

## **The Affordable Care Act was Upheld, So Now What?**

### *What the Supreme Court Decision Means for Employers*

After months of uncertainty, the U.S. Supreme Court (the “Court”) issued a ruling in the Health Care Cases. By a narrow 5:4 majority, the Court upheld the constitutionality of the Patient Protection and Affordable Care Act (PPACA). The Court majority determined that the individual mandate was a tax and that those individuals who do not purchase insurance will be subject to the nominal tax. Because of this analysis, the Court majority did not have to examine many other elements of the law, including whether or not the mandate was severable (i.e. could the rest of the law still survive if the individual mandate was struck down). The Court also found that states have the option of expanding coverage under Medicaid. Those states that choose to expand coverage will be eligible for additional funds from the federal government. Those states that do not expand coverage will continue to be eligible for federal government funding at current levels.

The decision alleviates much of the uncertainty surrounding implementation of the PPACA, although the ultimate fate of the law may still be determined by the November 2012 presidential and congressional elections. For employers, the consequences may be immediate. Below PRM Consulting Group has highlighted a few crucial implications of the Court’s decision.

**2012 W-2 Requirements:** Beginning in 2012 employers with 250 or more employees are required to report the value of an employee’s health benefits on W-2s (i.e. on W-2s for the 2012 tax year). Preparations should be underway in order to properly determine the value of employee health benefits for each employee. The fewer health plans an organization offers its employees, the easier it will be to meet this requirement. Employers offering numerous plans may consider consolidating plans in future years. We have found that plan consolidation can often lead to cost-savings, in addition to greater administrative ease.

**Preventive Care Requirements:** By upholding the PPACA, the Court ensured that many preventive care requirements that went into effect in September 2011 will remain in effect. Additionally, new requirements for women’s health services will go into effect this year (for plan years beginning after August 1, 2012). Since these requirements apply uniformly to all health insurance plans, it has become harder for employers to differentiate themselves on the basis of the quality of their coverage. This makes it more important than ever to make sure that total rewards packages are competitive, as they remain a strong tool for attracting top talent.

**Benefit Summaries:** Those organizations where open enrollment begins after September 23, 2012 will be required to provide summaries of benefits and coverage (SBCs) to each plan participant. New regulations allow the SBCs to be included with summary plan descriptions and

other open enrollment literature. Employers should begin preparing now to ensure they are ready to meet this requirement by the fall.

**Flexible Spending Accounts:** Applicable for the plan years beginning after December 31, 2012, pre-tax employee salary reduction contributions to health flexible spending accounts (FSA) will be capped at \$2,500 per employee. Employers may still contribute to health FSAs without limit or provide flex credits. The limits will not affect childcare or adoption FSAs, or contributions to health savings accounts (HSAs) or health reimbursement arrangements (HRAs). Thus, employers may want to evaluate current employee use of health FSAs and determine if increasing employer contributions may be a meaningful way to enhance current employee benefits. Additionally, employers may need to make changes to the current structure of their FSAs to ensure that health funds are not co-mingled with non-health funds.

**Employer Mandate:** Beginning in 2014, employers with more than 50 employees will be required to provide affordable health care coverage for full-time employees or pay a penalty (which begins at \$2000 per employee, although it excludes the first 30 employees). The penalty only applies to employees with a household income that is less than 400% of the federal poverty level. As exchanges develop, it may be logical for some employees to forego employer-sponsored insurance and seek their own policies on state exchanges. The consequences of such actions have yet to be determined. This requirement makes it more important than ever for employers to evaluate their current health insurance offerings and make sure they are competitive and cost effective. While the PPACA may result in little differentiation between health insurance plans, employers who continue to maintain insurance plans may see a distinct advantage in recruiting and retaining employees.

**Exchanges:** With the proliferation of state health care exchanges providing easier access to health insurance policies, some employers may determine it is more prudent to allow employees to purchase insurance in the marketplace. This is particularly true of employers with a large low-income workforce, where credits and incentives on the marketplace may make insurance options more affordable. This is also true of small employers, where employees may benefit from being a part of a larger participant pool. The decision whether or not to provide health care benefits should be evaluated in tandem with an employer's total rewards package. Employers should be particularly mindful that employees will likely expect increased compensation in order to offset the loss of health care benefits. Employers should begin planning immediately to ensure they have the correct structures in place by 2014 that will allow them to retain and recruit top-notch talent.

**Total Rewards and Executive Pay:** Beginning in 2018, the government will begin to tax employers that offer "Cadillac" health plans, or high-value health plans. If an employer is offering senior executives a plan which will meet the definition of a Cadillac plan, the plan should be reviewed in the context of the executive compensation package as a whole." In

anticipation of this change, employers should work with their Board of Directors and their Compensation Committee to ensure that they are providing an appropriate mix of total rewards to their senior executives. Changes to health plans may need to be off-set with increases to cash compensation, deferred compensation, or perquisites. It is important for organizations to have a clearly articulated compensation philosophy to ensure adequate planning to meet future compensation needs.

Additionally, the implementation of health care reform is expected to diminish profit margins for many health insurance providers. In the hours after the announcement of the Court's decision, stock markets responded with a considerable decrease in the price of health insurance stocks. Ultimately, the cost of health care reform will be passed along to the consumer. As an employer, it is important to make sure that you regularly evaluate your health care options and bid your insurance provider against competitors in the marketplace. While the mix of competitors may change as a result of health care reform, this exercise is more important now than ever before.

Finally, changes in health care benefits will require additional employee communications. We recommend developing a comprehensive communication strategy to address employee questions and concerns, both during open enrollment and throughout the year. A comprehensive strategy will take advantage of a variety of outreach tools including: social media; company newsletters; in-person sessions; and webinars.

For more information on how the Patient Protection and Affordable Care Act may affect your organization, and for further help in preparing for implementation please contact PRM Consulting Group.