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REFORM Update

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The Supreme Court of the United States recently ruled in the case of Burwell v. Hobby Lobby Stores, Inc. The case addressed Hobby Lobby's religious objection to paying for certain forms of birth control. The Affordable Care Act ("ACA") requires non-grandfathered group health plans to cover a wide range of well-woman services with no member cost-sharing. This range of services includes a number of FDA-approved contraceptive medications and devices. The initial requirements included a very narrow exemption for churches and other houses of worship that object to contraceptive coverage on religious grounds.

The contraceptive mandate brought a flurry of objections from various employers. In response, the Obama administration provided an alternative for non-profit religious organizations that met specific requirements. These requirements were discussed in our *Reform Update* at http://www.mcgrawwentworth.com/Reform_Update/2013/Reform_Update_71.pdf.

Not all employers were eligible for the alternative offered by the Obama administration. A number of suits were filed in federal courts, challenging the requirement to cover specific birth control services. The Hobby Lobby case was heard by the Supreme Court in their most recent session. The Court found that the government violated the Religious Freedom Restoration Act of 1993 ("RFRA") by requiring faith-based employers to cover certain forms of birth control as part of the ACA's preventive services requirements.

Hobby Lobby, a faith-based employer, objected to only four of the twenty methods of birth control a plan is required to cover. They argued that it is an intrusion on their sincerely-held religious beliefs to require their health plan to provide or pay for drugs and devices that they believe may terminate a fertilized egg. Thus, Hobby Lobby, which is family-owned, sued the Department of Health and Human Services ("HHS"), asserting that the ACA's contraceptive mandate violates both their First Amendment right to freedom of religion and the RFRA. The RFRA provides that the federal government "shall not substantially burden a person's exercise of religion" unless that burden is the least restrictive means to further a compelling governmental interest. For example, many private religious organizations object to the ACA's requirement to provide coverage for the so-called "morning after" pill.

Because Hobby Lobby chose not to cover all birth control methods subject to the contraceptive mandate, they were facing a potential fine of $475,000,000 per year. The Court's ruling in their favor means the fine will not be assessed.

The Court's ruling has generated significant publicity and debate, but it will have very little impact on most employers. Closely-held organizations will not be required to cover birth control medications or procedures that they believe violate their religious beliefs. The Court indicated that the federal government could extend to these companies the same alternative available to specific non-profit religious organizations. The ruling does not, however, require the federal government to extend this alternative.

The ruling has also raised an issue about the definition of “closely-held organizations.” Hobby Lobby was the named plaintiff in this case, but two other companies were also included in the decision (Conestoga Wood Specialties and Mardel). All three organizations are family-owned. The Internal Revenue Service defines a closely-held company as a corporation where more than half the value of the outstanding stock is directly or indirectly owned by five or fewer individuals at any time during the last half of the tax year. State corporate law may define closely-held companies differently for state law purposes. The Supreme Court ruling pointed to state corporate law as the way to settle any conflicts.

This will not end the debate over the requirement for group health plans to provide coverage for birth control. Another lawsuit on this issue was filed by the Little Sisters of the Poor, a Roman Catholic religious congregation that provides care to low-income elderly people. Earlier this year, the Supreme Court granted an injunction, which means the Little Sisters are not required to provide any birth control coverage to their employees until the Court decides this case. Since the Little Sisters receive their coverage through the Christian Brothers Employee Benefit Trust, the Trust was granted the injunction.

The Supreme Court ruling only applies to closely-held organizations that are opposed to covering specific birth control medications or methods because they violate the owners’ religious beliefs. The federal government is not required to offer the alternative accommodation to employees of these organizations. However, they will likely react to the ruling by providing some accommodation that allows direct access, at no cost, to contraceptive services excluded by the employer’s plan.