

MULTIEMPLOYER BENEFIT PLANS ALERT

January 2013

NEW FEES, REGULATIONS AND LEGAL CHALLENGES (NOT MUCH HAS CHANGED FROM 2012!)

1. There are three fees for multiemployer health funds to keep in mind going into 2013. The first two are mandated by the federal Patient Protection and Affordable Care Act of 2010 (PPACA), while the third is based on a 2012 Connecticut law:
 - A. Fees to fund the Patient-Centered Outcomes Research Institute (PCORI). The overall goal of PCORI (www.pcori.org) is to conduct research and issue findings which will help patients and their health care providers make informed health care decisions. PCORI will be funded through fees from health insurance issuers and self-insured plans. In December of 2012, the Internal Revenue Service (IRS) issued final regulations governing the payment of PCORI fees. Under the regulations, PCORI fees apply to each plan year ending on or after October 1, 2012, and before October 1, 2019. The base PCORI fee is \$2 (\$1 for the plan year ending before October 1, 2013) multiplied by the “average number of lives covered” under the plan. The PCORI fee may also increase to account for health care inflation in plan years ending on or after October 1, 2014. PCORI fees should be reported on IRS Form 720 and paid *annually*. If your plan year ended in October through December of 2012, your first PCORI fee will be due by July 31, 2013.
 - B. Fees to fund the Reinsurance Program. With federal and state Exchanges commencing business in 2014, the PPACA established a “reinsurance program” to operate between 2014 and 2016. The goals of the program are to stabilize premiums in the individual health insurance market and to provide “reinsurance” payments to health insurance issuers that cover high risk individuals. The program must collect a total of \$25 billion from health insurance issuers and self-insured plans over those three years. The Department of Health and Human Services (DHHS) issued guidance on this program in December of 2012, and it provides that the “per capita contribution rate” for the 2014 benefit year is \$5.25 per month (\$63 per year!). The guidance also states that the DHHS will collect the reinsurance contributions on an annual basis from health insurance issuers and self-insured plans.
 - C. Connecticut’s childhood immunization vaccine assessment. Under this Connecticut law passed in 2012, third-party administrators (TPAs) and domestic insurers (DIs) that administer self-insured plans are required to pay an assessment to the state based upon the entity’s number of Connecticut enrolled and/or covered lives. We understand that the assessment was recently set by the Insurance Department at \$9.78 per life. While the assessment is not imposed directly on self-insured plans, plans that utilize TPAs or DIs should not be surprised if those entities either (1) seek reimbursement from the plan for the assessment, or (2) raise their standard rates to cover this additional cost of doing business. Self-insured plans that process their own health claims, thereby avoiding the use of TPAs and/or DIs, will likely not be impacted by this assessment.
2. United States Supreme Court to rule on the issue of same-sex marriage. In the October 2012 case of *Windsor v. United States*, the Second Circuit Court of Appeals (which includes Connecticut) held that a provision of federal law, the Defense of Marriage Act or “DOMA,” defining marriage as between one man and one woman was unconstitutional. In December of 2012, the United States Supreme Court agreed to hear the *Windsor* case, along with another case involving same-sex marriage (*Hollingsworth v. Perry*). The rulings in these cases will

be very important for any multiemployer health or retirement plan which utilizes DOMA when determining spousal status. The Supreme Court has scheduled arguments for these two cases in late March of 2013, and we expect decisions will be issued by June of 2013.

3. Reid and Riege comments on the PPACA's 90-day waiting period standard. One of the many PPACA provisions which apply to multiemployer group health plans is the 90-day waiting period standard. In short, this provision requires that group health plan coverage must commence within 90 days after an employee meets a nondiscriminatory eligibility rule. Because multiemployer group health plans normally require that a collectively-bargained employee work a specified number of hours of covered employment within a set measuring period (e.g., a month, calendar quarter or calendar year), we wrote to the Employee Benefits Security Administration (EBSA) and requested clarifications on behalf of our clients on EBSA proposed regulations interpreting the 90-day waiting period standard. Our comments are available on the Department of Labor's website at <http://www.dol.gov/ebsa/pdf/tr12-02-0026.pdf>.
4. With the Presidential Election behind us, numerous PPACA regulations are being released. Since the November election, there have been a number of new PPACA regulations issued which will be of interest to multiemployer group health plans and their contributing employers. The topics covered by these regulations include: (a) Employer Shared Responsibility, (b) Health Insurance Market Rules, (c) Standards Related to Essential Health Benefits, Actuarial Value, and Accreditation, and (d) Incentives for Nondiscriminatory Wellness Programs in Group Health Plans. If you have any questions regarding these regulations and their application to your plan or company, feel free to contact us.
5. More legal challenges to the PPACA. In June of 2012, the Supreme Court issued its *National Federation of Independent Business v. Sebelius* decision and upheld the PPACA's individual mandate by a vote of 5-4. Despite that ruling, there continue to be attacks on the PPACA on a number of fronts, including challenges by religious groups and employers with sincere religious beliefs against the PPACA's requirement for certain group health plans to provide preventive health care coverage, as well as contraceptives, at no cost. There are at least forty current cases dealing with this issue, and it appears likely that this will need to be resolved by the Supreme Court. Legal challenges to the PPACA's employer and individual mandates are also continuing, such as the case of *Liberty University v. Geithner* in the 4th Circuit Court of Appeals.

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