

**ALERTS**

## Supreme Court Upholds Landmark Health Care Reform as a Tax

**July 10, 2012**

On June 28, Chief Justice Roberts announced the U.S. Supreme Court's long-awaited decision to uphold the Patient Protection and Affordable Care Act, including the controversial individual mandate provision. Beginning in 2014, the mandate requires certain individuals to purchase health insurance that provides a minimum level of coverage or pay a financial penalty. The amount of the penalty for 2014 (due in April 2015) is the greater of \$95 per adult and \$47.50 per child (up to a maximum of \$285 per family) or 1 percent of the individual's household income. The penalty is phased in through 2016 to a maximum of \$695 per adult (\$2,085 maximum per family) or 2.5 percent of income, if greater. After 2016, the maximum penalty will be adjusted for cost-of-living.

In a 5-4 decision, the Court ruled that while it would be unconstitutional to require individuals to purchase health insurance, Congress can impose an excise tax on those individuals who refuse to do so under its taxing power. Though not expressly called a "tax" in the legislation, the Affordable Care Act provides that the penalty is to be collected with the non-compliant individual's taxes and must be assessed and collected in the same way as tax penalties.

Though the Court did uphold the Affordable Care Act, stating it was confident that Congress would have wanted to preserve the Act if any of the contested provisions were struck down or modified, the Court did limit the Affordable Care Act's Medicaid expansion provision. Generally, the Affordable Care Act expands the scope of Medicaid and increases the number of individuals states are required to cover. The Act provides for

increased federal funding to cover the states' new costs for expanding their Medicaid programs, but also provides that if a state does not comply with the new coverage requirements the state will lose both future and existing federal funding. The Court ruled that Congress can condition future Medicaid funding on states' compliance with new coverage requirements but that it cannot "penalize States that choose not to participate in [a] new program by taking away their existing Medicaid funding."

Because the Affordable Care Act remains valid law, group health plans must continue to comply with the Act's currently effective provisions (for example, providing coverage for adult dependent children, eliminating pre-existing condition exclusions for children under age 19, eliminating lifetime and annual dollar limits on essential health benefits unless a valid waiver of the annual dollar limit has been obtained and, for non-grandfathered plans, covering emergency services without pre-authorization and preventive services without cost-sharing). Furthermore, group health plans must prepare to adopt and implement the Act's future requirement, including the following key provisions for 2012 and 2013:

## 2012 Action Items

- Providing the Summary of Benefits and Coverage (SBC) during open enrollments on or after Sept. 21, 2012; and
- Reporting on Form W-2 the annual cost of group health care coverage for 2012 (though employers that contribute to multiemployer plans are currently exempt from this requirement).

## 2013 Action Items

- Amending Flexible Spending Account Plans to limit the maximum deferral to \$2,500 for plan years beginning in 2013 (i.e., Jan. 1, 2013 for calendar year plans);
- Increasing the FICA payroll tax withholding to include an additional 0.9 percent Medicare tax (in addition to the current 1.45 percent) on wages above \$200,000 for individuals and \$250,000 for married couples filing jointly;
- Adding a new 3.8 percent tax on unearned income, including interest, dividends, capital gains and other investment income (though 401(k),

pension and profit-sharing plans are exempt from this requirement); and

- Notifying employees about the availability of state exchanges by March 2013.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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