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Memorandum

To: Clients
From: Governmental Practice Group
Re: **Health Care Alert!**
Date: October 1, 2013

1. **OCTOBER 1 DEADLINE.** The media in recent weeks has explained the need for **ALL** employers (not just those with 50 or more employees) under the **Affordable Health Care Act** (AHCA) to give written notice to their employees on or before October 1, 2013:
 - Informing them of the existence of the marketplace of insurance options (referred to by most as the “Exchange”), and how the employee can contact the Marketplace to compare health insurance coverages;
 - Stating whether the employer does (or will continue) to provide health insurance on the same basis as before (e.g., what portion of the premium you will continue to pay as the employer’s contribution, usually expressed in terms of a percentage);
 - Explaining that if the employee declines coverage through the employer’s sponsored plan, that the employee could lose the employer’s contribution towards insurance.

NOTE: the Notice is to be given even if your current employees have access to your employer sponsored health insurance.

A SAMPLE OF THE NOTICE CAN BE OBTAINED AT: <http://www.connectforhealthco.com/>

2. **NO PENALTY FOR NOT GIVING NOTICE?** Many employers are relying upon recent statements by both the US Department of Labor and the Small Business Administration to the effect that there will be no “*penalty*” or “*fine*” imposed on an employer that fails to provide the required notice on or before October 1, 2013.

Our concern is that even though the federal government won’t fine you, the language is mandatory in the AHCA, and therefore if an employee does not receive the required notice and discovers that he/she could have qualified for subsidized premiums under a policy found

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in the Marketplace, that the employee may have some form of legal claim against an employer for deliberate failure to give notice and the possible loss of that subsidy (resulting in monetary damages to the employee). We are uncertain as to whether the Act gives an employee what is called “a *private right of action*” to enforce it for the employee’s benefit, and we can’t predict if such a federal claim would be barred by the Colorado Immunity Act.

In addition, if an employee is not covered by your plan, that person could be subject to a tax penalty for refusing to join any plan, and could claim that his/her employer failed to give the required notice in a timely fashion causing the penalty to be imposed on the employee.

3. **SHUT DOWN.** Last night, the federal governmental shutdown occurred because the Senate refused to accept the House’s demand that the AHCA be either rescinded or delayed in whole or part as a condition of continued governmental operations.
4. **RECOMMENDATION.** Because we cannot predict Congress’ actions or inactions in the next few days or weeks as to whether the House will be successful in demanding a rescission or a delay in the Act’s implementation as a price for restarting the federal government, we recommend that some form of notice or communication be made to your employees to avoid any future claims of “*deliberate*” or “*willful*” refusal to comply with the AHCA.

Therefore, we are recommending that our clients provide notice to its employees:

- **Using the sample Notice form found on this website:**
<http://www.connectforhealthco.com/>

OR

- **At least give some form of written notice to your employees that, as an employer, you will be continuing to provide health insurance after October 1, that if your fringe benefits package changes in the near future, you will advise them, and that in the meantime, they should review the Exchange options at <http://www.connectforhealthco.com/>, especially if an employee is NOT covered by your health insurance for some reason.**

5. If you have any questions, give us call.
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