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**Labor & Employment Alert  
November 2012**

**Federal Government Releases Additional Proposed  
Regulations Under the Affordable Care Act**

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With the 2012 election behind it and Speaker of the House stating that the Patient Protection and Affordable Care Act (“PPACA”) is the “law of the land,” the Obama Administration has pushed forward with health care reform by releasing new proposed regulations on November 20, 2012. The newly proposed regulations provide guidance on wellness program provisions under the PPACA, nondiscrimination for people with preexisting conditions, and the long awaited meaning of “essential health benefits.” The new regulations would be effective for plan years beginning on or after January 1, 2014.

- Wellness Program Proposed Regulations – The PPACA contained provisions creating incentives to have employer sponsored wellness programs. The new regulations build on rules already in place to promote these programs and protect consumers. Participants in health-contingent wellness programs would be able to see premiums reduced by up to 30%, instead of up to 20% as allowed currently. The maximum reward could be up to 50% of the premium, if the program is intended to prevent or reduce tobacco use. The proposed regulations also include provisions regarding the design of health-contingent wellness programs intended to prevent discrimination and allow all participants to achieve the rewards. The proposed regulation is available at: <http://www.dol.gov/ebsa/pdf/wellnessproposedregulation.pdf>.
- Nondiscrimination for Preexisting Conditions Proposed Regulations – One of the key provisions of the PPACA was its prohibition on discrimination based on preexisting conditions. The prohibition on such discrimination is already effective for children under age 19, but the law requires an elimination of preexisting condition exclusions for all Americans in plan years beginning on or after January 1, 2014. The proposed regulations would implement this requirement. Under these regulations, insurers may only implement higher premiums based on age, tobacco use, family size and geography and not health status, gender, occupation, or employer size or industry. Massachusetts already prohibits preexisting condition exclusions in health plans. The proposed regulations would also make catastrophic coverage plans available to young adults and

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those who cannot afford other coverage. The proposed regulation is available at:  
<http://www.dol.gov/ebsa/pdf/hhsmarketrules.pdf>

- Essential Health Benefits Proposed Regulations – The PPACA requires most Americans, as of January 1, 2014, to be enrolled in a health plan that provides “essential health benefits.” The statute contained some information about what would be included in the definition of essential health benefits, but provided that regulations would flesh out the definition. The statute provided a list of categories that must be included in essential health benefits and stated that essential health benefits must be equal in scope to benefits offered by a “typical employer plan.” The proposed regulations provide for a benchmark plan that will be different in every state to be selected by each state from a list of options for each state included in an appendix to the regulations. Any plan in that state would have to offer benefits equal in scope to the benchmark plan in order to be considered essential health benefits. The proposed regulation is available at:  
[http://www.ofr.gov/OFRUpload/OFRData/2012-28362\\_PI.pdf](http://www.ofr.gov/OFRUpload/OFRData/2012-28362_PI.pdf)

The public comment period for the proposed regulations is ongoing. Comments on the preexisting condition and essential health benefits regulations are due December 26, 2012, with comments on the wellness program regulations due January 25, 2013. Once the government receives and reviews the public comments, it may or may not make changes to the proposed regulations. It will then release final regulations to go into effect for plan years beginning on or after January 1, 2014. Employers should review their health care plans now to understand whether they are likely to meet the essential health benefits standard.

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*If you have any questions or concerns with regard to the implementation of the Act, please contact Katherine A. Hesse, Brian P. Fox or the attorney assigned to your account.*

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