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# Comment

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## **Compliance Corner: Final USERRA Regulations Affect Benefit Obligations During Military Leave**

*By John R. Hickman, Esq., and Ashley Gillihan,  
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On December 19, 2005, the Secretary of the Department of Labor ("DOL") issued final regulations interpreting the provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"). The final regulations come on the heels of proposed regulations issued in September 2004, the Veterans Benefits Improvement Act of 2004 (issued December 10, 2004) and an interim regulation issued on March 10, 2005 that established a notice requirement. The final regulations are effective on January 18, 2006.

USERRA requires employers to afford certain employment and reemployment rights to qualifying employees whose employment is interrupted by voluntary or involuntary service in the uniformed services. The final

## **Consumer-Driven Health Plan Cost Growth Significantly Slower Than Other Plans**

*PR Newswire*

The cost of health plans that encourage members to be better healthcare consumers grew at a significantly slower rate in 2005 than other types of plans, U.S. employers reported in a survey released by the Deloitte Center for Health Solutions.

The cost of consumer-driven health plans -- such as health savings accounts or health reimbursement arrangements -- increased by an average of 2.8 percent from 2004 to 2005, according to the survey of 152 major U.S. employers. That compares to an 8 percent increase in total premiums for health maintenance organizations, an 8.5 percent increase for point-of-service plans and a 7.2 percent increase for preferred provider organizations. Traditional or indemnity plan costs increased 6.4 percent last year, according to the survey. The average for all types of plans was 7.3 percent.

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## Consumer-Driven Health Plan Cost Growth Significantly Slower Than Other Plans

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"Employers are increasingly turning to consumer-driven health plans to reduce costs and help workers and their families make better healthcare decisions," said Tommy G. Thompson, the independent chairman of the Deloitte Center for Health Solutions. "Not only do companies protect their bottom lines, they help make employees better health consumers."

The survey also found that businesses are projecting similar rates of cost growth in 2006, including 2.6 percent for consumer-driven health plans, 7.4 percent for health maintenance organizations, 7.3 percent for point-of-service plans, 7.5 percent for preferred provider organizations, and 6.6 percent for traditional or indemnity plans. The average for all types of plans is projected to be 7.1 percent.


Not surprisingly, 40 percent employers said consumer-driven health plans offer "the most effective approach for managing costs and maintaining quality care," while 35 percent said preferred provider organizations were the most effective. Eighteen percent selected health maintenance organizations, 6 percent said point-of-service plans, and just 1 percent said traditional or indemnity plans.

Consumer-driven health plans combine discounts inherent in managed care programs with incentives to encourage members to become better consumers of healthcare. Typically, these plans are designed using accounts -- tax-advantaged health savings accounts or health reimbursement arrangements -- that often include some level of employer

contribution, in combination with front end deductibles. They also provide the member with tools that provide clinical, cost and quality information so they can make personal health decisions that best meet their needs.

"They encourage employees to become consumers of healthcare and provide them with the tools necessary to understand how to work with their physicians to get the right care, in the right setting, at the right time," said Barbara Gniewek, principal and healthcare industry leader of Deloitte's Human Capital practice.

"In addition to cost savings, consumer-directed health plans can offer employees an additional tool to save money tax free for retiree health," said Edwina Rogers, Vice President Health Policy for The ERISA Industry Committee. "Further, many of our members are aggressively working to supply their employees with quality and efficiency information on healthcare providers."

A Deloitte study released in November found that 43 percent of U.S. companies either have a consumer-driven health plan in place (22 percent) or will be offering one in the next two years (21 percent). Another 51 percent said they are reviewing consumer-driven options and may offer one in the near future if they can be proven to be attractive to employees while saving money. 

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regulations provide much needed guidance and clarity to a law that impacts virtually every aspect of an employee's employment and reemployment if that employee leaves to perform services in the uniformed services. In this article, we focus solely on the health and welfare benefit plan issues addressed in the final regulations.

