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LEGISLATIVE UPDATE

by Jennifer Lunski, Esq.

At Woodruff-Sawyer, we offer frequent updates on legislative changes that impact employee benefit plans. Employers should review the updates to ensure their plans and policies are in compliance with the newest legislation and regulations. This update includes articles on the following topics:

1. HHS Issues Preventive Care Guidance
2. 9th and 11th Circuit Courts Rule on the Constitutionality of the Affordable Care Act (ACA)
3. HHS Issues Additional Guidance on Premium Tax Credits
4. HHS Exempts Stand-Alone HRAs from the Annual Limit Waiver Requirement
5. Health Care Reform Summary of Benefits and Coverage Guidance
6. Massachusetts Conforms State Tax Code to the Internal Revenue Code C
7. Rhode Island Passes Civil Union Law
8. San Francisco Issues 2012 Health Care Security Ordinance Rates

At Woodruff-Sawyer, we want to understand how The Patient Protection and Affordable Care Act (ACA) impacts our clients. In meeting with members of Congress and their staff we have learned that legislators on both sides of the political aisle are open to improving and revising ACA. Topics three through five above are proposed rules issued by the government. The government is actively accepting comments on these rules from the employer community. Our goal is to simplify ACA for you, in order to do so, we will be meeting with clients to get feedback on how ACA will affect employer plans. We will then pass on your message to federal and state government officials. Your experience as an employer with this legislation is instrumental in determining how we can help you navigate and comply with regulations. We

are advocates for you in actively shaping the future of your employee benefit plans as new options and changes occur at both the federal and state level. What are your thoughts on ACA and the most recent proposed regulations in this legislative update? Let us know your thoughts by visiting us on Facebook at www.facebook.com/WoodruffSawyer.

HHS ISSUES PREVENTIVE CARE GUIDANCE

As you are likely aware, the Affordable Care Act (ACA) requires non-grandfathered health plans to provide preventive services without cost sharing for plan years beginning on or after September 23, 2010. Recommendations on preventive services come from various government agencies, committees and task forces. The U.S. Preventive Services Task Force is the source for many of the recommendations and they are listed here: <http://www.healthcare.gov/center/regulations/prevention/taskforce.html>.

The United States Department of Health and Human Services (HHS) issued guidance on August 1, 2011 requiring health insurance plans to cover additional women's preventive services. The new requirements apply to non-grandfathered plans beginning with the plan year that starts on or after August 1, 2012 (for a calendar-year plan, January 1, 2013). Under the new guidelines, the following additional women's preventive services must be covered without cost-sharing:

- Well-woman visits;
- Screening for gestational diabetes;
- Human papillomavirus (HPV) DNA testing for women 30 years and older;
- Sexually-transmitted infection counseling;
- Human immunodeficiency virus (HIV) screening and counseling;
- FDA-approved contraception methods and contraceptive counseling;



- Breastfeeding support, supplies, and counseling; and
- Domestic violence screening and counseling.

Under the regulations, religious institutions that offer insurance to their employees may choose not to cover contraception services.

Keep in mind that plans which use a network of providers to provide preventive services are not required to cover preventive services delivered by out-of-network providers. Cost-sharing can also be imposed on out-of-network preventive services.

For additional information on the HHS guidelines for expanding women's preventive services, please visit: <http://www.healthcare.gov/news/factsheets/womensprevention08012011a.html>.

While the preventive guidance regulations have been released on women's health services, there are issues that may arise that are not addressed in the regulation. Non-grandfathered health plans may require additional guidance before taking action. Your Woodruff-Sawyer representatives will work with you to ensure that your plans are in compliance with this new regulation.

9TH AND 11TH CIRCUIT COURTS RULE ON THE CONSTITUTIONALITY OF THE AFFORDABLE CARE ACT

Two additional Circuit Courts of Appeal have ruled on the constitutionality of the mandate which requires individuals to maintain health insurance or pay a penalty. The 9th Circuit Court of Appeals ruled that there was no standing to challenge ACA. The 11th Circuit Court of Appeals held that Congress exceeded its power to regulate interstate commerce with the 2014 individual mandate. However, the 11th Circuit ruled that the entire law should not be thrown out; only the individual mandate provision should be eliminated. Your Woodruff-Sawyer representatives will continue to monitor legal decisions as they occur. Until the Supreme Court hears the case of whether or not ACA is constitutional, we are advising clients to comply with the law.

