W-2 Reporting of Health Coverage:** This year, employers have been gathering information on the dollar value of health benefits provided to employees in preparation for the inclusion of that information on employees' W-2 forms early next year. For more details, please see our March *Briefing* at:

[http://www.keenan.com/news/brief/2012/BRF\\_20120328\\_W-2Requirements\\_KA.pdf](http://www.keenan.com/news/brief/2012/BRF_20120328_W-2Requirements_KA.pdf)

- **\$2,500 Limit on Flexible Spending Accounts (FSAs):** For plan years beginning in 2013, there will be a limit of \$2,500 on medical flexible spending accounts.
- **MLR Rebates:** By August of 2012, insurance carriers that have spent less than 85% of large group premium revenue (or 80% of small group premium revenue) on medical costs or quality improvement measures will owe a rebate to policyholders. 1.9 million Californians are expected to receive rebates this summer. The following two *Briefings* discuss how these rebates will be paid to both fully-insured governmental plans and fully-insured ERISA plans.

[http://www.keenan.com/news/brief/2012/BRF\\_20120531\\_MLRRebateGovernmentPlans\\_KA.pdf](http://www.keenan.com/news/brief/2012/BRF_20120531_MLRRebateGovernmentPlans_KA.pdf)

[http://www.keenan.com/news/brief/2012/BRF\\_20120531\\_MLRRebateERISAPlans\\_KA.pdf](http://www.keenan.com/news/brief/2012/BRF_20120531_MLRRebateERISAPlans_KA.pdf)

- **Clinical Effectiveness Research Fee:** The ACA established the Patient-Centered Outcomes Research Institute (PCORI), which conducts research to provide evidence-based information regarding the effectiveness of treatments to help patients and their health care providers make more informed health care decisions. The funding for this comes from a fee imposed on both fully-insured and self-funded plans. The fee will equal \$2 times the number of covered lives for policy years ending after September 30, 2012 through September 30, 2019. (Plans with policy years ending before October 1, 2013 will pay a fee of \$1 times the number of covered lives.)
- **Quality of Care and Cost Reporting:** Starting this year, non-grandfathered group health plans and health insurance issuers are required to provide a report to the U.S. Department of Health and Human Services and plan enrollees about plan benefits, costs or designs that provide incentives for certain cost-reduction strategies. Federal agencies have yet to issue regulations on this provision.

While plan sponsors are on track to continue compliance with statutory and regulatory requirements, there is still uncertainty regarding the ultimate fate of the ACA. Congressional Republicans and presidential candidate Mitt Romney have committed themselves to “repeal and replace” the law. The House of Representatives intends to hold a repeal vote in the next week. While a Democratic majority in the Senate will not likely take up that vote, the November 2012 election could change the makeup of the Senate, making a repeal vote more likely next year.

On July 3, 2012 and again on July 10, 2012, Keenan will host a free one-hour webinar: **Health Care Reform Ruling: What Now?** This webinar will detail the implications of the Court’s ruling, discussing the possibility of legislative change to the ACA after the November elections and providing a year-by-year ACA compliance checklist. To register for this important webinar, please click on the following link: [http://www.keenan.com/hcr\\_webinar\\_2012.html](http://www.keenan.com/hcr_webinar_2012.html)

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