NOTE: The DOL also issued another final regulation on December 19, 2005 regarding the notice required to be provided by employers to employees pursuant to the Veterans Benefits Improvement Act of 2004. This notice was the subject of the interim regulation issued March 10, 2005. Under the regulations, employers are required to post a notice of rights and benefits under USERRA in a place where employers typically post notice to employees. The final regulation provides a slightly modified version of the notice (most significantly, the new notice incorporates changes made by statute that created the National Disaster Medical Service that appointees of the NDMS are deemed to be providing "uniformed service" for purposes of USERRA). The new notice should be posted by January 18, 2006. You can find a copy of the notice at [http://www.dol.gov/vets/programs/userra/USERRA\\_Private.pdf](http://www.dol.gov/vets/programs/userra/USERRA_Private.pdf).

**Overview**

USERRA requires employers to afford certain rights and protections relating to employer provided health and welfare benefits to employees who take a leave of absence to perform services in the uniformed services. The following questions must be answered to fully understand the impact USERRA has on employer provided health and welfare benefits:

- Which employers are subject to USERRA?
- Which employees are subject to USERRA's protections?
- What health and welfare benefit plan rights must be afforded upon taking leave?
- What are the health plan continuation coverage requirements under USERRA?
- What health and welfare benefit plan rights must be afforded upon return from service in the uniformed services?

**Which Employers Are Subject to USERRA**

*A. Scope of USERRA Generally*

USERRA's reach is extremely broad. In fact, USERRA applies to virtually every U.S. based private and public "employer" (see below for a

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more detailed definition of “employer”) regardless of size. This includes U.S. companies both within the U.S. (including companies in U.S. Territories and Possessions) and abroad and foreign companies that have a location or branch in the U.S. USERRA also reaches to both the federal and state/local governments. Unlike many other federal laws such as the ADEA, the ADA and FMLA, there are virtually no exceptions to USERRA’s applicability.

*B. Definition of Employer*

The regulations define “employer” as “any person, institution, organization, or other entity that pays salary or wages for work performed or that has control over employment opportunities”. The regulations further clarify that the definition of “employer” includes the following:

- Any person, institution, organization or other entity to whom the employer has delegated the performance of employment related responsibilities other than those persons or entities that have been delegated purely “ministerial” duties;
- Federal and state governments
- Any successor in interest to an “employer”
- A person or entity that has denied initial employment in violation of USERRA’s anti-discrimination provisions. *Id.*

Thus, “employer” may include not only the traditional employer but it may also include a third party who has fiduciary responsibility with respect to a health and welfare benefit plan. The preamble states that Congress intended for the definition of employer to be broad enough to “apply to insurance companies that administer employers’ life, long term disability or health plans so that such entities cannot refuse to modify their policies in order for employers to comply with requirements under [USERRA]”. Thus, it is possible that an insurance carrier or even a third party administrator could be subject to liability under USERRA if such entity has discretionary authority to provide benefits and benefits are not provided in accordance with USERRA. Unfortunately, the regulations do not provide a clear cut definition of “ministerial duties”. The regulations provide examples of ministerial duties, such as maintenance of personnel files or preparation of forms to a governmental agency; however, the preamble makes clear that the examples were not intended to be exhaustive and were offered only as mere “illustrations”. Although not clear, an entity that only has discretionary authority over claims decisions and not discretionary authority over eligibility will not arguably constitute an employer but additional guidance is welcomed.

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Lest there be any doubt regarding ultimate compliance responsibility, the preamble to the regulations clarifies that the true employer is responsible for negotiating all insurance contracts to ensure that they comply with the applicable USERRA requirements.

The preamble also clarifies that individuals such as managers and supervisors could be subject to USERRA liability if the company has delegated the performance of employment related responsibilities to them.

**Which Employees are Subject to USERRA Protection?**

*A. Uniformed Services Generally*

USERRA applies to all employees of “employers” whose employment is interrupted to perform services in the “uniformed services”. The regulations define “uniformed services” to include all categories of military training and service, including voluntary or involuntary service, in times of peace or war. The regulations also clarify that service as a disaster response appointee upon activation of the National Disaster Medical System qualifies as service in the Uniformed Services, even if the individual is not a member of the uniformed services.

