

For Immediate Release:

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Employee Benefits
Compliance & Regulatory Affairs
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Compliance at-a-glance

- "Fiscal Cliff" is avoided...kind of
- Small Business Health Care Credit Takes on a New Form
- Exchanges! Exchanges! Read all about it!
- A Little Guidance on Reimbursable Medical, Dental and Dependent Care Expenses May Go a Long Way
- Additional Cost-of-Living-Adjustments Released...Finally!

CONGRESS REACHES A DEAL TO AVOID THE FISCAL CLIFF...AND IT AFFECTS SOME BENEFITS

On January 3, 2013, the American Taxpayer Relief Act of 2012 (ATRA) was signed into law, avoiding the so-called "Fiscal Cliff." The "Bush-era" tax cuts expired for incomes over \$400,000 (\$450,000 for joint filers), but tax rates for incomes below this amount were made permanent.

ATRA provisions affect employee benefits in the following ways:

- **Employer-provided educational assistance:** An employee may receive up to \$5,250 per year, without taxation
- **Commuter benefit plan:** An employee may contribute up to \$240 pre-tax, per month, for both transit/commuting and parking commuter benefits (previously the amounts were \$240 for parking and \$125 for commuting)
- **Employer-provided adoption assistance:** An employee may receive up to \$12,970 of employer-paid adoption expenses, without taxation

ATRA impacts payroll taxes in the following way:

- Social Security tax rate for employees increases from 4.2% to 6.2%; this increase is for wages earned up to \$113,700
- Social Security tax rate for employers remains unchanged at 6.2%

For further explanation of the Social Security tax rate, see Notice 1036:
<http://www.irs.gov/pub/irs-pdf/n1036.pdf>

Important Dates

1/24/2013 - Barney & Barney Compliance Mixer. Come and meet the Compliance Team, get a quick update on health care reform and enjoy wine and snacks

2/5/2013 - Barney & Barney Quarterly Health Care Reform webinar. Register and hop online to get an update on the latest health care reform regulations on the Employer Mandate and how it may affect you

2/12/2013 - Barney & Barney Employer Mandate Workshop. Webinars and seminars are great. But if you prefer one-on-one instruction on how to comply with health care reform's Employer Mandate, this workshop is for you. A small group (approximately 10 people) of like-industry professionals will have the entire compliance and actuary team in the room to personally work through our new proprietary worksheets using your census data, you bring to the meeting

Plan Years on/after 1/1/2013 - Flexible Spending Accounts limited to \$2,500 for employee contributions

60 days after the Beginning of the Plan Year - Employer Creditable Coverage Reporting to CMS due (e.g., if your plan effective date is 1/1, you must report by 3/1)

Plan Years on/after 8/1/2012 - Health care reform's women's preventive services mandate with no cost-sharing (for calendar year plans the effective date was January 1, 2013)

Plan Years on/after 9/23/2012 - Health care reform's annual dollar limits for "essential health benefits" restricted to no less than \$2 million, absent a waiver (for calendar year plans the effective date was January 1, 2013)

Plan Years on/after 9/23/2012 - Summary of Benefits and Coverage (SBC) must be provided to plan participants and prospective participants upon marketing, 30 days prior to renewal and within 7 days of special enrollment election (for calendar year plans the effective date was January 1, 2013)

Plan Years Ending on/after 10/1/2012 - Comparative Effectiveness Fee: Fully-insured carriers and self-funded plan sponsors will be subject to a fee in the amount of \$1 per covered life. The Fee is due July 31 of each year using Form 720 "Quarterly Federal Excise Tax Return."

10/15/2013 Medicare Part D creditable and/or non-creditable notices to plan participants due (if not previously provided earlier in the year as part of the Benefits Information Guide or at open enrollment)

11/15/2013 - Barney & Barney's Legislative Compliance 2014 Outlook Seminar in San Diego

Action Required (only for employers with affected plans):

- Ensure plans reflect these changes
- Plans already in effect prior to the ATRA changes require plan amendments to permit these new changes, including a Summary of Material Modification
- Update plan documents within 60 days

For complete details, see:

<http://beta.congress.gov/bill/112th-congress/house-bill/8>

SMALL BUSINESS HEALTH CARE TAX CREDIT FORM UPDATED

The Internal Revenue Service (IRS) recently released the 2012 version of Form 8941. This form is used in calculating a small employer's health care tax credit of up to 35% of employer contributions toward health insurance. This credit is available to employers with less than 25 employees, earning less than \$50,000 a year.

