



## LABOR & EMPLOYMENT

### NEW HEALTH CARE CLAIMS TAX IMPACTS EMPLOYERS

A new 1% tax in Michigan on health care claims will impact employers who provide health care coverage to their Michigan employees. This tax is intended to help fund Michigan's Medicaid Program and replaces the former 6% use tax applied to Medicaid managed care plan services. It applies to claims paid for Michigan residents receiving medical services in Michigan on or after January 1, 2012. While the tax is collected from insurance carriers who provide fully insured group health plans and from third party administrators who pay claims for self-funded group health plans, most Michigan employers will be affected by the tax, since the insurance carriers and third party administrators are passing the tax directly through to the employer.

The tax applies to medical, dental and vision plans. The only exemptions from the tax are:

- Plans covering Federal employees;
- Services for Michigan residents received outside of the State;
- Services for non-residents received in Michigan;
- Cost sharing requirements such as deductibles, co-pays and co-insurance which are paid by employees;
- Claims for workers' compensation and long term care;
- Medicare, Medicare Advantage, and Medicare Part D claims; and
- Reimbursements under health savings accounts, flexible spending arrangements, or other health reimbursement arrangements authorized under Federal law.

For employers that pay monthly premiums, insurance companies are applying a factor of 1% or less to the premium being charged, since the tax only applies to Michigan residents who receive medical care in Michigan and the tax is capped at \$10,000 per individual per year. For example, we are aware that insurance companies are adding a tax recoupment factor that ranges between 0.75% of the employer's monthly premium to 0.9% of the employer's monthly premium. The actual percentage charged by the carrier appears to vary, in part, based on the percentage of Michigan residents covered by the plan in question.

A key question for many employers whose employees pay part of the cost of their insurance premiums is whether this cost can be passed on to the employees as though it is simply a premium increase. Although the tax will be separately itemized on each employer's bill, there is nothing in the new health care claims tax law that prohibits an employer from passing all or part of the tax on to its employees. Therefore, if employees are paying a specific percentage of the premium, the tax could simply be an addition to each employee's premium, and the employee would be contributing the same percentage, of a number that increases by 0.75% to 1% per month.

On the other hand, if an employer is charging a specific monthly or weekly fee to its employees for health insurance coverage, and this fee is memorialized in an Employment Agreement, a Collective Bargaining Contract, an Employee Handbook, or is otherwise set for a specific period, the employer may be precluded from adding all or part of the tax to the employee's share of the premium.

Whether an employer passes along all or a part of this tax to its employees is up to each individual employer. However, the purpose of this Client Alert is to make employers aware of the existence of this new tax. Then, each employer can decide whether it will be borne by the employer or passed along to employees before issuing the first paycheck in January of 2012.

A lawsuit has been filed in the Federal District Court for the Eastern District of Michigan alleging that the law is preempted by ERISA as it applies to self-insured employer health care plans and further violates the supremacy clause of the U.S. Constitution. Although we do not know how that case will turn out, we do know that other states, including New York and Massachusetts, have a similar tax which has been upheld after legal challenges. We are also aware that many insurance carriers, third party administrators and health maintenance organizations are adding a charge for the tax to their January 2012 invoices.

#### FOR MORE INFORMATION CONTACT:



**James B. Perry** is a Member in the Detroit office. His expertise is in employment law, including maintenance of Union-free status programs, labor contract negotiation and administration, labor arbitration, and defense of employment litigation in federal and state courts, and before the NLRB and other government agencies. He can be reached at 313.223.3096, or [jperry@dickinsonwright.com](mailto:jperry@dickinsonwright.com).



**Deborah L. Grace** is a Member in the Troy office. She is a principal employee benefits counsel to public and private companies, advising them on all aspects of the design, implementation and administration of all types of retirement plans, including 401(k), profit sharing, defined benefit, ESOP, SEP, SIMPLE-IRAs, 403(b), and 457 plans. She can be reached at 248.433.7217, or [dgrace@dickinsonwright.com](mailto:dgrace@dickinsonwright.com).



**Cynthia A. Moore** is a Member and Practice Department Manager in the Troy office. She counsels a diverse group of employers in the tax and ERISA aspects of welfare benefit plans, including Section 125 plans, COBRA compliance, consumer directed health plans, retiree medical plans, VEBA's and wellness plans. She can be reached at 248.433.7295, or [cmoore@dickinsonwright.com](mailto:cmoore@dickinsonwright.com).