The regulations make an important clarification regarding National Guard duty. Specifically, National Guard duty does not qualify as service in the uniformed services if the individual has been called up by the state governor for duty not subject to federal control, such as emergency duty in cases of floods (although state law may provide protection of employment rights).

*B. Definition of Employee*

An “employee” is defined generally to include any individual employed by an employer. The definition also includes any employee employed in a foreign country by an employer who is incorporated in the U.S. or is controlled by an entity that is organized in the U.S. The regulations clarify that independent contractors are not subject to USERRA and the regulations prescribe a specific six (6) factor test for determining whether an individual is an independent contractor.

**What Health and Welfare Benefit Rights Must be Afforded upon Taking Leave?**

*A. General Rules*

The regulations outline a few fundamental rules regarding welfare benefits (other

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than group health plan coverage) for employees leaving to perform services in the Uniformed Services:

- Employees are treated for welfare benefit plan purposes as being on furlough or leave of absence, regardless of how the employer characterizes them (e.g. terminated).
- The employee is entitled to the “non-seniority” rights and benefits provided under an agreement, policy, practice or plan in effect at the time of the leave and those implemented during the leave that are generally provided to similarly situated employees on a “comparable” non-military leave. Employees taking a military leave must be given the most favorable treatment accorded to that comparable form of non-military leave.
- If an employee provides notice of intent not to return following the leave (in accordance with USERRA’s rules), then the employer is not required to provide non-seniority rights and benefits during the leave. NOTE: The employee may still be entitled to reemployment rights under USERRA even though he/she provides a notice of intent not to return following the leave.
- The employee must be permitted, upon request, to use any accrued vacation, annual, or similar leave with pay during the period of service even if similarly situated

employees on comparable leave are not entitled to use such accrued leave.

- The employee is entitled to all seniority based benefits that he/she had on the date of the leave plus any that he/she would have accrued had the leave not been taken. Thus, the leave is not considered a break in service for purposes of seniority based benefits.

*B. Non-Seniority Rights and Benefits*

The regulations do not provide a good working definition of “non-seniority” rights and benefits. However, it logically appears that all benefits that are not seniority based are presumably considered “non-seniority”. The regulations define “seniority” as “longevity in employment together with any benefits of employment that accrue with or are determined by longevity of employment.” The regulations provide three factors in determining whether a benefit is seniority based or not:

- Whether the benefit is a reward for length of service rather than a form of short term compensation;
- Whether it is reasonably certain that the employee would have received the right or benefit if he or she would have remained continuously employed;

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- Whether it is the employer’s actual custom or practice to provide or withhold the right or benefit as a reward for length of service (without regard to written policies and procedures).

The difference between non-seniority and seniority rights and benefits is that an employer must provide non-seniority rights and benefits during the leave only if other similarly situated employees on comparable leave are provided those benefits. Interestingly, the regulations clarify that accrual of vacation is generally considered to be a non-seniority right or benefit (citing to the Supreme Court’s decision in *Foster v. Dravo*, 420 U.S. 92 (1975)). Thus, an employer generally must allow accrual of vacation only if the employer allows similarly situated employees to accrue vacation during a comparable leave.

*C. Comparable Leave*

If the employer has a single leave policy for all employees, then the non-seniority rights and benefits provided to those taking a military leave are the same as every other employee who takes a non-military leave from the employer. However, if the employer has varying leave policies, then the employee must be offered the most generous form of

comparable leave provided to similarly situated employees. The regulations cite three factors to be considered when determining whether a non-military leave is ‘comparable’:

- Duration of the leave. The regulations indicate that this might be the most significant factor to compare.
- The purpose of the leave (e.g. personal vs. sickness)
- The ability of the employee to choose when to take the leave.

One commenter asked whether benefits provided for non-military leaves pursuant to law as opposed to an agreement, policy or plan established by an employer are required to be provided during a military service leave. The DOL indicated that it could not establish a hard and fast rule and that the determination of whether such legally mandated non-seniority rights and benefits (such as those provided under FMLA) must be provided must be decided on a case by case basis and depends on the nature of the leave and how it compares to the military leave as well as the nature of the mandated benefit.

