



FRIDAY, AUGUST 19, 2011

HEALTH CARE REFORM UPDATE

RECENT EVENTS IN HEALTH CARE REFORM

In this issue of *Health Care Reform Update* we offer an overview of recent developments related to the health care reform legislation including a recent ruling on the individual mandate, “safe harbor” rules for affordability tests, and an update on the Early Retiree Reinsurance Program (ERRP). The next issue of our *Health Care Reform update* will be published next week to address the newly released Uniform Benefit Summary regulations.

Trion remains committed to working closely with you to help you understand how your plan designs and costs may be impacted by health care reform and what steps you are required to take to comply with the legislation. We hope you continue to find our updates helpful and invite you to share your questions and comments by emailing us at health.reform@trion.com or calling 610-945-1198. To view past issues of our *Health Care Reform Update*, visit <http://www.trion.com/healthreform>

U.S. Appeals Court Rules Against Individual Mandate in Health Care Reform Law

The day after President Obama signed the Patient Protection and Affordable Care Act (PPACA) into law in March 2010, 26 states filed a suit challenging the constitutionality of the law, primarily focusing on the individual mandate provision and the expansion of Medicaid. Late last year a Florida U.S. District Court found in favor of the states and declared the entire Health Reform Law unconstitutional. Progressing through the appeal process, the 11th Circuit Appeals Court in Atlanta late last week issued its opinion on the states’ lawsuit.

Effective in 2014, the Individual Mandate requires that all Americans purchase health insurance or pay a penalty. This mandate is considered an important element of the entire law because it reduces the number of uninsured Americans and the costs associated with care for the uninsured which is otherwise borne by all taxpayers. The Mandate is also considered important to the financial viability of the Health Insurance Exchanges and other market reform provisions.

The 11th Circuit of the U.S. Court of Appeals issued a [ruling](#) last week that the PPACA mandate requiring individuals to purchase health insurance is unconstitutional. The Court decided that “Congress cannot...mandate that individuals enter into contracts with private insurance companies for the purchase of an expensive product from the time they are born until the time they die” (p.206 of ruling). The Court, however, found that this mandate can stand alone from other PPACA requirements and that all other provisions of the law are legal and in place. The 11th Circuit opinion also was the first bi-partisan decision; in the 2-to-1 ruling, a judge appointed by a Republican president joined one named by a Democrat to write the majority opinion.

This August decision conflicts with the 6th Circuit Court’s opinion, issued in June 2011 which upheld a lower ruling that the Individual Mandate was a valid exercise of Congress’s power under the Commerce Clause of the Constitution. A third appellate challenge to PPACA by the State of Virginia in the 4th Circuit Court of Appeals is expected to be ruled on within the next few weeks.

Due to the conflicting opinions between the 6th Circuit and the 11th Circuit on the constitutionality of the individual mandate, this issue is expected to be decided by the U.S. Supreme Court during the 2011-12 session. It is also expected that the conflicting opinions will affect how quickly states prepare for the health exchanges and implement Medicaid changes while they await the final legal outcome.

IRS Announces Development of “Safe Harbor” Rules for “Affordability” Test

Starting in 2014, employers could be liable for an annual \$3,000 penalty if their medical plan does not satisfy minimum benefit and affordability tests established in the health reform law. The affordability test applies to employees whose income makes them eligible for federal subsidies and requires that the employer health plan employee contribution cannot “exceed 9.5% of **household** income.” A major problem with administering this “affordability” rule is that employers generally have no way of knowing their employees’ “**household** income”.

The IRS now has published “safe harbor” rules for the test. These new rules give employers the ability to base their affordability calculations on a known quantity: their employee’s **W-2 wages**. The 9.5% of income test also will be applied only to single coverage, allowing employers to charge higher contributions for family coverage.

Early Retiree Reinsurance Program (ERRP) Update

The Department of Health and Human Services (HHS) has issued new guidance on how plan sponsors can demonstrate they are not using reimbursements under the ERRP as general revenue. Plan sponsors are required to maintain their level of contributions for health benefits relative to a “baseline year.” The new rules allow Employers to Define the “Baseline Year” using the following guidelines:

- the plan year most recently ended before the employer submitted ERRP application,
- that plan year combined with up to four of the immediately preceding plan years (the average of the contributions for those years will be taken); or
- a plan year ending after June 1, 2010 for which the budget was finalized before June 1, 2010.

Additionally, the rules including the following:

- **Measurement of Contributions:** If a plan sponsor cannot determine the extent to which its contributions funds benefits, a “reasonable methodology” to estimate may be used.
- **Comparison Methodologies:** Allows plan sponsors flexibility in determining how to compare current contributions, net of ERRP reimbursements, to contributions in the baseline year. The comparison may be based on total dollars or per capita dollars.
- **Years when requirement must be met** (the contribution requirement in plan years for which it receives a reimbursement and during which it applies a reimbursement for a permitted purpose): The new guidance does not set a limit on how far into the future a reimbursement may be applied.

Plan sponsors should be prepared to confirm that they are compliant and be able to justify their approach if audited.

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