Action Required (only for eligible small employers):

- Seek advice from tax professional or accountant
- Form 8941 only provides a calculation of the tax credit, which is then reported on Form 3800 or Form 990-T (for tax exempt employers)

Form 8941 can be found at the following link: <http://www.irs.gov/pub/irs-pdf/f8941.pdf>.

STATE EXCHANGE GUIDANCE AND LIST OF CONDITIONALLY APPROVED EXCHANGES RELEASED

The Center for Consumer Information and Insurance Oversight (CCIIO) has recently released a list of 17 states, plus the District of Columbia, with conditional approval for their own State-Based Exchange (SBE). States include:

- | | |
|------------------|------------------|
| 1. California | 10. Nevada |
| 2. Colorado | 11. New Mexico |
| 3. Connecticut | 12. New York |
| 4. Hawaii | 13. Oregon |
| 5. Idaho | 14. Rhode Island |
| 6. Kentucky | 15. Utah |
| 7. Maryland | 16. Vermont |
| 8. Massachusetts | 17. Washington |
| 9. Minnesota | |

Arkansas and Delaware received conditional approval to operate a State Partnership Exchange (SPE) which partners with the Federal option.

In other news, on January 14, 2013, the Department of Health and Human Services (HHS) released proposed regulations related to State Exchanges, including:

- Appeals processes, notice requirements, and verifications of eligibility for qualifying coverage in an eligible employer-sponsored plan
- Eligibility requirements for State Exchanges
- Medicaid and Children's Health Insurance Program Reauthorization Act (CHIPRA) eligibility notices, appeals, and other administrative procedures
- State flexibility in designing Medicaid benefits and cost-sharing

No Action Required by Employers. Take-aways Include:

- Consult with your Barney & Barney team to see how Exchanges operating in states your employees reside in affect your population
- Be on the look-out for future model notices for the SBE

Details to follow in upcoming Breaking News. Proposed regulations are available at:

http://www.ofr.gov/OFRUpload/OFRData/2013-00659_PI.pdf. For the list of states participating in both SBEs and SPEs, including links to websites for each state, see: <http://cciio.cms.gov/resources/factsheets/state-marketplaces.html>

GUIDANCE SPECIFYING MEDICAL, DENTAL AND DEPENDENT CARE EXPENSES RELEASED

The Internal Revenue Service (IRS) recently released Publications 502 and 503, listing specific expenses that qualify as a personal income tax deduction, or for benefit plan reimbursements (including Flexible Spending Accounts (FSA), Health Reimbursement Accounts (HRA), and Health Savings Accounts (HSA)).

No Action Required by Employers. Take-aways Include:

- Be aware of expenses that may be reimbursable under a benefits plan

For more information regarding these Publications, go to: Publication 502: <http://www.irs.gov/pub/irs-pdf/p502.pdf>; and, Publication 503: <http://www.irs.gov/pub/irs-pdf/p503.pdf>

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) BREACH, FINE IMPOSED FOR GROUP UNDER 500 LIVES

Hospice of North Idaho (HONI) was recently fined \$50,000 for a breach of Protected Health Information (PHI) affecting fewer than 500 individuals. It has been settlements for large HIPAA violations (groups over 500 individuals) which have become increasingly common in recent times; HONI is now the first where a breach of less than 500 individuals' PHI caused such a significant fine.

The fine not only focused on the breach itself, but more importantly on the employer's written HIPAA policies, and whether the employer conducted a risk assessment under the HIPAA Security Rule.

