

To: Clients and Friends
From: Smith & Downey
Date: December 22, 2010
Re: Health Reform Act – Impact On Health Coverage for Former Employees

A number of our clients have been struggling lately with one likely-unexpected impact of the health reform act.

Specifically, as discussed in our prior e-Alerts, the act imposes on non-grandfathered, fully insured health plans nondiscrimination rules similar to those already existing for self-funded health plans.

Therefore, absent some future relief from the regulators, if an arrangement between an employer and a former high paid employee provides the former employee with a “better deal” under the employer’s non-grandfathered, fully insured health plan than is given to other former employees of the employer, prohibited discrimination arguably occurs under the new law (beginning with the first plan year beginning after 9/22/10) and the new law’s nondiscrimination penalties (which fall on the employer and which can be quite severe) arguably apply.

In light of the failure to date by the regulators to issue any relief (or guidance) on this issue, many employers that maintain non-grandfathered, fully insured health plans (or that maintain grandfathered, fully insured health plans that may lose their grandfathering) are checking their severance arrangements, employment agreements and other programs to ensure that they don’t contain discriminatory health benefits for former high paid employees. (Employers with self-funded health plans already have to perform this task.)

Please contact us if we can provide any assistance with this effort.