



BENEFIT NEWS BRIEFS

Hearing Set On Legality Of Michigan Law's 1% Tax On Certain Paid Health Care Claims

In [Benefit News Briefs 2011-56](#), we reported in detail on a new Michigan law establishing a 1% tax on certain paid health care claims beginning January 1, 2012. As expected, the legitimacy of the law was challenged in court and the judge has set a June 7 date for a hearing on the Motion to Dismiss the lawsuit filed by the Defendant State of Michigan. The following documents from that case are available by "*clicking on*" the link:

- [Docket Sheet as of April 1, 2012](#)
- [State's Motion to Dismiss](#)
- [Plaintiff's Response to Motion to Dismiss](#)
- [State's Reply to Response to Motion to Dismiss](#)

In [Benefit News Briefs 2011-83](#) we discussed the law's applicability to out-of-state TPAs and multiemployer group health plans:

The law is the *Health Insurance Claims Assessment (HICA) Act*. The tax applies to certain paid health care claims beginning January 1, 2012 and ending January 1, 2014. We will focus on the effect the law has on multiemployer plans, although the law also applies to single-employer plans.

Generally, the *HICA Act* applies to certain insurance carriers, third-party administrators (TPAs), and self-insured entities (including Taft-Hartley multiemployer group health plans (GHPs)) that pay *health claims for Michigan residents for health-related services performed in Michigan*. The assessment is levied upon the "paid claims" of those entities.

"Paid claims," are defined as "*actual payments, net of recoveries, made to a health and medical services provider or reimbursed to an individual by a carrier, third party administrator, or excess loss or stop loss carrier.*"

"Health and medical services" is broadly defined to include "*services included in furnishing medical care.*"

It should be noted that the **tax includes benefit payments made for prescriptions, durable medical equipment, dental and vision services.** (See FAQs 28-31, 44 and 45). The *HICA Act Frequently Asked Questions* (FAQs) were updated December 6, 2011 by adding FAQs 38-49 and available by "[clicking here](#)" or at: http://www.michigan.gov/taxes/0,4676,7-238-43519_59498-264523--,00.html.

[According to] the Michigan Department of Treasury, Tax Policy Division - **Basically, if an entity meets the definition of "carrier" or "third party administrator" under the Act, regardless whether the entity itself is located in Michigan, it is subject to the law.**

Thus, in addition to out-of-state TPAs being subject to pay the tax, **out-of-state multiemployer GHPs that pay claims for Michigan residents for health-related services performed in Michigan will also be responsible to pay the tax.**

The Michigan Department of Treasury has been contacting entities it believes will be covered by the law and informing them of the tax. However, it is likely that many out-of-state TPAs or multiemployer GHPs that pay claims subject to the tax will be missed. Such out-of-state TPAs or GHPs may wish to check the residency of the participants for which it pays claims to Michigan service providers. In addition to Michigan TPAs and GHPs, it would seem more likely that TPAs and GHPs in the states surrounding Michigan would most likely be required to pay taxable claims given their proximity to Michigan.

A newly released presentation is available by "[clicking here](#)" or at: http://www.michigan.gov/documents/taxes/HICA_Info_Seminars_370417_7.ppt.

The main *HICA Act* website is at: <http://www.michigan.gov/taxes/0,4676,7-238-43519-264498--,00.html> and contains various tax filing forms. *Benefit News Briefs 2011-83* (excerpts, emphasis added)

Until the court rules otherwise, the entities covered by the Michigan law must comply or face possible consequences. Though, there may be out-of-state TPAs or multiemployer GHPs that wish to gamble that the law will be stricken down and hold off paying, for trustees of out-of-state multiemployer GHPs, somehow the words "gamble" and "fiduciary prudence" don't sound right together. ☺

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An even more important court ruling is expected this summer as the U.S. Supreme Court rules on the constitutionality of the *Affordable Care Act (ACA)*. Those interested can find links to the written briefs submitted to the Supreme U.S. Court at: http://www.americanbar.org/publications/preview_home/March2012.html.

and written transcripts of the oral arguments at: http://www.supremecourt.gov/oral_arguments/argument_transcripts.aspx.

and audio of the oral arguments at: http://www.supremecourt.gov/oral_arguments/argument_audio.aspx.

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