Action Required (only for employers subject to HIPAA)

- Draft and implement HIPAA privacy policies in anticipation of future breaches; or, reevaluate current HIPAA policies in place
- Be aware that smaller employers may be subject to HIPAA breach fines
- Contact your Barney & Barney Team regarding any compliance questions

For further reading of the HIPAA Security Rule, go to: <http://www.hhs.gov/ocr/privacy/hipaa/administrative/securityrule/securityrulepdf.pdf>

ADDITIONAL 2013 COST-OF-LIVING ADJUSTMENTS RELEASED

The Internal Revenue Service announced late last week, annual inflation adjustments for tax year 2013, including tax changes from the recently passed American Taxpayer Relief Act (ATRA). Most notable, include:

- A \$245 monthly limit for both qualified transit passes/vanpool expenses (up from \$240 for tax year 2012 (the legislation provided a retroactive increase from the \$125 limit that had been in place)), and qualified parking reimbursements
- Adoption assistance benefits allowing employee's a tax-free maximum of \$12,970

Action Required:

- Ensure plans reflect new limits, where applicable

For more details on maximum exclusions, see: <http://www.irs.gov/uac/Newsroom/Annual-Inflation-Adjustments-for-2013>

QUESTION OF THE MONTH

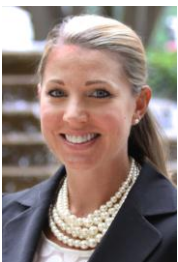
Q: Can we satisfy the COBRA initial notice requirement by including the notice's contents in our group health plan's SPD?

A: Yes, but it may be better to use a stand-alone initial notice. The DOL's COBRA regulations expressly permit a plan administrator to satisfy the initial notice requirement by including the notice's contents in a summary plan description (SPD). Indeed, the DOL has suggested that plans may prefer to take advantage of the reduced cost and added efficiency of providing a single document that satisfies both the initial notice requirement and the SPD requirement. Even so, a stand-alone initial notice may be preferable. Although it is a close call, we offer the following reasons why a stand-alone initial notice in addition to the SPD may be a better way to go:

- The information required to be included in the initial notice is important to covered employees and covered spouses because it can affect their ability to maintain health coverage. It's also important to plans and employers because failure to comply with COBRA's initial notice requirement exposes them to the possibility of COBRA liabilities and penalties. A stand-alone initial notice of COBRA rights and obligations may be more likely to be noticed and read by the covered employee and covered spouse than the same information contained in the SPD.
- If you use a single document, your SPD distribution procedures must comply with the COBRA rules regarding distribution of the initial notice. Generally, the deadline for delivery of the COBRA initial notice will be the same as ERISA's deadline for delivery of the SPD—within 90 days after plan coverage begins. However, COBRA requires the initial notice to be provided to both the covered employee and any covered spouse, while SPDs are only required to be delivered to the participant (and not to a spouse). Therefore, if the SPD is used to satisfy the initial COBRA notice requirement, delivery procedures must be modified to include covered spouses.
- It may be administratively simpler to send out stand-alone initial notices, particularly if procedures are already in place to ensure that covered employees and covered spouses are provided with initial notices when their coverage starts. Plan administrators that decide to start including the initial notice in the SPD may find it difficult to implement SPD delivery procedures so that SPDs are delivered according to the COBRA initial notice delivery requirements—especially the requirement that a spouse who is later added to coverage be sent an initial notice. In addition, plan administrators using stand-alone initial notices may find it easier to keep records that will suffice as proof of delivery of the initial notice to a particular covered employee or covered spouse.
- If changes are required to the initial notice, or if the employer prefers to distribute a new initial notice to every employee at open enrollment, an initial notice is smaller and less costly to distribute than a full SPD. And as a practical matter, many COBRA initial notices are provided on behalf of employers by third-party administrators (TPAs) that are engaged to provide COBRA administrative services. These TPAs may provide stand-alone initial notices as part of their contractual COBRA administrative responsibilities and will likely continue to do so even if the information is also included in the SPD.

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Contact



Lisa R. Nelson, Esq.
Director
Compliance & Regulatory Affairs
(858) 875-3017
lisan@barneyandbarney.com



Christopher K. Bao, Esq.
Compliance Manager, Orange County Office
Compliance & Regulatory Affairs
(949) 540-6924
chris.bao@barneyandbarney.com