



# Health Care Reform Bulletin

August 26, 2011

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## Court Challenges to Affordable Care Act Moving Forward

The various legal challenges to the Affordable Care Act took a big step forward this month when the 11th Circuit Court of Appeals issued a decision on August 12th that the law's individual mandate (for all U.S. citizens to have health insurance in 2014 or pay a fine) is unconstitutional. The ruling leaves the rest of the law intact and therefore has no immediate effect on the law's application.

Although decisions from two other Courts of Appeals are still pending, the decision is important because it contradicts the decision earlier this year from the 6th Circuit Court of Appeals upholding the law, thus creating a split between the circuit courts. This split makes it significantly more likely that the Supreme Court will take up the question sooner rather than later, potentially even during its 2011-2012 session.

## Proposed Rules Include Affordability Guidance

In a set of proposed regulations released this month that focus on establishing and administering the state-run health insurance Exchange markets, the IRS finally clarified the affordability requirement for Exchange subsidies. Under the Affordable Care Act, while an employee who is eligible for insurance through the employer is able to purchase coverage through the Exchange if they wish, that employee will only be eligible for an Exchange subsidy if the employer's insurance is "unaffordable" or is not minimum essential coverage.

The proposed rule explains that coverage is unaffordable if the cost of the employee's required contribution for self-only coverage is greater than 9.5% of the taxpayer's household income for that year. However, since most employers do not know household income, the government anticipates issuing a safe harbor that prevents the employer from being assessed a "play or pay" penalty as long as the full-time employee's premium contribution for single coverage in the lowest-cost plan does not exceed 9.5% of that employee's W-2 wages from that employer.

So while it is possible for any employee to waive employer coverage and purchase Exchange coverage and it may be possible for employees to qualify for an Exchange subsidy based on household income, the employer may be protected from penalties if they properly plan and keep full-time employees' premium contributions for the lowest-cost plan under the 9.5% of W-2 wages threshold. We will be sure to let you know any more details when this employer safe harbor becomes official.



## New Labeling

Another set of proposed regulations released earlier this month will require plans and issuers to provide consumers with more user-friendly information about their health plans.

The regulation requires that consumers be given a Uniform Glossary of Terms and a standardized Summary of Benefits and Coverage. Although plans will be required to comply in March 2012, we expect to see additional clarification in the form of a Final Rule prior to that date, so look for more in-depth analysis of this new requirement in next month's bulletin.

## Comment Period on Preventive Services Still Open

Don't forget that HHS is still accepting public comment on its proposed regulation on Women's Preventive Services Guidelines released at the beginning of August. These proposed rules require non-grandfathered plans to cover various preventive services, including contraceptives, with no cost-sharing. If you would like to submit a comment to HHS, you can find instructions here in our bulletin from earlier this month.