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Supreme Court Hears Arguments Regarding the Constitutionality of DOMA

On March 26, 2013, the United States Supreme Court heard arguments on the constitutionality of the Defense of Marriage Act of 1996 ("DOMA"). The Court heard arguments on the U.S. Court of Appeals for the Second Circuit's decision in *Windsor v. U.S.*, Docket No. 12-2335-cv (2nd Cir. Oct. 18, 2012), which held Section 3 of DOMA unconstitutional. Section 3 of DOMA defines "marriage" as a legal union between one man and one woman for purposes of federal law, thereby precluding same-sex spouses from certain benefits and coverages under the Social Security Act, ERISA, and the Internal Revenue Code. If the Supreme Court finds Section 3 of DOMA unconstitutional, ERISA covered plans will no longer be permitted to rely on DOMA to exclude benefits for same-sex spouses. A decision is expected in June 2013.

DOL Provides Guidance on Integrated Status of HRAs

On January 24, 2013, the Departments of Labor ("DOL"), Health and Human Services ("HHS"), and the Treasury (collectively, the "Departments") issued a set of Frequently Asked Questions ("FAQs") implementing various provisions of the Patient Protection and Affordable Care Act ("PPACA"). The FAQs define an "integrated HRA" as an "HRA that is available only to employees who are covered by primary group health plan coverage provided by the employer and meeting the requirements of Public Health Service Act (PHS Act) section 2711." PHS Act section 2711 prohibits plans and insurers from imposing lifetime or annual limits on the dollar value of essential health benefits.

HHS has previously stated that the PHS Act annual and



BENEFITS UPDATE

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PCORI Fees Due Beginning July 31, 2013

Beginning with each plan year ending on or after October 1, 2012 and before October 1, 2019, plans will be required to pay a research fee to fund the Patient-Centered Outcomes Research Institute Trust Fund ("PCORI"). The research conducted by the PCORI will evaluate and compare health outcomes and the clinical effectiveness, risks, and benefits of medical treatments and services. The fee is generally \$1 per covered life for 2012 and \$2 per covered life for 2013. Thereafter, the fee will be increased for inflation based on the projected amount of National Health Expenditures.

The PCORI fee for a plan year is due no later than July 31 of the year following the last day of the plan year. Plan sponsors are required to report and pay the PCORI fee using IRS Form 720, "Quarterly Federal Excise Tax Return."

IRS Updates EPCRS Program

On December 31, 2012, the IRS released Revenue Procedure ("Rev. Proc.") 2013-12, which includes significant changes to the Employee Plans Compliance Resolution System ("EPCRS"). EPCRS is the IRS's correction program for retirement plans. The long awaited update, which is effective beginning April 1, 2013, replaces Revenue Procedure 2008-50. Most notably, Rev. Proc. 2013-12 streamlines the process for filing a Voluntary Correction Program ("VCP") application by revising the documents previously used for this purpose, and requiring the use of new Forms 8950 ("Application for Voluntary Correction Program") and 8951 ("Compliance Fee for Voluntary Correction Program"). VCP applications are now required to be sent to Covington, Kentucky, rather than Washington, D.C.

The Rev. Proc. also increases fees for plans that fail to timely adopt certain required amendments, and provides methods that plans should use for locating missing participants now that the IRS has discontinued its Letter Forwarding Program. The Rev. Proc. provides the

following methods to locate missing participants who are owed benefits: (a) use of the Social Security Letter Forwarding Program; (b) use of a commercial locator service; or (c) use of internet search tools.

HHS Issues Final Rule on Transitional Reinsurance Program Fee

On March 11, 2013, HHS issued final regulations implementing the PPACA's transitional reinsurance program fee. The temporary reinsurance program is designed to fund reinsurance payments to health insurers that cover high risk individuals in the individual market. The purpose of this program is to stabilize premiums in the individual market during 2014, 2015, and 2016. The fee for 2014 is \$63 per covered life (\$5.25/covered life/month). The fee applies to plans providing major medical coverage. This means that integrated HRAs, prescription drug coverage, health flexible spending accounts, health savings accounts, and other PPACA excepted benefits are not subject to the fee.

Plan sponsors of self-insured plans, and insurers of insured plans, are required to report their enrollment counts to HHS by November 15 of each year (2014, 2015, and 2016) using one of the permissible counting methods set forth in the final regulations. HHS will provide a notice of the fee by December 15, and the plan sponsor or insurer will have 30 days from receipt of this notice to pay the fee.

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The information contained in this newsletter is only a summary of recent developments affecting employee benefit plans. It is not intended to take the place of specific legal advice. If you have questions concerning how these developments affect your plan, please contact Blitman & King LLP at one of the above locations.