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Health Care Reform – Full Steam Ahead!

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In a dramatic and narrowly reasoned 5-4 ruling yesterday, the Supreme Court upheld the Patient Protection and Affordable Care Act (PPACA). Media pundits and legal analysts are combing the complicated opinion, studying each nuance and offering thoughts as to how the ruling fits into America's social, political and historical context. For most employers offering (or not!) health care plans to their employees, however, the meaning of the decision is simple – health care reform is likely here to stay.

The result of yesterday's opinion is that PPACA is considered constitutional. Accordingly, those provisions of health care reform already in place will continue. Provisions that may affect employer plans include:

- Children may remain on their parents' health insurance, tax-free, until age 26;
- Employers cannot drop coverage if an individual gets sick or makes an unintentional mistake on his/her application for insurance coverage;
- Plans cannot impose exclusions for pre-existing conditions on enrolled individuals under age 19;
- States are required to begin laying the groundwork for health insurance exchanges. The exchanges will make available to everyone, including individuals purchasing insurance on their own and those working for small businesses, the same economies of scale of administration, marketing, and risk pooling available to workers in large businesses, thereby making insurance more affordable to all;
- States are required to create a temporary "high-risk pool" to provide coverage until 2014, when the exchanges become operational, for eligible individuals who have been denied health care coverage on the basis of pre-existing conditions;
- Plans must cover and eliminate co-pays for some preventative services;
- Enhanced claims procedures apply;
- Plans cannot impose lifetime dollar limits on essential benefits and are restricted from imposing annual dollar limits on essential health benefits;
- Employers must report the value of health insurance on the employee's W-2;
- Insurers are required to limit the ratio of premiums spent on

administrative costs compared to medical costs (called the medical loss ratios, or MLRs); and

- Small businesses may be entitled to tax credits that make it easier to provide coverage to workers, while also reducing premiums.

Likewise, provisions of PPACA scheduled to be implemented in the future will go forward as planned. These include the major expansion and reform provisions of health care reform that will generally take effect in 2014, including:

- Individuals must purchase insurance or pay a tax penalty;
- Large employers (50+) must offer health care coverage for full-time employees or may be subject to a penalty tax (the "pay or play penalty");
- Health flexible spending accounts will be limited to \$2,500 per year (effective in 2013);
- Plans may not impose pre-existing condition limitations;
- States must possess operational health insurance exchanges; and
- Plans will be prohibited from imposing annual dollar limits on essential health benefits.

While the Supreme Court's actions yesterday resolve the constitutionality of the PPACA, the controversy surrounding the law and challenges to it will continue. Mitt Romney has vowed, if elected, to repeal the PPACA on the first day of his term by sending out waivers to all 50 states to keep them from having to follow the law, and Congress could act to repeal any or all pieces of the monumental legislation. With only 129 days to the election, the Supreme Court's decision is only one volley in a greater debate. We at Holland & Hart LLP will continue to follow all health care reform developments affecting our employer clients, and to provide timely updates as they develop.

For questions regarding this update, please contact the Employee Benefits group.

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