

HEALTH LAW UPDATE

January 21, 2010

HEALTH REFORM'S IMPACT ON PROVIDERS AS EMPLOYERS: KEY ISSUES TO CONSIDER

While the pending healthcare reform legislation will affect how healthcare providers furnish goods and services within the larger healthcare delivery system, providers also should consider how the reform legislation will affect them as employers and as the recipient of other workers' personal services. Because the reform legislation is intended to rebalance how the costs of the healthcare delivery system are borne by private industry, government and the general public, it fundamentally will change how all businesses, including healthcare providers, provide and pay for the healthcare coverage their employees and other healthcare workers receive.

Healthcare providers will need to consider and address at least the following six key issues when deciding what healthcare coverage to provide or make available to their employees and how to handle other workers who provide non-employee services to them:

- Individuals will have greater direct access to individual health insurance coverage by purchasing group coverage commercially and will have an obligation to either buy the coverage directly or obtain it indirectly through an employer. Changes in the accessibility of coverage likely are to change the traditional imperative that a healthcare provider must provide coverage, or provide certain types of coverage, to its employees through an employer-sponsored or union co-sponsored plan.
- Providers that currently offer coverage to their employees through an employer-sponsored plan may not have to make significant changes to their plans or improve the coverage presently being provided. However, all plans will have to be reviewed to meet minimum standards and conform to the new rules expected to emerge. A so-called "grandfather" rule, to protect existing plans from having to make major changes, will at least provide transitional relief.
- Providers that use an employer-sponsored plan to provide coverage to employees will have to comply with several new administrative rules and compliance obligations, including, in some cases, automatic enrollment rules and new reporting requirements.
- The impact on specific providers will vary, due to the uncertain effects of such a substantial redistribution of the benefits and burdens of the healthcare delivery system. Factors affecting the impact will include the number of full-time employees in the employer's workforce; how coverage is provided (e.g., by purchasing commercial coverage, through self-insurance, etc.); whether the covered population is located in high-cost or low-cost states; whether the workforce can be relocated or realigned or can be rearranged; whether the plan-covered population is heavily weighted towards younger employees or older employees, or includes substantial numbers of retired and other former employees; and similar considerations.

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- Healthcare providers that rely on a composite workforce to provide their services, including part-time employees, independent contractors, "dependent" contractors and "shared" and leased employees, likely are to face special challenges. The current reform legislation sharply distinguishes between large employers and small employers in terms of the obligations each faces, and generally leaves seasonal and part-time employees and independent contractors with the burden to purchase coverage for themselves. The new economic burdens imposed by the reform legislation will create new incentives for individuals to challenge traditional work classifications or attempt to modify them (possibly by seeking to organize and bargain collectively).
- The general marketplace reforms contained in the legislation are set to take effect for plan years beginning six months after enactment (generally starting in 2011). However, most substantive employer provisions begin to take effect in 2014, and some provisions are not scheduled to take effect prior to 2018. Delayed effective dates, and the need for several of the provisions to be interpreted by regulatory agencies, provide the opportunity to analyze and plan for the upcoming changes for at least the next several years. In addition, the reform legislation makes employers responsible for full-time employees only, which is likely to prompt many employers to review the composition of their respective workforces.

No matter what the final reform legislation looks like, healthcare providers are well served by taking into account not only the direct impact reform will have on their business model, but also how reform will affect what health benefit coverage they provide to their employees and how they obtain services from workers for whom they would not have any direct obligations.

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