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HEALTH CARE REFORM

Eye on Washington

U.S. SUPREME COURT UPHOLDS THE AFFORDABLE CARE ACT

ADP has been closely monitoring and preparing for the U.S. Supreme Court's (the "Court") opinion regarding the Patient Protection and Affordable Care Act (the "ACA"). As such, ADP is fully aware of the Court's ruling that the ACA is largely constitutional, including the individual mandate.

THE DECISION:

On Thursday, June 28, the Court released its landmark decision regarding the ACA. By a vote of 5-4, the Court ruled that the ACA's individual mandate is constitutional. This means that employers, group health plans and health insurers must continue to comply with the ACA's various mandates.

Specifically, the Court ruled that the individual mandate is constitutional under Congress's taxing power. Because the mandate was ruled constitutional under the taxing power, the Court did not need to reach a decision as to whether it was severable from other parts of the ACA. The Court slightly limited the ACA's Medicaid eligibility expansion provisions. The ACA had attempted to penalize states who chose not to expand the Medicaid eligibility by eliminating all Medicaid funding for those states, including preexisting Medicaid funding. The Court ruled that states could not be penalized for not expanding their Medicaid eligibility, meaning that they can continue to receive preexisting federal Medicaid funding.

What it Means to Employers

In the near term, employers and health insurers should continue to implement the ACA's various reforms and mandates. Mandates generally effective or coming into effect in 2013 include:

- Form W-2 reporting requirement on the value of health coverage (for the 2012 tax year);
- \$2,500 limit on employee contributions to health flexible spending accounts (FSAs) (for plan years beginning in 2013);
- Summary of Benefits and Coverage requirements (for open enrollment periods starting on or after September 23, 2012);
- Requirement for employers to notify employees of the availability of health insurance exchanges (March 2013);



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- Expansion of Medicare to include an additional 3.8% tax on the unearned income of high earners (for the 2013 tax year);
- 0.9% Medicare payroll tax increase on higher-income earners (for the 2013 tax year); and
- Insured plans covering 100 or more employees must maintain a loss ratio of no less than 85%, while insured plans covering fewer than 100 employees must maintain a loss ratio of no less than 80%. Self-insured benefit plans are not subject to these requirements.
 - o Insurers who have loss ratios lower than these requirements are required to provide premium rebates to the plan sponsor.
 - o The Department of Labor (DOL) has issued Technical Release 2011-04, providing guidance for ERISA-covered group health plans on the use of MLR-related rebates.

Note that the rules governing many of these mandates have not yet been drafted by the federal regulators.

Additional insurance mandates and market reforms become effective in 2014, including:

- The “play or pay” employer mandate; (NOTE: for employers planning on using the look-back methodology, it will be necessary to track time – on a calendar month basis – during 2013);
- Employer certification to the U.S. Department of Health and Human Services regarding whether its group health plan provides “minimum essential coverage”;
- Monthly determination of full-time employee status (employers with 50+ FTEs);
- Detailed reporting to the IRS of health coverage availability and cost to FTEs;
- Increase in permitted wellness incentives from 20% to 30%;
- For large employers (200+ employees), automatic enrollment of new employees in a group health plan (effective date unknown);
- 90-day limit on waiting periods;
- Coverage under non-grandfathered plans for certain approved clinical trials;
- Initial phase of the Medicare Part D “donut hole” fix, which will completely eliminate the Medicare Part D coverage gap by 2020;
- Guaranteed availability and renewability of insured group health plans;
- Complete prohibition on preexisting condition exclusions for enrollees aged 19 or older (prohibition has already taken effect for enrollees under age 19); and
- Complete prohibition on annual dollar limits.

By fall of 2013, exchanges will begin accepting enrollment information. These exchanges may be run by the state, the federal government or a hybrid of the two.



IN THE BUSINESS OF YOUR SUCCESSSM

HEALTH CARE REFORM

Eye on Washington

What the Court's Ruling on Medicaid Eligibility Means

The impact of the Court's ruling on Medicaid is that a state that does not expand its Medicaid eligibility provisions will lose increased funding provided under the ACA, but will not lose preexisting Medicaid funding. The decision also makes more employees potentially eligible for a federal subsidy for coverage in a health insurance exchange, thus increasing employers' exposure to the employer mandate.

The rules regarding federal premium subsidies for coverage obtained through a health insurance exchange generally consider an individual subsidy-eligible if he or she is not Medicaid-eligible and the employer either fails to offer a group health plan or the plan fails to meet certain quality and affordability standards. In 2014, the ACA calls for an expansion of Medicaid eligibility from incomes below 100% of the federal poverty level to incomes below 133% of the federal poverty level (really 138% of the federal poverty level due to an additional 5% income disregard provided under the ACA).

In states that do not expand their Medicaid eligibility, more employees will potentially be eligible for a federal premium subsidy for exchange coverage. For example, an individual whose income puts him or her at 120% of the federal poverty level will not be eligible for Medicaid if his state declines to participate in the ACA's Medicaid expansion. Such individual may put his employer at risk for a penalty under the "play or pay" employer mandate if the employer's plan fails certain quality and affordability standards (generally, if premiums for single coverage exceed 9.5% of the employee's W-2 Box 1 income or if the plan fails to provide at least a 60% "actuarial value").

Employers should continue to monitor ACA developments and work with trusted advisors who can provide them with the latest, up-to-date information on new ACA developments and assist them in their remaining compliant with the law.

To view the full Court decision, please visit: <http://www.supremecourt.gov/opinions/11pdf/11-393c3a2.pdf>.

ADP recognizes that the health and productivity of American workers is critical to the overall health of our nation and our economy, and that providing health coverage and support for personal health – through whatever means – is a critical component of effective Human Capital Management. As the trusted business partner to hundreds of thousands of organizations of all sizes and types, ADP remains fully committed to helping all our clients prepare for their continuing responsibilities under the requirements of the ACA, and assisting them in their implementation of ACA's various reforms and mandates moving forward.

ADP's mission is focused on helping our clients succeed, regardless of judicial, legislative, regulatory or market developments.



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July 17th at 3pm EST

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