No other guidance is provided by the DOL regarding “comparable” leave. Conservative

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employers may wish to identify its most favorable leave policy (regardless of how it compares) and apply that policy to military leave.

*D. Similarly Situated Employees*

The employer must provide the most generous form of comparable leave provided to similarly situated employees. Similarly situated employees are those employees “having similar seniority, status and pay who are on a furlough or leave of absence.” The DOL states in the preamble that seniority for purposes of determining who is a similarly situated employee need not be determined by a collective bargaining agreement and consideration of seniority in making this determination does not make the benefit seniority based benefit.

**What are USERRA’s Health Plan Continuation Coverage Requirements**

USERRA and the regulations establish minimum requirements for offering group health plan coverage continuation during a military leave. These requirements apply only to the extent that more generous group health coverage is not offered to similarly situated employees under a comparable non-military leave.

*A. Definition of Health Plan*

The regulations define “health plan” very broadly. Specifically, “health plan” is defined to include an insurance policy or contract, medical or hospital or service agreement, membership or subscription contract or “other arrangement under which health services are provided or the expenses of such services are paid”. The DOL indicates in the preamble that “health plan” also includes a health flexible spending arrangement (“Health FSA”).

This definition of “health plan” under USERRA is similar to that utilized by COBRA but is broader in that it is not limited to employers of a particular size as COBRA is. This means smaller employers who are typically not subject to COBRA will have to implement continuation coverage requirements consistent with USERRA’s requirements.

*B. Duration of Continuation Coverage*

All employees covered under a group health plan who are taking a leave of absence to perform services in the Uniformed Services are entitled to continue their group health plan coverage (including coverage for covered dependents) up to the lesser of (i) 24 months or

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(ii) the date the employee does or should have returned to employment or, where applicable, applied for reemployment. Unlike COBRA there are no other specific triggers such as divorce or death that would extend continuation health coverage under USERRA for a dependent. Unlike COBRA, dependents have no continuation rights under USERRA except as a derivative of the employee's right and dependents have no separate election rights under USERRA.

*C. Impact of USERRA on Health FSA Coverage*

There is no limited duration exception for health FSAs under USERRA similar to that provided under ERISA and the Code for Health FSAs that are "excepted benefits". Consequently, it would appear that employees on military leave must be offered an opportunity to continue Health FSA coverage for up to the maximum 24 month period (or if earlier, the date the employee should have become reemployed or applied for reemployment), even if that employee had "overspent" his/her account at the time of the leave. Of course, from the employee's perspective, continuation of Health FSA coverage into a subsequent year would not make economic sense in the absence of ongoing compensation.

*D. Election Procedures*

The regulations do not establish specific election requirements, opting to instead allow employers to establish "reasonable" election procedures. The DOL does, however, indicate that election procedures similar to those established under COBRA may be reasonable. Whether subject to COBRA or not, we recommend establishing procedures that mirror COBRA's election procedures but that also allow for additional time not otherwise required by COBRA where it was impossible or unreasonable for the employee to make a timely election under the facts and circumstances. Employer plan sponsors and administrators should be aware of the following:

- Failure to meet the specified time frame for making an election will not preclude the employee from electing continuation of coverage where it was impossible or unreasonable under the facts and circumstances for the employee to make an election.
- Unlike COBRA, dependents are not entitled to a separate election. Thus, if the employee fails to elect continuation of coverage under USERRA, then employers are not required to afford covered

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## Health Savings Coalition Signals Support for Plan on HSA Expansion

### *Life Science Weekly*

With President Bush frequently declaring that healthcare would lead his 2006 domestic agenda, health insurance advocates are applauding signs that at least one recent administration proposal probably won't be on the table.

