

## Publications

### *Labor and Employment Alert: Summaries of Benefits and Coverage on Hold and Other Employee Benefits News*

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#### Summaries of Benefits and Coverage on Hold

A new FAQ posted to the Department of Labor's website puts a temporary hold on the creation and distribution of Summaries of Benefits and Coverage (SBCs).

In August, the Department of Labor, the Internal Revenue Service, and the Department of Health and Human Services (the "Departments") published proposed regulations and templates regarding a new standardized explanation of medical benefits created by the Patient Protection and Affordable Care Act ("PPACA"). As we explained in a previous Vorys Client Alert, the guidance left many unanswered questions, and the templates were in some ways inappropriate for self-insured group health plans. Nonetheless, the proposed regulations directed group health plan sponsors to provide SBCs to individuals enrolling in health coverage on and after March 23, 2012.

The Departments have now granted plan sponsors a reprieve. According to the new FAQ, "until final regulations are issued and applicable, plans and issuers are not required to comply with [the SBC mandate]. It is anticipated that the Departments' final regulations, once issued, will include an applicability date that gives group health plans and health insurance issuers sufficient time to comply."

#### Complaints about Employee Benefits Made Easy

The Department of Labor (DOL) set up a new consumer assistance webpage where individuals can submit complaints and report problems with their employee benefits. An individual using these tools will be asked to provide employer contact information.

The summary plan descriptions and other materials describing your company's employee benefit plans should include clear contact information for the internal department responsible for employee benefit matters. Managers should know to route inquiries to that

internal department. If you receive an inquiry from a DOL representative in response to a complaint, it is important to follow up promptly and thoroughly. Please let us know if we can be of assistance. We want to make sure that a small misunderstanding doesn't turn into a big problem.

**No State Taxation of Adult Children's Health Coverage**

As you probably know, federal law now requires all group health plans to offer coverage to employees' children up to age 26. Such coverage is not subject to federal income tax, even if an adult child is not the employee's tax dependent, so long as the child is related to the employee by birth, adoption, placement for adoption, or is a step-child or foster child.

Initially, states were inconsistent in their tax treatment of adult children's coverage, but that has changed. We are pleased to tell you that – finally – all of the states now conform to the federal tax treatment on this issue such that no state taxes the value of group health coverage provided to these adult children. The last state to conform its tax code was Wisconsin. On November 4, 2011, Wisconsin amended its tax laws with retroactive effect to January 1, 2011. Please let us know if you want further information on this or other state tax issues related to employee benefits.

**HIPAA Audits Coming**

Now might be a good time to review your group health plan's HIPAA compliance. The Office for Civil Rights at the Department of Health and Human Services has launched an audit program to test compliance with HIPAA's privacy and security rules. In addition, over the past year, several covered entities have been hit with financial penalties for the failure to properly implement HIPAA's protections. Although doctors, hospitals, pharmacies, and insurers continue to receive most of the attention, health plans should also prepare for closer scrutiny.

**The Ohio Constitution, the U.S. Constitution, and the U.S. Supreme Court**

Ohio voters passed State Issue 3, amending the Ohio Constitution to state that "No federal, state, or local law or rule shall compel, directly or indirectly, any person, employer, or health care provider to participate in a health care system." However, due to the Supremacy Clause of the U.S. Constitution, federal law trumps the State constitution. Therefore, State Issue 3 has no legal impact on the obligation to comply with PPACA, which is the federal health care reform law.

However, any decision by the U.S. Supreme Court on the constitutionality of PPACA may impact its implementation. As you may have heard, the U.S. Supreme Court will decide whether PPACA's individual mandate (i.e., the requirement that we each have health coverage or pay a penalty) is constitutional. If they find that the individual mandate is not constitutional, the U.S. Supreme Court will consider whether the entire law falls, or whether the individual mandate can be "severed" so that the rest of the law survives. The U.S. Supreme Court's decision on PPACA is expected in June 2012.