

# Global Benefit Plans: Legal Issues for Global Employers and Producers

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Agenda:

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- I. Introduction
  - II. Select U.S. & International Health Insurance Laws & Regulations
  - III. Trends & Emerging Issues

## Introduction:

### Health Care: No Longer A Domestic-Only Approach:

- Global Economy
- Health Care Reform
- Expanded Laws & Regulations (Scope & Applicability)
- Medical Tourism
- Cost Savings/Outsourcing

### Provision of Health Care to Multi-National Employers Involves Numerous Analyses:

#### ➤ Multiple Jurisdictions Involved:

- Location of Employer
- Location of Employees
- Location of Dependents
- Location of Vendors (Insurers, TPA's, Providers, Brokers, Consultants)
- Location of Funding

#### ➤ Multiple Laws Involved:

- Insurance
- Benefits
- Tax
- Labor



## U.S. & International Health Insurance Laws & Regulations

### Realities:

- **Highly Regulated Industry With a Trend Toward Increased Regulation**
- **Incorrect Presumptions:**
  - Relationship With Foreign Insurer enables employers/producers to avoid U.S. Laws
  - Leaving employees on a U.S. Domestic plan enables employers/producers to avoid host-country laws
- **Bottom Line: Facts & Circumstances Analysis Required**

### Regulation of Insurance in the United States:

- **Landmark U.S. Supreme Court Cases: Paul v. Virginia (1869) & U.S. v. Southeastern Underwriters (1944)**
- **McCarran-Ferguson Act (1945)**
- **U.S. State Insurance Law Fundamentals:**
  - Illegal to transact business without authority
  - Forms and policies filed and approved
  - Mandates apply to “Residents”



## U.S. & International Health Insurance Laws & Regulations

### Regulation of Insurance in the United States (Continued):

➤ **Congress Has Limited U.S. State Authority. How?**

- Through Passage of “Benefits” Laws (ERISA, HIPAA, COBRA, etc.)

➤ **ERISA:**

- Welfare Benefit Plans (Definition)
- Fiduciaries (Definition/Acts/Standard for Acts):
- Potential Liability & Co-Fiduciary Liability
- International Exclusion
- Preemption: Insured versus self-insured

➤ **HIPAA/HITECH:**

- Expanded to include business associates (new agreement requirements)
- Breach notifications
- ICD 10/5010

➤ **COBRA:**

- American Recovery & Reinvestment Act (Government Subsidy)
- Exception – Treas. Regulation #54.4980B-3
- State COBRA/Continuation (California, New York)



## U.S. & International Health Insurance Laws & Regulations

Regulation of Insurance Internationally:

➤ **Regulations Vary – No Uniform Set of Rules. Can be based on:**

- Citizenship
- Residence
- Payroll/Employing entity
- Solicitation/Contract location
- Licensing (Freedom of Services in the EU)
- Exceptions (Mexico)

➤ **National Health Systems and/or Mandatory Participation Schemes:**

- Europe (Netherlands, France, Belgium, Czech Republic, etc.)
- Canada – varies by province
- Japan – Social Insurance System



## U.S. & International Health Insurance Laws & Regulations

### Regulation of Insurance Internationally (Continued):

#### ➤ Regulations (local licensed coverage) Tied to Visa Requirements and/or Immigration Laws:

- Saudi Arabia
- United Arab Emirates
- Germany
- Australia (effective 9/14)
- Iceland

#### ➤ Benefit & Certification Requirements:

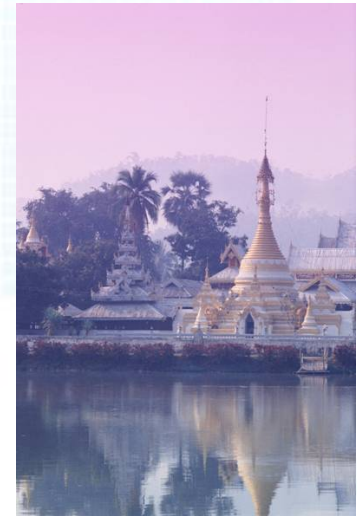
- Switzerland (Cantons)
- Russia
- Austria (Lifetime Cover)
- Continuation (Sweden, France)



## Trends & Emerging Issues

### United States:

- **Health Care Reform – President Obama**
  - 8 Guiding Principles
  - Oversight & Regulation - U.S. Federal vs. State (Pre-emption)
  
- **Taxes & Revenue Generation:**
  - NYHCRA
  - Foreign Withholding
  - IRC Section 105(h)
  - Offshore Excise Tax
  - Escheat Obligations
  - Subrogation
  
- **Foreign Corrupt Practices Act**
- **OFAC**
- **Increasing Trend of Heightened Regulatory Scrutiny (including Privacy)**
- **Producer Compensation:**
  - Disclosure and Reporting (Form 5500 Changes)



## Trends & Emerging Issues

### International:

- **Visa Requirements Tied to Locally Compliant Coverage**
- **Increased Requirements for Certificates**
  - Australia (Class 457 Visa – Effective 9/14/09)
- **Expanded Applicability to Expatriates**
  - South Korea
  - Germany
  - Japan
- **Increased Coordination (BAFIN & NYS)**
- **Increasing Trend of Heightened Regulatory Scrutiny (including Privacy)**
- **Taxes**
  - Insurance Premium Taxes (IPT)
    - (Location of Employees (UK) vs. Location of Policyholder (rest of EU))
- **Producer Licensure (Intermediary Directive)**
- **Duty of Care – 2 Cases Settled in Europe**



## Recommended Approach For Implementing a Global Benefit Plan

### 5 Steps:

- (1) Choose an insurer with best-in-class service capabilities and commitment to client and member satisfaction
- (2) Research & Analyze funding, fiduciary obligations, host country laws. Stay Current.
- (3) Start with a US compliant insurer
  - US State Laws
  - US Federal Laws
- (4) Review worldwide compliance:
  - Worldwide operations
  - Global license base
  - Compliance activities
  - Knowledge and expertise
- (5) Review list of clients and references

