



THE KULLMAN FIRM  
A PROFESSIONAL LAW CORPORATION

# THE HOLLIS COMPANIES

## Patient Protection and Affordable Care Act:

### Selected Issues and Recent Developments

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# Form 1099 Reporting

- The new Form 1099 reporting requirements under the Patient Protection and Affordable Care Act (PPACA) were repealed.
- Increased recapture amounts.

# Free Choice Vouchers

- Free Choice Vouchers Eliminated by Budget Bill.

# Court Challenges

Held constitutional by:

1. *Mead v. Holder*. Appeal pending in the D.C. Circuit.
2. *Liberty University v. Geithner*. Appeal pending in the Fourth Circuit.
3. *Thomas More Law Center v. Obama*. Appeal pending in the Sixth Circuit.

# Court Challenges

Held unconstitutional by:

1. *Florida v. U.S. Department of Health and Human Services*. Appeal pending in the Eleventh Circuit.
2. *Virginia V. Sebelius*. Fourth Circuit review pending. Virginia's request for direct review from U.S. Supreme Court was denied.
3. *Baldwin v. Sebelius*. Pending before the Ninth Circuit.

# Dependent Coverage

- A group plan that makes available dependent coverage of children must make such coverage available for children until they reach age 26.
- Restrictions on Plan Definition of Dependent.
- Federal Tax Exclusion for Dependent Coverage.

# Dependent Coverage

- State Income Taxation of Dependents.
- As of February 2011, the following states were non-conforming (recent changes are noted below):
  - Arizona (now conformed)
  - Arkansas (now conformed)
  - California (conformed by California Assembly Bill (AB) 36, enacted April 7, 2011)
  - Georgia
  - Hawaii
  - Idaho
  - Indiana
  - Kentucky (now conformed)
  - Maine (now conformed)
  - Massachusetts
  - Minnesota (conformed for 2010, not for 2011 and later)
  - Oregon (now conformed)
  - South Carolina
  - Virginia (now conformed)
  - West Virginia (now conformed)
  - Wisconsin

# Grandfathered Plans

- Grandfathered plans are permanently exempt from complying with many of PPACA's requirements.
- Grandfathered plans are those in effect on March 23, 2010.
- New employees and dependents can be added to a grandfathered plan without losing that status.
- Grandfathered plans are exempt from many of the new law's provisions.



# Grandfathered Plans

- Grandfathered plans are exempt from the following requirements:
  - Preventative Care
  - Emergency Services
  - Primary Care Professionals
  - Ob-Gyn
  - Nondiscrimination Rules
  - Appeals Process
  - Group Health Plan Transparency Disclosure Requirement
  - Cost Sharing
  - Clinical Trials
  - Non-discrimination against providers
  - HIPAA Wellness Rules
  - Wellness Programs and Firearms

# Grandfathered Plans

- Grandfathered plans are required to comply with the following:
  - Dependent Coverage to Age 26
  - Pre-existing condition exclusions
  - Lifetime and annual maximums
  - Rescission of Coverage
  - Waiting Periods
  - Over-the-Counter Medications
  - Voluntary Long-Term Care
  - W-2 reporting of the value of coverage the employer provides
  - Summary of Benefits
  - Health Flexible Spending Accounts (FSA)
  - Automatic Enrollment
  - Employer Reporting on Health Coverage
  - Rebates for High Loss ratios
  - Employer Notices to Employees
  - Requirement to Provide Employees Vouchers

# Grandfathered Plans

- Recent Guidance on retaining or losing grandfathered plan status.
  1. Changing Carriers.
  2. Moving between options.
  3. Transferring employees to another plan.
  4. Increasing the cost sharing for a prescription because of reclassification.
  5. Adopting a value-based insurance design (VBID).
  6. Formula Employer Premium Subsidy Based Employer Contributions.
  7. Out-of-pocket limits based on a formula.

# Nondiscrimination Rules

- Before PPACA, Code §105(h) nondiscrimination rules applied only to self-insured medical reimbursement plans.
- Fully insured group health plans were not subject to any federal nondiscrimination requirements.
- PPACA added PHSA section 2716, which extended the §105(h) nondiscrimination rules to fully-insured plans.
- Effective date postponed.
- Penalties and enforcement.
- Issues for coming regulations.

# Appeals Processes

- Group health plans must implement an effective internal appeals process. Plans must offer a binding external review process.
- Grandfathered plans are exempt from these rules.
- The Department of Labor's Technical Release No. 2010-02 (September 20, 2010) provided for a non-enforcement grace period until July 1, 2011.
- Department of Labor's Technical Release No. 2011-01 (March 18, 2011) eliminates the good faith compliance requirement until plan years beginning after July 1, 2011. It delayed enforcement of certain portions of the rules until plan years beginning on or after January 1, 2012.

# Appeals Processes

- Consequences if appeals process is not compliant (strict compliance).
  - Excise tax;
  - Deemed exhaustion of administrative remedies;
  - Enforcement action to require compliance;
  - No deference to plan administrator's decision (no decision to which deference can be applied); and
  - New argument that exhaustion is futile since the claim procedure is flawed.

# W-2 Reporting of Health Care Costs

- Form W-2 reporting is required of the value of coverage the employer provides.
  - Tax Effect.
  - Voluntary Reporting.
  - Small Employer One-Year Delay.
  - What Cost is Reported?
  - Method for Reporting the Cost on the Form W-2.
  - Multiple plans.
  - Coverage is treated as “applicable employer-sponsored coverage” regardless of whether the employer or employee pays for the coverage.

# Issues for 2011

- Market reform plan changes for fiscal year plans.
- Notice of grandfathered status.
- Mini-med waiver renewal.
- Cadillac tax – financial reporting of future liability.
- Create retiree-only plan.
- Cafeteria plan amendments required by June 30, 2011.