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WELFARE BENEFITS AND ERISA LITIGATION

Recent Developments Affecting the Administration of Group Health Plans

U.S. Supreme Court clarifies ERISA-provided remedies for misrepresentations in Summary Plan Descriptions:

The U.S. Supreme Court held in *Cigna Corporation v. Amara* (No. 09-804, 5/16/11) that plan participants who were provided a Summary Plan Description (SPD) with an erroneous and misleading description of benefits could sue under ERISA § 502(a)(3)(b) to obtain relief if it can be established that the participants were actually harmed by the employer's misrepresentation. The Court went on to hold that failure to comply with ERISA's SPD notice requirements *may entitle plan participants to other remedies* such as reformation of the plan, remedies to place the person entitled to its benefit in the same position he would have been in had the representations been true, and even monetary compensation, known as "surcharge."

U.S. Agencies Issue Proposed Rule Outlining PPACA Requirements for Summary of Benefits and Coverage:

On August 22, 2011, the Department of Health and Human Services (HHS), along with the Department of Labor (DOL) and the Internal Revenue Services (IRS), published a proposed rule setting forth the requirements of the Summary of Benefits and Coverage (SBC) disclosure that health insurers and group health plans (including grandfathered plans) must provide to plan participants and beneficiaries under the Patient Protection and Affordable Care Act of 2010 (PPACA). The SBC is a notification that must be provided in addition to the SPD. The proposed rule includes details regarding the required content of the SBC, its appearance, language and format, and the delivery deadlines.

U.S. Agencies Issue Guidelines on Required Coverage of Women's Preventive Services:

On August 1, 2011, the HHS, DOL and IRS issued guidelines clarifying the meaning of preventive care for women required under PPACA. Non-grandfathered plans and issuers are now required to provide coverage without cost-sharing for preventive services, such as contraceptive methods and counseling, breastfeeding support and supplies, well-woman visits, HPV and HIV testing, counseling for sexually transmitted infections, and screening and counseling for interpersonal and domestic violence.

The Puerto Rico Health Insurance Code:

Puerto Rico Act No. 194 of August 29, 2011 (Act No. 194) created the Puerto Rico Health Insurance Code (Code). The first phase of the Code covers areas such as prescription drug management, internal claims procedures, health insurance for small and medium size companies or PYMES, and group health coverage for newborns and children recently adopted or placed for adoption. The Code also incorporates the insurance market reform introduced by PPACA, including the extension of dependent coverage to adult children to the age of 26, the restriction or elimination of annual or lifetime limits, and the requirements for preventive services without cost-sharing, among others.

As group health plan administrators, employers should revise plan documentation, including SPDs, to incorporate these amendments, especially now that the *Cigna* decision makes it clear that misrepresenting and misleading statements contained in an SPD could lead to potential liability to employees.

If you have any questions or comments, or wish additional information regarding this matter, you may contact any of the attorneys listed below, members of our Welfare Benefits and ERISA Litigation Practice Team:

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