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## New federal guidelines for same-sex spouses emerge in wake of DOMA ruling

On June 26, the U.S. Supreme Court struck down a portion of the Defense of Marriage Act (DOMA) ruling that it violated the equal protection clause of the U.S. Constitution.

Section 3 of DOMA defined the term "marriage" for purposes of federal law as being a legal union between one man and one woman as husband and wife. The Court threw out this definition, ruling that marriage must be defined under federal law as any legally-recognized marriage under state law, including same-sex marriages.

The Court's decision left many unanswered questions for individuals and employers, which led to the need for federal agencies to issue clarifying guidance. Both the Internal Revenue Service (IRS) and Department of Labor (DOL) have recently released guidance to answer questions on how the Court's decision will be implemented.

On Aug. 29, the IRS issued Revenue

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## Educating Employees on Health Insurance Exchanges

As the new health insurance Exchanges, or Marketplaces, come online this fall, many individuals and employers are still uncertain about how they will work. Their confusion is hardly surprising, given the complexity of the health care reform law and the contradicting sources of information regarding the changes.

Beginning Oct. 1, most employers are required by the Affordable Care Act to provide notices to new and current employees regarding the existence of the Exchanges. These notices must provide information on the services available through the Exchange, the availability of subsidies and the impact to the employee of choosing to purchase coverage through an Exchange.

In addition, employees may look to their employers as a source of information because they associate health insurance with their employers. As a result, employers are likely to field numerous requests for guidance over the next few months. In fact, a recent

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## Exchange Education, cont.

survey by the Midwestern Business Group on Health found that 90 percent of employers have been asked questions about health care reform by their workers.

Employers may also receive questions about the Exchanges because the Exchange open enrollment period overlaps with many employer-sponsored health plan enrollment periods. Some employees are bound to confuse the two types of coverage and look to the employer for answers.

Although the DOL has said that there are no penalties for failing to provide the notice about the Exchanges, employers should consider the benefit of educating their workforce as a whole (as well as the peace of mind from being in full compliance with the law). Failing to provide the notice can lead to the employer having to answer the same questions many times.

Common questions from employees are listed below. Some of these questions can be answered by providing the notice about the Exchanges.

- What is the individual mandate?
- What is the Exchange?
- What kind of coverage is available through the Exchange and how much will it cost?
- How do I get subsidies and reduced out-of-pocket expenses?
- Is anything happening to the company plan?
- How and when do I enroll?
- When does coverage start?
- Can I keep my own doctor?
- What if I have a pre-existing health condition?
- Is the company plan considered affordable?
- Is the company plan grandfathered?

To prepare answers for these or other questions you may have, or for help with employee communication, contact your Brown & Brown Benefit Advisors representative.

## Large Employer Reporting

The Affordable Care Act (ACA) requires large employers to report information to the IRS and employees regarding the employer's health coverage. These requirements are found in Section 6056 of the Internal Revenue Code. They take effect in 2015, with the first reports required to be filed in 2016.

The reporting requirements apply to "applicable large employers," which employed, on average, at least 50 full-time employees (including full-time equivalents) during the prior calendar year. Full-time employees are those who average at least 30 hours of service per week.

The information required is designed to help the IRS determine the employer's compliance with the employer-shared responsibility (or pay or play) rules and to help employees determine whether they can claim a premium tax credit for coverage purchased through an Exchange.

Information that will be required includes:

- Contact information for the employer;
- Whether the employer offered minimum essential coverage to its full-time employees (and their dependents);
- The number of full-time employees for each month during the calendar year;
- The months during the calendar year for which coverage was available, for each employee;
- Each full-time employee's share of the lowest-cost monthly premium for self-only coverage; and
- Contact information for each full-time employee and the months the employee was covered under an eligible employer-sponsored plan.

Additional information related to the employer and coverage is expected to be requested.

## Same-sex marriage, cont.

Ruling 2013-17, ruling that same-sex couples who are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes, including income, gift and estate taxes.

This ruling applies regardless of whether the couple lives in a jurisdiction that recognizes same-sex marriage or not. However, it does not apply to registered domestic partnerships, civil unions or similar formal relationships recognized under state law.

Employees may pay for health insurance coverage for same-sex spouses on a pre-tax basis and may be reimbursed tax-free through medical reimbursement accounts like FSAs and HSAs for their spouse's expenses. Employers may file refund claims for payroll taxes paid on previously-taxed health insurance and fringe benefits provided to same-sex spouses.

The DOL has issued two separate pieces of guidance on the implementation of DOMA. On Aug. 9, the DOL issued Fact Sheet #28F, confirming that, for purposes of the FMLA, the term "spouse" includes a same-sex spouse if the marriage is recognized under the laws of the state in which the employee resides.

As a result, legally married same-sex spouses living in a state that recognizes same-sex marriage will be entitled to FMLA leave on the same terms as opposite-sex spouses. However, unless further guidance is issued extending FMLA rights to all legally married same-sex spouses (regardless of residence), employers will not be required to make FMLA leave available to a same-sex spouse who resides in a state that does not recognize same-sex marriage.

On Sept. 18, the DOL issued Technical Release 2013-04, adopting an approach consistent with that of the IRS for purposes of ERISA and the Internal Revenue Code. Under this ruling, the terms "spouse" and "marriage" include same-sex couples validly married under state

law, regardless of whether the couple lives in a jurisdiction that recognizes same-sex marriage.

## Final HIPAA Rule

The Final Rule on HIPAA Privacy and Security Protections went into effect on Sept. 23. It updates HIPAA's privacy, security, enforcement and breach notification requirements, and includes changes required by the Health Information Technology for Economic and Clinical Health Act (HITECH Act).

To comply with the final HIPAA rule, health plans will need to:

- Review business associate agreements to determine whether amendments are necessary. Amendments to existing business associate agreements should be made before the end of the transition period. At the latest, this period will end on Sept. 23, 2014, although it may end sooner for some plans.
- Update HIPAA policies and procedures for the new rule's changes. For example, revisions should be made for the new breach notification standards, expanded individual rights and the prohibition on using genetic information for underwriting purposes.
- Update workforce training programs for the new requirements. For example, the training should be updated to include information on the risk assessment standard for breach notifications, and the "significant-risk" standard should be replaced with the "low probability" standard.
- Review the HIPAA privacy notice and make any necessary changes to reflect the final rule. If the health plan has a website, the updated privacy notice should be posted by Sept. 23, 2013. If not, the updated notice should be provided within 60 days of the revision to the notice.

Please contact your Brown & Brown Benefit Advisors representative for more information about the new HIPAA rule.

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