Proposed in November as part of a report from the President's Advisory Panel on Tax Reform to Treasury Secretary John W. Snow, the plan would have limited the tax exclusion for employer-provided health insurance to \$5,000 for an individual or \$11,500 for a family. Employer-paid premiums above those amounts -- set at the estimated average national cost of health coverage and indexed to general inflation -- would be taxable as income.

Panel members argued the caps would serve to "create a level playing field" between group and individual health insurance, as the plan also calls for extending identical tax deductions to those who purchase health policies in the individual market. Under the current tax system, direct purchasers of health insurance typically pay premiums with after-tax dollars.

The President had yet to specifically endorse the idea in any of his public speeches when Al Hubbard, director of White House's National

Economic Council, reportedly confirmed to the Bloomberg news service that the president had rejected the proposal and wasn't interested in pursuing the issue. Instead, Hubbard reportedly said, Bush would support expansion of health savings accounts and greater tax deductibility of healthcare expenses.

The announcement follows recent polling conducted by Ayres, McHenry & Associates on behalf of America's Health Insurance Plans showing that, in the key 2008 primary states of Iowa, New Hampshire and South Carolina, more than 80% of Republicans and Democrats said they opposed taxing health benefits.

Tax preferences for healthcare represent the largest group of tax benefits in the current Internal Revenue Code. The tax-reform panel estimated they total \$141 billion in foregone revenue, or 12% of all federal income tax revenue in 2006, with the employee exclusion alone accounting for \$126 billion of that total.

But Janet Trautwein, chief executive officer of the National Association of Health Underwriters, argued that, contrary to the study's contention,

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the most expensive plans don't necessarily provide the most generous benefits. Insurance rates vary for different employer groups for many reasons, and directly taxing healthcare benefits would "affect workers all across America at every level of employment," she said.


"For example, in certain areas of the country the cost of insurance is higher than in other geographic areas, and a group who has a large number of older or sicker employees may also have higher health insurance rates," Trautwein said.

AHIP President Karen Ignagni expressed the group's opposition to the proposed benefit cap in a letter to Snow, who still is expected to provide a response to the tax reform's full report. Ignagni argued the proposal likely would cause the number of uninsured to rise, citing a recent survey that found 11% of workers with employer-provided health insurance would consider forgoing healthcare coverage altogether if they were required to pay taxes on their benefits.

And while calling proposals to expand deductibility of individual policies an "important first step," Ignagni expressed the group's preference that a full tax credit for health insurance premiums, rather than a deduction, be included in any plan to rewrite the tax code.

"Unfortunately, a tax deduction would be of limited utility to the moderate-income taxpayers who represent approximately two-thirds of the uninsured," Ignagni wrote. 🍌

*By R.J. Lehmann, Washington bureau manager  
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### Comment

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For more than 18 years, CONEXIS has delivered a wide range of employee benefit solutions to employers, third party administrators (TPA's), business outsourcing partners and health plans nationwide. Specializing in the complex areas of administration and compliance, our expertise includes COBRA and HIPAA Administrative Services; Direct Bill Services for Retirees, Leave of Absence (LOA) and Family Medical Leave Act (FMLA); and Flexible Benefits Administration, including Section 125 Flexible Spending Accounts (FSA), Section 132 Transportation Plans, Section 105 Health Reimbursement Arrangements (HRA), and Health Savings Accounts (HSA). CONEXIS is a Word and Brown company, headquartered in Dallas, Texas, with a regional office in Orange, California.

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dependents an election right. However, if COBRA is also applicable, the covered dependent will have a separate election right under COBRA.

- If the employee leaves for military service without giving advance notice of the leave as otherwise required by USERRA, then coverage may be terminated at the commencement of leave subject to retroactive reinstatement if it was impossible or unreasonable under the facts and circumstances for the employee to provide advance notice. In order to qualify for the exception to making a timely election, the employee must first be excused from providing advance notice of the leave.
- If advance notice is provided but an election is not immediately made, then coverage may be terminated subject to reinstatement upon a timely (or untimely but otherwise excepted) election.
- If the employer fails to establish reasonable notice and election procedures, then the employee may elect continuation coverage, subject to retroactive reinstatement, at any time during the maximum USERRA continuation period.

