

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

THE QC GROUP, INC., DANIEL
MEDFORD, and DAVID DEVOWE,

Civil No. 13-1726 (JRT/SER)

Plaintiffs,

vs

KATHLEEN SEBELIUS, in her official capacity as Secretary of the United States Department of Health and Human Services or her successor; and the UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES;

PRELIMINARY INJUNCTION

SETH D. HARRIS, in his official capacity as Acting Secretary of the United States Department of Labor or his successor; and the UNITED STATES DEPARTMENT OF LABOR;

JACOB LEW, in his official capacity as U.S. Secretary of the Treasury or his successor; and the UNITED STATES DEPARTMENT OF THE TREASURY, and

DANIEL I. WERFEL, in his official capacity as Acting Commissioner of Internal Revenue or his successor; and the INTERNAL REVENUE SERVICE,

Defendants.

James Dickey and Erick Kaardal, **MOHRMAN & KAARDAL PA**, 4100 Multifoods Tower, 33 South Sixth Street, Minneapolis, MN 55402, for plaintiffs.

Ann Bildtsen, Assistant United States Attorney, **OFFICE OF THE UNITED STATES ATTORNEY**, 300 South Fourth Street, Suite 600, Minneapolis, MN 55415; Bradley Philip Humphreys, **UNITED STATES DEPARTMENT OF JUSTICE**, 20 Massachusetts Avenue NW, Washington, DC 20530, for defendants.

Plaintiffs have filed a motion for preliminary injunction and stay [Docket No. 9] in the above-referenced case. The Plaintiffs have filed a Local Rule 7.1 meet-and-confer statement indicating an agreement between the parties on the Plaintiffs' proposed order. Defendants have filed a Notice of Non-Opposition to the Motion [Docket No. 13].

Based on these filings, Defendants are preliminarily enjoined until thirty days after the mandate issues from the Eighth Circuit in *O'Brien v. U.S. Dep't of Health & Human Servs.*, No. 12-3357, or *Annex Medical, Inc. v. Sebelius*, No. 13-1118, whichever occurs first, from enforcing the contraceptive coverage requirement under 42 U.S.C. § 300gg-13(a)(4) and its implementing regulations¹ against plaintiffs, its employees or any health insurance issuer when offering any group health insurance coverage to American Manufacturing Company ("AMC") without coverage for "All Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity," as prescribed by a health care provider. *See* HRSA, Women's Preventive Services: Required Health Plan Coverage Guidelines, available at <http://www.hrsa.gov/womensguidelines> (August 1, 2011), attached as Exhibit A hereto.²

¹ 75 Fed. Reg. 41,726, 41,728 (July 19, 2010) (interim final rules with request for comments); 76 Fed. Reg. 46,621, 46,621-26 (Aug. 3, 2011) (interim final rules with request for comments); 77 Fed. Reg. 8725, 8725-30 (Feb. 15, 2012) (final rules).

² The U.S. Food and Drug Administration has approved currently the following contraceptive methods and sterilization procedures for women: female condom; diaphragm with spermicide; sponge with spermicide; cervical cap with spermicide; spermicide alone; oral contraceptives (combined pill) ("the Pill"); oral contraceptives (Progestin-only) ("the Mini Pill"); oral contraceptives (extended/continued use) ("the Pill"); patch; vaginal contraceptive ring; shot/injection; Plan B, Plan B One-Step and Next Choice; Ella; Copper IUD; IUD with progestin; implantable rod; sterilization surgery for women and sterilization implant for women.

Further, if AMC adopts a self-insured plan under the Employee Retirement Income Security Act of 1974 (ERISA), which must also comply with the requirements of 42 U.S.C. § 300gg-13(a)(4) and its implementing regulations, Defendants are preliminarily enjoined until thirty days after the mandate issues from the Eighth Circuit in *O'Brien* or *Annex Medical*, whichever occurs first, from enforcing the contraceptive coverage requirement under 42 U.S.C. § 300gg-13(a)(4) and its implementing regulations against plaintiffs, its employees or any third party administrator when administering any self-insured plan for AMC without coverage for “All Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity,” as prescribed by a health care provider. Ex. A.³

Additionally, if the Defendants eventually prevail and this preliminary injunction is dissolved, the Defendants are still enjoined from retroactively assessing or collecting any taxes, fees, penalties or fines based on violations during the period of the enforcement of this preliminary injunction. The Defendants may, of course, assess or collect such taxes, fees, penalties or fines for violations after the date of dissolution of the preliminary injunction.

See U.S. FDA Birth Control Guide, *available at* <http://www.fda.gov/downloads/ForConsumers/ByAudience/ForWomen/FreePublications/UCM282014.pdf> (updated August 2012), attached as Exhibit B hereto.

³ See Note 2, *supra*.

All proceedings in this case are stayed pending resolution of the appeal in either *O'Brien* or *Annex Medical*, whichever occurs first.

IT IS SO ORDERED.

DATED: August 30, 2013
at Minneapolis, Minnesota.

s/John R. Tunheim
JOHN R. TUNHEIM
United States District Judge