Supreme Court Upholds Healthcare Reform – It's Time for Employers To Get To Work

Insights
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Today the U.S. Supreme Court issued its long-awaited decision on the Patient Protection and Affordable Care Act (ACA). In what is easily the most significant decision this term, and arguably one of the most important rulings in decades, the Supreme Court upheld the so-called "individual mandate" and all of the provisions of ACA that impact employers. *NFIB v. Kathleen Sibelius, Secretary of Health and Human Services.*

While the political impact of this ruling may be far from certain, the impact on employers is clear – it's time to get to work. Anticipating that the Supreme Court would invalidate much or all of ACA, many employers have been sitting on the sidelines and putting off investing much time or energy into analyzing how healthcare reform will impact their businesses. Now that the uncertainty has been lifted, it is time for employers to focus on the many healthcare reform compliance obligations and possible economic impacts.

"Big Ticket" Items for Employers
Of all the employer obligations in ACA, those that are likely to have the most significant impact on plan design and costs will become effective in 2014 or shortly thereafter:

- The Employer "Play or Pay" Mandate: While much of the focus recently has been on the *individual* mandate, the more important mandate for *employers* is the "play or pay" mandate, which will require large employers (generally, those with 50 or more full-time employees taking into account full-time equivalents) to provide adequate and subsidized group health plan coverage to all full-time employees and their families beginning in 2014. If an employer fails to satisfy this requirement, it will be subject to a penalty - generally, $2,000 per full-time employee per year. This could have a significant economic impact on many employers. Accordingly, it is very important for employers to start modeling how this mandate will impact their bottom line starting in 2014.

- New Nondiscrimination Requirements: ACA prohibits most insured group health plans from discriminating in favor of highly-paid employees. If an employer's plan fails to satisfy this requirement, the employer will be subject to significant financial penalties. Implementation of this requirement has been delayed to give regulators time to issue guidance. However, it is expected that this requirement will begin applying in 2014 or shortly thereafter. If you are

offering different plans, eligibility periods, or premium subsidies to different groups of employees, it is likely that you will need to adjust your offerings to comply with these new nondiscrimination requirements.

- Automatic Enrollment: ACA requires most employers with more than 200 employees to automatically enroll new employees who are eligible for group health plan coverage. Rather than having to affirmatively elect health coverage, the "default" will be for employers to automatically enroll any eligible employee who fails to opt out. Statistics have shown that this type of enrollment process is certain to increase plan participation. Accordingly, it is likely to lead to higher plan subsidy costs for many employers. Implementation of this requirement has also been delayed to give regulators time to issue guidance on the requirement. It is expected that this requirement will also begin applying in 2014 or shortly thereafter.

While the obligations described above will not be effective for at least 18 months, employers need to start evaluating the impacts as soon as possible in order to adequately plan for additional economic burdens and consider strategic plan design changes.

Immediate Compliance Issues

In addition to the "big ticket" economic and strategic issues discussed above, there are numerous compliance issues that will require your immediate attention:

- Disposition of Medical Loss Ratio (MLR) Rebates: In the coming months, many employers will receive MLR rebates from their group health insurance carriers. In most cases, disposition of these rebates is a fiduciary act under ERISA that will require employers to determine whether all or part of a rebate must be refunded to employees or otherwise used to benefit employees. The answer will depend on the language of an employer's plan documents and the structure of plan premiums. Any employer that receives an MLR rebate will need to review its legal rights and obligations with respect to the rebate.

- New Summary of Benefits and Coverage (SBC) Requirement: Beginning with the next open enrollment period, employers must distribute an SBC for most of their group health plans. The SBC is a uniform disclosure of the material terms and provisions of a plan, which is intended to allow employees to more easily compare different plan offerings. The content requirements for an SBC are very detailed and will likely require the assistance of an employer's insurance carrier or third-party administrator. With 2013 open enrollment periods right around the corner for most employers, compliance with the new SBC requirements should be an immediate priority.

- Reporting the Cost of Coverage on 2012 W-2 Forms: Beginning with the 2012 W-2 forms to be distributed by employers in 2013, many employers will be required to report the total cost of any group health plan coverage that was provided to an employee. This cost is not taxable – it is simply an informational item on the W-2. But ensuring compliance with this new requirement

will likely require a lot of coordination between an employer's HR and payroll departments. Ensure that you are adequately planning for this new requirement now, as it will be quite difficult to gather all of the necessary information and program payroll systems after the end of year and still be in a position to distribute W-2s in a timely manner.

- New Limitations on Medical Flexible Spending Accounts: Employee contributions to a flexible spending account maintained under your cafeteria plan will be limited to $2,500 beginning in 2013. Your cafeteria plan should be amended to reflect this change before January 1, 2013 for calendar year plans.

The compliance obligations discussed above are just a sample of the additional burdens that employers will need to address in order to satisfy their healthcare reform obligations.

Going Forward

The cost of maintaining a health plan will likely go up. You will have to examine the portion of employee cost that you are paying currently in light of employees' pay to determine whether you will be in compliance with the play or pay mandate and anticipate the additional cost of the automatic enrollment requirement. The cost of compliance with ACA will be reflected in increased administration fees and premiums, as well.Also, you should consider that your employees will have many questions about how all of this impacts them, so you need to be prepared to address those questions.

As you can see, this decision has far-reaching – and possibly expensive – implications for employers. To explain the requirements in more detail, Fisher Phillips presented a free webinar.

This Alert provides an overview of a specific Supreme Court ruling. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.