

## 2011: The Year In Review

*Alston & Bird, LLP*  
*Employee Benefits and Executive Compensation*

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## The Road Well Traveled

- Over the Counter Drug/Medicine Rule
- EEOC final regulations on Title II of GINA
  - EEOC opinion letter on GINA
- 20% Excise Tax on non-qualified HSA Distributions
- Effective date of Wellstone MHP/SA Regulations for calendar year plans and plan years beginning February 1 through June 1
- HRA/CMS reporting exemption
- “Seff” Case
- Supreme Court “Amara” Decision
- HIPAA Privacy/Security Enforcement

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## The Road Well Traveled

- Effective date of Health Insurance Reforms for calendar year Plans and plan years beginning February 1 through September 1
- HC Reform Guidance
  - Internal and External Claims Review Technical Release/amended regulations from agencies
  - Exchange regulations from HHS
  - Pay or Play guidance/request for comments from IRS
  - Subsidy/credit guidance for exchange from IRS
  - Nondiscrimination request for comments from IRS
  - New well-woman “recommended preventive service” guidance (effective 1/1/13 for calendar year plans)
  - SOBC Guidance (and subsequent delay)
  - W-2 reporting guidance
  - Annual limit waiver for HRAs
  - ERRP related maintenance of effort guidance from HHS
  - Lower court decisions on constitutionality of health care reform
  - New FAQs from agencies
  - Resolution of state income tax issues for adult children

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### Assistance Eligible Individuals

- Qualified Beneficiary tied to definition under ERISA
  - Covered employee
  - Covered spouse
  - Covered dependent child
- Some covered individuals may not be eligible for subsidy
  - Domestic partners and others offered continuation coverage not independently eligible for Subsidy
    - Unclear whether eligible for subsidy as part of qualified beneficiary/AEI election
  - Individuals added to continuation coverage during open enrollment?
    - Unless QB (i.e., newborn or newly adopted child) subsidy does not apply

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### The Road Ahead-2012

- CER Fee (plan years ending after September 30, 2012)
- Collection of information required for W-2 reporting
- Amend plans with fiscal year plan year for 2500 Health FSA limitation
- Expiration of various tax provisions
  - Transit Parity
  - Educational Assistance tax exclusion
  - Dependent Care credit amounts (increased by EGTRRA)
- Supreme Court decision on health care reform

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### The Road Ahead-2012

- Will we see regulations/guidance on the following:
  - Cafeteria Plan final regulations
  - Fully insured plan nondiscrimination rules
  - SOBC Rules
  - Pay or Play Rules
  - Essential Benefits
  - HITECH Final Regulations

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