*E. Payment of Premiums*

The regulations indicate that employers may not charge employees performing service for

less than 31 days more than the regular employee share for that coverage (presumably the same employee contribution amount prior to the leave, subject to any decreases or increase effectuated after the leave begins). If the employee performs service for 31 days or more, then the employer can be charge 102% of the total cost (i.e. the applicable premium under COBRA). Not unlike the notice and election requirements, the DOL refused to establish hard and fast rules regarding payment of premiums instead, opting to allow employers to establish reasonable payment procedures. The preamble indicates that the premium payment procedures under COBRA may be reasonable.

*F. Interaction of COBRA with USERRA Continuation of Coverage*

In many cases, the military leave will constitute both a qualifying event under COBRA and a triggering event under USERRA. USERRA continuation of coverage and COBRA continuation of coverage are separate and distinct continuation requirements; however, the two periods may very well run concurrent with one another. If that is the case, employees will receive the best treatment afforded by either USERRA or COBRA. Thus, employer/plan sponsors should be aware of the differences

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between the two and how the two operate where the continuation periods run concurrently:

- Unlike COBRA, there are no triggers under USERRA to extend USERRA beyond the maximum 24 month period. Thus, if a divorce or separation occurs between months 19 and 24, USERRA coverage is not extended and since the COBRA period has already ended (absent a disability extension under COBRA); there is no extension of COBRA either.
- The only permitted reasons for terminating health plan coverage prior to the end of the maximum USERRA period is failure to pay the premium and presumably a dishonorable discharge from the uniformed services. Thus, the coverage of a dependent receiving both USERRA and COBRA coverage cannot be terminated during the 24 month period if that individual becomes covered under another group health plan after electing COBRA.
- Covered dependents do not have separate election rights under USERRA; however, they do have separate election rights under COBRA.

**What Health and Welfare Benefits Must Be Provided Upon Reemployment?**

*A. Non-seniority Benefits (other than health benefits)*

The DOL does not specifically address an employee's entitlement to non-seniority based benefits upon reemployment; however, the employer's most generous policy applicable to similarly situated employees under comparable leave would presumably apply.

*B. Health Benefits*

If health coverage is lost during the leave, the regulations indicate that the employee and the employee's eligible dependents' health benefits must be reinstated "upon reemployment" and the employer may not impose any exclusion or waiting period (other than for illness or injuries determined by the Secretary of Veteran's affairs) to have been incurred in or aggravated during the performance of Uniformed Services) that would not have applied had the coverage not been terminated by reason of military service. The employee is not entitled to delay his coverage beyond the reemployment date.

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*C. Seniority Based Benefits*

Generally, the employee is entitled to any seniority based rights and benefits that he/she would have attained absent the military leave. The military leave cannot be counted as a break in service for determining coverage seniority based benefits. Thus, if an employee is absent from employment for 5 years (the maximum allowed under USERRA), then that 5 years must be counted as “service” for purposes of retiree health plan eligibility.

**Miscellaneous**

- Cafeteria Plans. The preamble to the regulations indicate that Treasury and IRS have indicated that an amount will not be treated as violating the cafeteria plan rules because a plan provides a new election either upon leaving employment for military service or subsequent reemployment. Presumably, this means that even if coverage eligibility is not lost, an election to drop coverage upon taking the leave, similar to that provided under FMLA, would not violate the 125 rules. Likewise, reinstatement of any pre-tax elections would presumably be permitted upon return.
- USERRA’s anti-discrimination provisions will prevent an employer from discriminating against an employee, both in employment and benefits, because the employee is

a member of the uniformed services. Thus, USERRA liability can arise even where the employee is not performing services in the Uniformed Services.

