# HEALTHCARE REFORM, SPONSORED BY YOU: EMPLOYERS RESPONSIBLE FOR NEW "RESEARCH INSTITUTE" TAX, EFFECTIVE FOR 2012

April 17, 2012

To Our Clients and Friends:

As the constitutionality of the Patient Protection and Affordable Care Act (PPACA) hangs in the balance, the Obama administration continues full steam ahead with health care reform rule-making. If the Supreme Court does not overturn the entire law, one rule, overshadowed by more media-appealing questions raised by the individual mandate, will have an immediate impact on issuers of health insurance policies and employers who sponsor self-insured health care plans: a new tax designed to fund a private, non-profit corporation known as the "Patient-Centered Outcomes Research Institute."[1]

The "Research Institute" tax is relatively modest in the early years but could increase significantly as the cost of health care rises. In addition, the incremental effect of this and myriad other taxes and expenses imposed by PPACA – and their attendant procedural hassles – may give one the feeling of being "bitten to death by ducks."

**Who is liable for the "Research Institute" tax?** The new tax is imposed on issuers of health insurance policies covering individuals residing in the United States (including policies for fully insured employer-provided health care), and employers who sponsor self-insured health plans, in each case for policy and plan years ending on or after October 1, 2012 and before October 1, 2019. This means that the tax will be imposed for the current 2012 plan year for plans operating on a calendar year basis, and for each of the next six years.

Although the tax is imposed on the insurance provider of a fully insured health care plan, the insurer can be expected to pass the cost of the tax on to employers and employees. It should be noted, however, that the Department of Labor is "considering permissible funding sources" for the tax payable by plan sponsors, including whether the cost of the tax may be passed on in the

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[1] *The "Patient-Centered Outcomes Research Institute" is expected to help "patients, clinicians, purchasers, and policy-makers in making informed health decisions by advancing the quality and relevance of evidence-based medicine through the synthesis and dissemination of comparative clinical effectiveness research findings."*

form of higher premiums without violating the prohibited transaction rules and fiduciary obligation provisions of ERISA.

How much is the tax? The amount of the tax is equal to:

- for the 2012 plan year, $1 dollar multiplied by the average "number of lives" covered by the policy or plan;
- for the 2013 plan year, $2 dollars multiplied by the average "number of lives" covered by the policy or plan; and
- for plan years 2014 though 2018, $2 dollars, increased by the percentage increases in the projected per capita amount of "National Health Expenditures," multiplied by the average "number of lives" covered by the policy or plan. Projections of National Health Expenditures are estimates of spending for health care in the United States over the next decade, with projections based on health care services to be delivered and the source of funding for those services. Therefore, the amount of the tax will likely increase, perhaps significantly, as the cost of health care in the United States rises.

The "number of lives" covered by a health care plan include the employees and former employees participating in the plan as well as the participants' spouses, dependents and other beneficiaries covered by the plan.

Proposed Regulations. Proposed regulations issued last week by the Internal Revenue Service provide guidance on the application of the new tax. The proposed guidance includes:

- various exceptions for policies and plans that will not be subject to the tax;
- several methods that insurers and employers may use for calculating the average number of lives covered under a health care plan during the plan year, including for the current 2012 plan year;
- because a plan maintained by related employers is not considered maintained by a single employer for purpose of the "Research Institute" tax, guidance on how the tax is allocated among the employers participating in the plan; and
- procedures for reporting and paying the tax.

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Please feel free to contact us if you would like to discuss how you may be subject to the new tax or if you would like to discuss any of the forgoing.

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