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ACLI UPDATE

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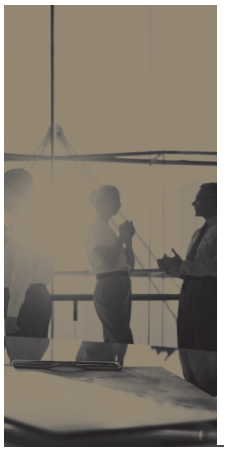

In 2012, the District of Columbia (D.C.) City Council passed the Health Benefit Exchange Authority Establishment Act (Establishment Act). This law created D.C.'s Health Benefit Exchange Authority (Exchange) and also provided authority to the Exchange to assess, through rulemaking, a fee from carriers of qualified health plans in order to fund its operations once federal funding expires in October 2014.

In February 2014, the Executive Board of the Exchange published its Assessment Rule. The Rule allows for imposition of the assessment on all "health" carriers including those that sell only excepted benefits products, such as long-term care and disability plans, which by law, are not qualified health plans and cannot be offered on the Exchange. In May 2014, the D.C. Council enacted emergency legislation that would amend the Establishment Act to directly impose fees on excepted benefit carriers.

On July 3, 2014, ACLI filed a Complaint for Declaratory Judgment and Motion for Injunctive Relief in the United States District Court for the District of Columbia against the Exchange. The lawsuit, which was assigned to the Honorable Judge Beryl Howell, contended that legislation recently enacted by the DC Council assessing insurers that cannot or do not sell their products on the Exchange violates the Patient Protection and Affordable Care Act (ACA) and the U.S. Constitution. ACLI noted its support for the operation of state exchanges, and an appreciation of the need for revenue sources to fund them. However, both federal and state law clearly dictate that exchange authorities must look solely to carriers of qualified health plans that are subject to the authority's jurisdiction for funding. ACLI argued that

- Under the ACA, only qualified health plans can be offered through the Exchange. Excepted benefit plans, such as disability, long-term care, and accident coverage, are not qualified health plans. Excepted benefit issuers are therefore prohibited from offering their products on the Exchange.
- Issuers of excepted benefit plans cannot benefit from the Exchange's insurance market and will have no opportunity to recoup assessment costs through the Exchange.
- Because excepted benefit issuers do not benefit from operation of the Exchange, these issuers should not be required to finance the Exchange solely to generate revenue for a separate segment of the insurance industry.
- The ACA authorizes state health insurance exchanges to charge participating health insurance issuers assessments or user fees in order to finance post-2014 exchange operations.
- ACA regulations provide that state exchange rules cannot conflict with ACA provisions.
- Because the D.C. Assessment Rule levies assessments on excepted benefit issuers that cannot participate in the Exchange, it conflicts with the ACA and must be amended in order to align with federal law.
- The Assessment Rule can be amended to comply by simply limiting assessments to issuers of "qualified health plans" or "health benefit plans," as these terms are defined in the D.C. Code.

The ACLI lawsuit sought to enjoin the Exchange from issuing assessments on non-participating insurers. In response, the District filed a motion to dismiss the ACLI lawsuit. A hearing on ACLI's Complaint was held on July 29, during which Judge Howell announced her intention to decide on the ACLI and District motions simultaneously.

In mid-August, the Exchange issued assessment notices to all insurance carriers authorized to sell health, long-term care, disability income and supplemental benefit insurance in the District, regardless of whether the carriers were offering their products on the Exchange. The Notice of Assessment was addressed to the company's Corporate Treasurer/Tax Officer; assessments were equivalent to one percent of the company's 2013 gross health insurance receipts. Generally, the assessment notices provided for a mid-September 2014 deadline for filing an administrative appeal. The appeal process provides very limited grounds for challenging an assessment. The

deadline for payment of the assessments in the notices was set for Sept. 30, 2014.

ACLI notified the District Court in a supplemental declaration filing that assessment notices were issued to companies. It should be noted that, at the time the assessments were issued, the Exchange had no process for refunding assessment payments, even if the ACLI litigation effort was ultimately successful. We had anticipated a decision from the court sometime prior to the date the assessments are due, because Judge Howell had indicated her intention to decide on ACLI's motion for preliminary injunction and the District's motion to dismiss together.

On November 13, Judge Howell dismissed ACLI's complaint against the District of Columbia. Despite the ruling, ACLI maintains that D.C.'s assessment on excepted benefit products and other products that are not sold on the Exchange to fund its health exchange violates the ACA and is unconstitutional. On December 12, ACLI filed a notice of appeal to a District Court's decision dismissing ACLI's original complaint against the District of Columbia. ◂

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