Next steps after Supreme Court upholds Affordable Care Act

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Supreme Court decision

In 2010, Congress passed the Patient Protection and Affordable Care Act (the ACA). The ACA substantially changes the provision of health care in America, including the rules for employer-sponsored health plans.

Twenty-six states challenged the constitutionality of the ACA. On June 28, 2012, the U.S. Supreme Court almost entirely rejected this challenge to the ACA.

The Court held that the “individual mandate” was a valid exercise of Congress’s power to tax (referring to the penalty imposed on individuals who fail to obtain insurance as required, starting in 2014). The Court’s reliance on the power to tax may mean that the sanction for failing to retain coverage must be limited, which may encourage some individuals to pay the tax and wait to buy coverage until they’re ill or injured.

The Court limited the ACA only in restricting the sanction the federal government may impose upon states that don't fully expand their Medicaid programs as required.

What's next for employers?

Given the Court's decision, employers that haven't modified their health plans to comply with the ACA, including provisions not yet effective, will want to review and revise their plans as necessary to comply with the currently-effective provisions of the ACA and prepare for the pending provisions (taking into account further developments from Congress, the courts, the Internal Revenue Service and the Departments of Labor and Health and Human Services).

This article will remind employers of items that may need attention, though employers will want to keep in touch with their own benefit consultants and attorneys regarding new developments. ACA provisions that may affect employers' health plans include the following:

Provisions that are already effective:

- Coverage for dependents may not be cut off before age 26.
- Lifetime limits on benefits are prohibited.
- Preexisting-condition limits for dependents under age 19 are prohibited.
- Non-grandfathered plans must cover preventive services without cost-sharing.
- Coverage may not be retroactively canceled, absent material misrepresentation or fraud.

Effective in 2012-13:

- Plan administrators must distribute an 8-page or shorter "Summary of Benefits and Coverage" (the SBC) at the first open enrollment or first "plan year" starting after Sept. 22, 2012.
- Employers must report the aggregate cost of employer-sponsored health coverage on employees' W-2 forms for 2012 (due by Jan. 31, 2013).

Effective in 2013:

- Health flexible spending account contributions must be limited to $2,500 per employee per year.

Effective in 2014:

- All preexisting-condition exclusions will be prohibited.
- Employers that maintain non-grandfathered, insured medical plans that discriminate in favor of highly compensated individuals (HCIs) may be subject to horrendous penalties, effective after the IRS issues guidance (perhaps in 2014).
- All annual limits on benefits will be prohibited (replacing restrictions on annual limits in prior years).
- Plans may not impose waiting periods for coverage that are longer than 90 days.
- Employers with more than 200 employees must automatically enroll full-time employees, effective after regulations are issued (perhaps in 2014).

- Employers will be subject to penalty taxes if they fail to offer coverage to all “full-time” employees, or if the coverage is not “affordable.” These are the “play-or-pay” penalties.
- Employers will be permitted to increase wellness incentives without violating HIPAA.

Effective in 2018:

- Employers will be subject to a “Cadillac plan” penalty if they provide “excessive” health benefits.

So, employers’ obligations under the ACA weren’t changed by the Court’s decision. But most employers still have work to do to implement the ACA’s new rules, even disregarding the possibility of additional changes coming from Congress, the courts or regulators.

Employers may want to begin with these steps:

1. Speak with benefit brokers, consultants or attorneys about timely preparation of the "Summary of Benefits and Coverage" document for your company.
2. Speak with payroll vendors about steps to include health care costs on W-2 forms for 2012.
3. Look for potentially discriminatory provisions in their insured medical plans, if any, whether early entry, lower employee contributions, greater benefits, lower co-pays or coinsurance or subsidized COBRA coverage for the HCIs.
4. See whether their health plans cover all full-time employees or whether they may be subject, voluntarily or otherwise, to the play-or-pay penalties.

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