

CFO AWARDS

The Healthcare Reform Bill's Supreme Court Postmortem

By Tobias Kennedy

Unfortunately for me, the crystal ball I'm counting on is substantially fuzzier today upon authoring this piece than the picture will ultimately reveal to you by the time this article lands on your desk. However, while you'll have to either bear with me for short circuits in my ESP wiring or marvel at my Nostradamian foresight on the Supreme Court's somewhat unpredictable customs, I do sincerely believe that the Justices have tipped their hands and the information below is indeed quite important for the stewards of our local finance departments to fully understand.

There are three parts of the Healthcare Reform bill I see as completely severable from the individual mandate (meaning regardless of what happens to that controversial portion of the legislation, one can imagine the below regulations remaining) and we've been alerting CFOs to their peril for some time now. When given the opportunity to craft an article for our valley's financial officers, I thought there'd be no better topic than these three parts of PPACA which carry heavy non-compliance fines yet still have their respective start dates being ironed out. Rest assured, our government is in no mood to eliminate

cumbersome employer regulations and I want to be certain I highlight these looming "coming soon" rules so you can prepare and keep from being blindsided upon their enacting.

Potential Fines:

1. Healthcare Reform creates specific disclosure requirements to help plan participants understand their insurance options as well as other choices available to them. This newly created requirement means that a detailed document called a Summary of Benefits Coverage, or "SBC," must be delivered to employees in explicitly particular fashions and be of a specified page length and font size. Not only was PPACA this stringent in its instructions, but it also mandates that it be accompanied by a "uniform glossary of terms" and illustrate the coverages of each plan for having a baby, managing diabetes and treating breast cancer. The fine is up to \$1000 per enrollee who does not receive this information, so you will absolutely want to be sure you know and trust your insurance broker's advice on this one.

2. If you thought \$1000 per enrollee was bad, the good news about the next fine I'm spotlighting is that it comes with a maximum cap—you can only be fined \$3

million dollars for non-compliance! A lot has been made of the W-2 reporting requirements imposed upon employers, but it is very important you are tracking the changes as certain groups were mandated to comply, then given a reprieve, while others were simply expected to begin this arduous task for their 2012 year. The regulation states that the cost of ALL applicable employer-sponsored coverage must be reported and clearly indicated that both the employee's portion and the employer's cost share must be included in the new Box 12 using code "DD." Again, the fine can be as high as \$3 million for a mis-step here, so be sure your insurance advisors have the particulars down.

3. The final part of the Affordable Care Act I wanted to discuss is the discrimination language. By now I'm sure your broker advised you that a plan may not discriminate in favor of highly compensated individuals for things such as eligibility or premium cost shares. I'm also sure that you were subsequently told the effective date was pushed off "until further notice" (or at least I hope so, the notice delaying the start of this statute was issued in 2010!), but what I did want to make sure you're aware of today is that the fine for violating this provision results in an excise

tax of \$100 per day per individual discriminated against. So, while the richer PPO or more affordable premiums are a staple of many executive teams, be sure your broker is keeping a keen eye to when this practice does ultimately get the legal axe because your organization won't want to face the costly penalties nonconformity levies.

Regardless of what the Supreme Court does to this specific piece of legislation, the main point of the article remains: while the Justices probably won't be eliminating these employer mandates, even if they do, keeping in compliance with your benefits is a full time job so you'll want to be sure your business partner is not only doing great work on the plans, premiums and year-round servicing, but keeping you up to date on the latest regulations as they come down.

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