HHS ISSUES ADDITIONAL GUIDANCE ON PREMIUM TAX CREDITS

Health care reform requires that Exchanges be created in each state by 2014. Certain individuals will be eligible for premium tax credits for the coverage they purchase through the Exchange. On August 12, 2011, HHS issued proposed regulations providing guidance on individual eligibility and enrollment in a qualified health plan. The IRS has also issued proposed regulations to implement the premium tax credit. The guidance clarifies that the premium tax credit is available to individuals and families with incomes between 100% and 400% of the federal poverty level. The poverty level limits are updated yearly and have been issued for 2011 as follows:

Family Size	100%	200%	300%	400%
1	\$10,890	\$21,780	\$32,670	\$43,560
2	\$14,710	\$29,420	\$44,130	\$58,840
3	\$18,530	\$37,060	\$55,590	\$74,120
4	\$22,350	\$44,700	\$67,050	\$89,400
5	\$26,170	\$52,340	\$78,510	\$104,680
6	\$29,990	\$59,980	\$89,970	\$119,960
7	\$33,810	\$67,620	\$101,430	\$135,240
8	\$37,630	\$75,260	\$112,890	\$150,520

The guidance clarifies that the amount of the premium tax credit is tied to the amount of the premium. Therefore, older individuals that have a higher premium will receive a greater credit. Moreover, the guidance states that the amount of the premium tax credit is fixed based on a benchmark plan.

Based on the additional guidance, in 2014, if an employee eligible for the premium tax credit opts to purchase coverage through a state Exchange rather than through his/her employer, penalties may apply to the employer. Your Woodruff-Sawyer representatives can assist you in projecting what percentage of your workforce will be eligible for the premium tax credit and any potential penalties upon request. For additional information on calculating penalties, visit: http://www.nrf.com/modules.php?name=Pages&sp_id=1290.

HHS EXEMPTS STAND-ALONE HRAS FROM ANNUAL LIMIT WAIVER REQUIREMENT

As we mentioned in our July Legislative Update, HHS issued additional guidance related to the Annual Limit Waiver Application Process stating that waivers needed to be filed



with the U.S. Department of Health and Human Services (HHS) by September 22, 2011.

It has been an open question about whether or not stand-alone Health Reimbursement Arrangements (HRAs) are subject to ACA's restrictions on annual limits for essential benefits. Since the amount employers contribute to HRAs is less than the ACA's thresholds for minimum annual dollar limits on benefits, the industry questioned whether, or how, stand-alone HRAs would fit in the annual limit framework. It was also unclear whether these arrangements could or should utilize the annual limits waiver program HHS put in place for mini-med and other limited benefit plans.

The clarification, issued in a guidance memorandum, advises that stand-alone HRAs that were in existence on September 23, 2010, need not apply for waivers from the annual limits restrictions between now and 2014. While this answers the question about the need for HRAs to obtain waivers, it unfortunately leaves more fundamental questions unanswered, such as whether HRAs created after September 23, 2010, should be exempt from the annual limit rules, and what HRAs will need to do post-2014.

Other specific aspects of the HHS guidance of which you should be aware include:

- Stand-alone HRAs that are exempt from the need to obtain a waiver will still need to comply with certain record retention and annual notice requirements to participants. The annual notice requirement for exempt HRAs, which is essentially the same as what applies to other types of plans operating under a waiver, informs participants that the HRA has a specific dollar limit that is lower than the minimum annual limit prescribed by the ACA. A model disclosure form and more information on these requirements is contained in instructions from HHS that are available at <http://cciio.cms.gov/resources/other/index.html#alw> (click on June 17, 2011 Annual Limit Waiver Application Instructions; link will take you to instructions revised as of August 19, 2011).
- If an employer maintains a stand-alone HRA that is exempt from needing a waiver per the HHS guidance, but the employer also maintains other health coverage that does not comply with the annual limit rules, that other coverage will still need a waiver.

HHS has provided a contact point for those with questions or concerns about the HRA waiver guidance. Those wishing to communicate with HHS about the guidance can email AnnualLimitWaiver@cms.hhs.gov and use "HRA Exemption" as the subject of the email. A copy of the clarification can be obtained at <http://cciio.hhs.gov/resources/regulations/index.html#alw>.

