

EMPLOYEE BENEFITS ALERT

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

Government Issues Report, Seeks Input on Key Health Reform Issues

June 17, 2011

Recent announcements from the Department of Labor (DOL) and IRS suggest that additional guidance on two key issues under health reform may be forthcoming.

First, the DOL has issued a report describing the scope of benefits provided under a "typical employer plan." This is important because substantial portions of the health reform law apply only to "essential health benefits," a term which is defined by reference to whether the benefit is offered under a "typical employer plan." For example, "essential health benefits" may not be subject to lifetime dollar limits and may only be subject to certain "restricted" annual dollar limits prior to 2014. In addition, only "qualified" policies of insurance may be offered under the state health exchanges scheduled to become operational under health reform by 2014. Status as a "qualified" policy requires, at a minimum, coverage of "essential health benefits" in a manner roughly comparable to that provided under a "typical employer plan." The report summarizes various benefits (*e.g.*, physical therapy, kidney services, infertility services) and coverage provisions (co-payments for physician and in-patient hospital visits) collected from approximately 36,000 private employers' plans, including detailed information from a smaller sample of 3,900 employers. Although the report is only one factor that the Department of Health and Human Services will use in ultimately defining "essential health services," it will likely be the primary factor.

Separately, IRS and the Department of Treasury have requested input from employers on how to define certain terms under health reform's new "play-or-pay" rule (*i.e.*, the "shared responsibility" or "employer mandate" rule). Under that rule, which also takes effect in 2014, employers with at least 50 "full-time employees" are subject to a "shared responsibility payment" (*i.e.*, a penalty) if they do not offer their full-time employees "affordable" health coverage. Calculation of the fine is based partly on the number of full-time employees the employer has, and the term "full-time employee" includes any employee averaging at least 30 hours of service per week in a given month. In its request for comments, IRS has proposed allowing employers to use a "look back" period of at least three (but not more than 12) months to determine an employee's "average" weekly hours. IRS also is requesting input on how the terms "employee" and "hours of service" should be defined with respect to seasonal employees and employees with irregular work schedules, among other people. Separately, IRS also is requesting comments on how health reform's rule against group health plan waiting periods in excess of 90 days should be applied (for example, should non-consecutive periods of

employment be combined for this purpose). Comments may be submitted via email to: Notice.comments@irs.counsel.treas.gov.

If you have questions regarding the information in this alert, please contact any of the attorneys in our Employee Benefits Practice Group listed below.

Bass, Berry & Sims Employee Benefits Attorneys

David Thornton

(901) 543-5922

dthornton@bassberry.com

Fritz Richter

(615) 742-6256

frichter@bassberry.com

Richard Barry

(615) 742-6230

rbarry@bassberry.com

Curtis Fisher

(615) 742-7892

cfisher@bassberry.com

Michael Moore

(901) 543-5916

mtmoore@bassberry.com

John Kirk

(615) 742-7808

jkirk@bassberry.com

The materials contained herein have been abridged from the statutory sources and should not be construed or relied upon for legal advice. Readers are urged to consult legal counsel concerning particular situations and specific legal questions.

To ensure compliance with requirements imposed by the IRS, we inform you that this message is not intended to be used, and cannot be used, by the addressee or any other person for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code.

150 Third Avenue South, Suite 2800 • Nashville, TN 37201 • (615) 742-6200

The Tower at Peabody Place • 100 Peabody Place, Suite 900 • Memphis, TN 38103 • (901) 543-5900

1700 Riverview Tower • 900 South Gay Street • Knoxville, TN 37902 • (865) 521-6200