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Employee Benefits and Executive Compensation Alert

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New Health Plan Rules to Keep in Mind When Planning for the 2013 Open Enrollment Season

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The face of employer health plan compliance continues to shift as a number of new rules impacting health plans already have, or soon will, become effective. Not surprisingly, these rules pose new compliance challenges for employers who sponsor health plans. It is not too soon for plan sponsors to begin planning for the implementation of these requirements and to determine how they will affect 2013 open enrollment. Specifically, plan sponsors should be sure to consider the following:

- **Summaries of Benefits and Coverage**—Starting with open enrollment periods beginning on or after September 23, 2012, employers who sponsor medical plans (both self-insured and fully insured) will be required to provide all employees eligible for coverage with a "4-page" summary of benefits and coverage describing the plan's key terms. These "SBCs" must be prepared in accordance with the government's detailed instructions on content and appearance. If an employer sponsors more than one medical plan option, an SBC must be prepared for each option offered.
- **Maintenance of "Grandfathered" Status**—Plan sponsors will need to continue to closely monitor any changes to plans that have maintained their "grandfathered" status under health care reform. Upon forfeiting grandfathered status, plans become subject to a number of additional requirements, including the requirement to provide first-dollar coverage for preventive care and heightened claims and appeals procedures.
- **Dollar Limit on Health FSA Contributions**—Beginning in 2013, employers will be required to limit the annual dollar amount each employee may contribute to a health flexible spending account through salary reduction contributions to $2,500. Going forward, this amount will be indexed for inflation.
- **W-2 Reporting Requirements**—In January 2013, employers will have to distribute 2012 Form W-2s that include information on the value of certain health benefits provided to employees (based on each individual employee's elections).
- **Fee on Health Plans for Patient-Centered Outcomes Research Trust Funds**—Health care reform includes provisions designed to assist patients, clinicians, purchasers and policy-makers in making informed health decisions by establishing a private, non-profit organization, the Patient-Centered Outcomes Research Institute, to perform clinical effectiveness research. This institute will be funded by a new tax on health insurance policies and self-insured plans. The tax, which will apply to plan years ending on or after October 1, 2012 and before October 1, 2019, will be $1 per covered life for the first year and $2 per covered life (indexed for inflation after the second year) for each succeeding year. The Internal Revenue Service has issued guidance allowing plan sponsors some discretion in how to count participants for this purpose.
- **New Final HIPAA Regulations**—New HIPAA regulations reflecting changes made by the Health Information Technology for Economic and Clinical Health Act ("HITECH") are scheduled to be released by the end of June 2012. These final regulations are expected to address, among other things, the direct application of HIPAA's privacy and security rules to business associates, individual rights to obtain certain information in electronic form, the breach notification requirements, enforcement and penalties. These changes will require plan sponsors to review and revise their existing HIPAA privacy and security policies and procedures, and, in many cases, renegotiate business associate agreements.
- **On the Horizon**—Significant additional new rules implementing health care reform are also scheduled to go into effect in 2014. The Department of Labor has issued informal guidance indicating that it is working with the Internal Revenue Service and the Department of Health and Human Services to develop and issue guidance relating to these requirements, which include the requirement that employers automatically enroll full-time employees in their health plans, the 90-day limit on waiting periods for employer-sponsored plans, and the employer shared responsibility requirements (often called the "play or pay" rules).

In many ways, the fate of the health care reform rules discussed above (and those already in effect) will be decided by the Supreme Court when it issues its decision on the constitutional challenges to health care reform this summer. Pending the Court's decision, however, plan sponsors are required to implement the provisions of health care reform as they become effective, and therefore should be planning now. Advanced planning and timely implementation are particularly important in light of the fact that the Department of Labor has allocated significant resources to the performance of health care reform compliance audits, which have already begun.

The lawyers in Venable's **Employee Benefits and Executive Compensation Practice Group** continue to monitor the new developments impacting employer health plans and are available to assist plan sponsors and service providers as they continue to plan for, and implement, these new requirements.