HEALTH CARE REFORM SUMMARY OF BENEFITS AND COVERAGE GUIDANCE

Under ACA, by March 23, 2012, group health plans (including grandfathered plans) will be required to provide a four-page Summary of Benefits and Coverage (SBC). The Department of Health and Human Services, Department of Labor and Internal Revenue Service have issued proposed regulations regarding the four-page summary. The agencies have interpreted the four pages to be double-sided. The proposed guidance includes a uniform glossary of common health coverage terms, instructions, samples and a guide. A separate summary is required for each group health plan option offered to an employee. The proposed regulations require that the summary be a stand-alone document. The agencies recognize the potential overlap between the SBC and certain SPD requirements for ERISA plans. The summary can be delivered electronically by satisfying the requirements of the DOL's electronic disclosure safe harbor provisions. The proposed regulations would require that the SBC be automatically provided to a participant or beneficiary no later than the first day of eligibility to enroll in coverage.

For fully-insured plans, insurance carriers are required to provide the summaries by the March 2012 deadline. Self-insured plans have the option of including the summaries in open enrollment notices now or waiting until the proposed regulations are finalized.

The agencies have requested comments on the feasibility of implementation by March 23, 2012, the format of the summaries and whether or not the sample notice should be revised. The proposed regulations will be finalized sometime after the comment period ends on October 21, 2011.

MASSACHUSETTS CONFORMS STATE TAX CODE TO THE INTERNAL REVENUE CODE



In July 2011, Massachusetts amended its state tax code so that imputed income is no longer required for covered dependent children under age 26. This is explained in detail on the [TIR 11-5: Employer Provided Health Care Benefits Update](#) page of the Massachusetts Department of Revenue website.

This leaves only the states of New Jersey and Wisconsin with tax codes that could result in imputed income being charged to employees with covered dependent children under the age of 26.

RHODE ISLAND PASSES CIVIL UNION LAW

Effective July 1, 2011, Rhode Island law legalizes civil unions between same-gender individuals. Parties to a civil union will have all of the same rights, benefits, protections and responsibilities as married spouses under Rhode Island law.

SAN FRANCISCO 2012 HCSO HEALTH CARE EXPENDITURE RATES

San Francisco's Health Care Security Ordinance (HCSO) requires medium and large-sized employers to spend a minimum amount of money on health care for employees who work at least eight hours per week in San Francisco. The 2012 HCSO expenditure rates are as follows:

- Employers with more than 100 employees must spend at least \$2.20 per hour on health care for each covered employee (an increase from \$2.06 per hour in 2011).
- Employers with 20 to 99 employees must spend \$1.46 per hour on health care for each covered employee. (an increase from \$1.37 per hour in 2011).
- Small employers with less than 20 employees, and non-profit organizations with less than 50 employees remain exempt from this requirement.

Your Woodruff-Sawyer representatives can assist you in understanding and complying with all new regulations and legislation.

The information provided in this Legislative Update should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only and you are urged to consult an attorney concerning your own situation and any specific legal questions you may have.

Woodruff-Sawyer is one of the largest independent insurance brokerage firms in the nation, and is an active partner of International Benefits Network and Assurex Global. For over 90 years, Woodruff-Sawyer has been partnering with clients to implement and manage cost-effective and innovative insurance, employee benefits and risk management solutions, both nationally and abroad. Headquartered in San Francisco, Woodruff-Sawyer has offices throughout California and in Portland, Oregon. For more information, call 415.391.2141 or visit www.wsandco.com.

About Jennifer

Jennifer is Vice President, Compliance Officer in the Benefits practice at Woodruff-Sawyer & Co. She consults directly with our Employee Benefits clients on all matters of compliance and leads both internal and external trainings. She has also conducted numerous trainings on ERISA, COBRA and HIPAA to Department of Labor employees, the Department of Justice and to employers that sponsor ERISA-covered plans. A published expert on ERISA, COBRA and HIPAA rules and regulations, Jennifer has investigated a broad spectrum of company employee benefit plans and has extensive experience negotiating with industry fiduciaries and service providers.

Before joining Woodruff-Sawyer, Jennifer was a Senior Investigator at the US Department of Labor (DOL), Employee Benefits Security Administration in San Francisco. Jennifer can be reached at 415.402.6577 or jlunski@wsandco.com.