- The DOL commented briefly in the regulations on “differential pay” provided by employers during the leave and the IRS’ treatment for tax purposes of such pay under Rev. Rul. 69-136. The IRS treats such individuals as “terminated” for taxation purposes, which means that there is no withholding on the differential pay (leaving the employees to make up the difference when they file their tax return). The DOL indicated that it continues to treat such individuals as being on furlough or leave of absence and it has no authority over how the IRS treats such individuals. 🍷



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# Wealthy, Healthy ... and Worried? Healthcare Costs Pose Huge Threat to American Family Assets, PNC Survey Finds

## PR Newswire

Even wealthy Americans are concerned that rising healthcare costs will eat up their financial assets, according to survey findings released today by The PNC Financial Services Group, Inc. One in three (36 percent) of respondents said, "healthcare costs will ultimately consume a major portion of my financial assets." Nearly four in 10 wealthy Americans, including one quarter of those over age 65, said that affording healthcare for their families is a top financial concern.

"What's unfortunate is that many successful people spend a lifetime working to build their wealth, sometimes working so hard that they jeopardize their own health. Then they spend a majority of their wealth to restore their health," said Thomas Melcher, managing director and chief investment officer of PNC's wealth management unit for ultra high net worth clients.

Findings released today by PNC are part of a series of reports resulting from a nationwide survey of nearly 1,500 wealthy U.S. adults. Highlights of the findings include:

- Future of Medicare: Four in 10 respondents (42 percent) perceive the potential insolvency of the Medicare system as a threat or huge threat to their family's wealth. About half (49 percent) of those between the ages of 45-64 think its demise would be a threat or huge threat to their family's wealth. Among

those with children, more than half (51 percent) agree their children will not benefit from Medicare in the future.

- Long-term care costs and medical treatment also posed a risk for almost four out of 10 questioned (36 percent), with one-quarter (26 percent) of younger Americans, ages 18-44, with children under 18 expressing fear that their children would eventually have to pay for their long-term healthcare costs. Close to one-quarter (24 percent) of those with living parents worried about their parents' lack of long-term care insurance.
- Top Five Financial Concerns: More than half of respondents (52 percent) rated "providing for my health and wellness" as the No. 1 financial concern. This was followed by "sustaining and increasing my wealth" (47 percent); "providing for my family's security" (41 percent); and "having enough money to support my lifestyle (41 percent)." Next was "affording healthcare costs for my family" (38 percent).

### Planning Ahead?

The serious concerns expressed by survey respondents about the costs of long-term care, medical expenses for family members and the

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potential for Medicare insolvency have not translated into related financial planning for many wealthy Americans. PNC's survey found that asset protection preparations lag for many wealthy households. Survey results included:

- More than two-thirds (69 percent) of respondents do not have a comprehensive financial plan.
- More than one in 10 (13 percent) have not taken any of the appropriate steps to protect their wealth.
- Three out of four (75 percent) have completed a will, but four in 10 (39 percent) have no healthcare proxy, which specifies an individual to implement a living will and make healthcare decisions when its statement of preferences do not apply.
- While most have a will, less than half (45 percent) have established a trust to transfer wealth to heirs and only 26 percent have named a professional trustee.
- Seven out of 10 (69 percent) have not purchased long-term care insurance for themselves or a spouse. Among those who have not purchased long term care insurance, thirty-six percent felt it was unwise to spend money on a premium they may never use, 22 percent said it was cost-prohibitive and 21 percent said they never thought about it.

"The cost of healthcare is rising much faster than inflation, and the effect on family assets should be factored prominently into retirement planning and wealth preservation activities," Melcher said. "Without proper financial planning, many people end up leaving a bankrupt legacy to the next generation.

"A truly comprehensive financial plan should take everything into account, including healthcare, but that is often not the case," Melcher added. "Many people focus on lifestyle issues and financial growth strategies but want to avoid the fact that we will all get older and need some level of medical care in the future. And the level of need can be a financial drain for the individual, as well as the family, if they are ill-prepared due to the lack of advance planning."

Melcher said the healthcare proxy is a critical need for anyone to establish treatment desires. He also said that a health savings account offers a tax-advantaged way to set aside money for healthcare costs. From an asset protection perspective, Melcher said there are numerous options, ranging from an estate plan, life insurance, irrevocable life insurance trust and Delaware Asset Protection Trusts, for example. 🏠

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