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Health Care Reform Implementation in 2012

BACKGROUND: The Patient Protection and Affordable Care Act (PPACA) was passed on March 23, 2010. Three federal agencies exercise regulatory authority over PPACA through regulations and sub-regulatory guidance – the Department of Labor (DOL), the Department of Health and Human Services (HHS) and the Internal Revenue Service (IRS). PPACA is, by all accounts, an unprecedented piece of federal legislation and a shift in national health care philosophy. With that shift comes significant questions about PPACA’s impact on Idaho employers and health insurance carriers.

On the judicial front, the U.S. Supreme Court is expected to decide a split between federal appeals courts on the constitutionality of PPACA. The court has accepted an appeal from the Obama administration defending the law and urging it be upheld and two separate appeals by 26 states, including Idaho, and an appeal from the National Federation of Independent Business challenging the law.

“It was necessary for the NFIB to dedicate time and resources to this appeal of PPACA, to protect the interests of small business, including the small businesses of Idaho which are critical to this state’s growth and economic development,” said Suzanne Budge, Idaho state director for NFIB.

The Supreme Court will hear oral arguments on these cases in March. The court has divided the case into four distinct legal issues – the minimum coverage provision (individual mandate), the anti-injunction act issue (whether the case is “ripe” for review), the severability issue (whether the remainder of the law can stand if one provision is struck down) and the Medicaid expansion issue. On December 8th, the court issued a briefing schedule for each issue, making the last filing deadline March 13.

On the legislative front, Congress has made modest changes to PPACA, such as the elimination of the CLASS Act program, a federal long-term care program established under PPACA. Other aspects of PPACA are also in jeopardy simply by Congress’s legislative budgeting and funding process. And, of course, there will be an election in 2012 that could have an impact on the legislative appetite for health care reform.

All that said, PPACA was passed by Congress and signed by President Obama, making it a governing federal law, subject to regulation and enforcement by the DOL, HHS and IRS. The law structured an eight-year implementation period, ending in 2018.

Beginning in 2010, certain provisions of PPACA were implemented by employers and insurers, such as adult dependent coverage, elimination of many caps on coverage levels and the provision of first dollar preventive coverage. There are also significant changes happening in 2014, including the launch of various health insurance exchanges, including Idaho’s health insurance exchange, and the employer “shared responsibility” penalties for failing to provide minimum essential coverage and for failure to provide affordable health care

coverage. In 2018, employers who offer high-cost health plans will be assessed a “Cadillac tax” for the value of such health plans above designated thresholds for individual and family coverage.

While 2012 is not a milestone implementation year under PPACA, compared to 2014 and 2018, the accompanying calendar shows a number of changes that Idaho employers should be aware of and prepared to implement.

Questions from Idaho employers

What are the penalties if my company chooses a wait-and-see approach to PPACA through 2012?

In 2011, PPACA provides for a penalty of \$100 per day, per affected participant, for failure to comply with “any insurance market reform.” There is no tolling of the requirements of PPACA during the Supreme Court challenge. In 2012, employers face an additional penalty of \$1,000 per failure to provide a summary of benefits coverage. The “comparative effectiveness fee” also takes effect.

Since “grandfathered” health plans do not have to comply with certain provisions of PPACA, how do I know if my plan is grandfathered?

Health plans that existed on March 23, 2010 may be grandfathered if they have not lost their grandfathered status. Plans may lose their grandfathered status if they decrease benefits or increase the participants’ total cost for health care, or in other ways. It is a complicated analysis for which an employer should seek professional guidance. If a plan successfully retains its grandfathered status, it must notify its participants of this status.

Who is responsible for finding an independent review organization for my company’s health plan?

If your plan is insured in Idaho, the insurance carrier is responsible. The Idaho Department of Insurance’s process for external reviews was approved by the DOL in August. If your company has a self-insured plan, it is the plan’s responsibility. The DOL has, however, clarified that a third-party administrator may contract on behalf of a group health plan. However, when this occurs the TPA is acting as an agent of the plan and the plan still has the ultimate compliance obligation.