

# WELFARE BENEFITS AND ERISA LITIGATION LAW ALERT

## March 25, 2010

### HEALTH CARE REFORM IMPACTS EMPLOYERS AND GROUP HEALTH PLANS

On March 23, 2010, President Obama signed into law the Patient Protection and Affordable Care Act (the "PPACA" or "Act"). This law includes many provisions affecting the administration, design, and cost of group health plans, and establishes mandates for employers to provide health coverage.

The PPACA imposes a series of immediate requirements to be met by health insurance plans, which become effective for plan years beginning on or after September 23, 2010. For calendar-year plans, these provisions apply beginning on January 1, 2011. The other provisions of the Act, relating to the creation of state health care exchanges and individual and employer responsibility, become effective in 2014. Some of the more significant immediate changes under the Act include the following:

- Group health plans may not impose lifetime limits or unreasonable annual limits.
- Unmarried adult children may continue to be covered until they turn age 26.
- Plans may not impose pre-existing condition limitations on children.
- Plans must cover certain preventive services, such as immunizations and preventive care and screenings for infants, children and adolescents, without cost sharing.
- Plans cannot rescind or cancel coverage unless the participant or beneficiary has engaged in fraud or intentional misrepresentation of a material fact, and only with prior notice to the individual.
- Insured plans may not discriminate in favor of higher-wage employees.
- Plans must provide for appropriate appeals processes, including an effective external review process.
- Insurers and sponsors of self-insured plans are required to provide a uniform summary of benefits and coverage explanation (effective on March 23, 2012).
- The Act contains a grandfathering provision excluding existing plans from certain of its provisions (including collectively bargained plans until the collective bargaining agreement relating to the coverage expires).
- The Act creates a federal re-insurance program to provide reimbursement for employers that provide health insurance for retirees of ages 55 to 64 and their families.
- Once the PPACA provisions are fully implemented in 2014, other requirements will apply, including the following:
  - Certain "large" employers who fail to offer to its full-time employees the opportunity to enroll in group health coverage will have to pay an assessment if their employees are receiving assistance from the federal government to purchase insurance.
  - Employers with more than 200 full-time employees who maintain health plans are required to automatically enroll new full-time employees with the opportunity for employees to opt-out.
  - Plans may not impose waiting periods that exceed 90 days. Penalties will apply if employers impose a waiting period that exceeds 30 days.
  - Plans may not impose any pre-existing condition exclusions.
  - Plans may not impose coverage rules based on any factor related to health status.
  - Plans must tailor their wellness programs in compliance with the Act, except those in existence under existing regulations, which may continue to follow those regulations as long as the same remain in effect.

- Individuals will be required to maintain health insurance or pay a penalty, except when they are exempt based on either hardship or religious beliefs.
- Creation of state health care exchanges that would provide access to health coverage for individuals and small businesses will begin.
- By March 1, 2013, employers must provide a notice to their employees regarding the health care exchange in their areas, among other required information. Beginning on that same date, employers are required to provide this notice to all new employees as part of their new-hire materials.

The U.S. Congress is considering a package of amendments to this legislation embedded in the Health Care and Education Affordability Reconciliation Act of 2010, which is expected to be enacted in the upcoming days. Important details of the PPACA will need to be developed through regulations, administrative rulings, and future legislation. We will continue to monitor developments on the PPACA, and will keep you updated as legislative changes are enacted.

If you have any question regarding this matter, you may contact any of the attorneys listed below, members of our Welfare Benefits and ERISA Litigation Practice Team.

Sandra L. Negrón-Monge	(787)250-2638	<a href="mailto:sln@mcvpr.com">sln@mcvpr.com</a>
Agustín Fortuño-Fas	(787) 250-5631	<a href="mailto:aff@mcvpr.com">aff@mcvpr.com</a>
Patricia M. Marvez	(787) 250-2636	<a href="mailto:pm@mcvpr.com">pm@mcvpr.com</a>
Maralyssa Álvarez Sánchez	(787) 250-5682	<a href="mailto:max@mcvpr.com">max@mcvpr.com</a>
Luis Roberto Amadeo	(787) 250-5680	<a href="mailto:lra@mcvpr.com">lra@mcvpr.com</a>
Maggie Correa	(787) 250-5621	<a href="mailto:mc@mcvpr.com">mc@mcvpr.com</a>
Héctor Laffitte	(787) 250-5618	<a href="mailto:hml@mcvpr.com">hml@mcvpr.com</a>

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