



EMPLOYEE BENEFITS NEWSLETTER ~ OCTOBER 2009

Federal News Healthcare Reform: Will the Baton Fall Before the Final Handoff?

Yesterday, the Senate Finance Committee approved its version of healthcare reform. All 13 Democrats voted for the bill, as well as one Republican, Senator Olympia Snowe (ME). With the passage of this bill, it is the first time in history that a healthcare reform bill has been passed by all five of the congressional committees with jurisdiction over healthcare.

The Senate and House bills are each broadly similar in the scope of their reforms. All would tighten regulations on health insurers, mandate every American to purchase health insurance, offer subsidies to lower income earners and set up health insurance exchanges for people without employer-sponsored coverage, to help them choose between different options.

A main point of contention remains that lawmakers are divided over whether people with access to the exchanges should be allowed to choose a new government-run system—the “public option.”

The three House bills contain a public option, as does the bill from the Senate Health, Education, Labor & Pensions (HELP) Committee.

The Senate Finance Committee version is the only bill which does not contain the public option; moderate Democrats and Republicans in the Committee prevented the provision from being added to the legislation. For the public option to survive in the Senate reform package, a compromise between liberal Democrats and their more moderate Democratic/Republican counterparts would have to be achieved when the HELP and Finance Committee bills are combined.

House Speaker Nancy Pelosi (D-CA) has repeatedly stated that the House bill will include a public option, but the challenge will be mollifying moderate “Blue Dog” Democrats to support such a bill. This reticence stems from taking a politically tough vote on climate change over the summer. Blue Dogs from Republican leaning districts faced angry constituents during the August recess for supporting climate change legislation and are weary

to take another difficult vote before knowing if the Senate legislation will include a public option provision.

The House leadership, like Democrats in the Senate plan to bring a full bill to the floor this month.

NEXT STEPS – THE LAST MILE IS ALWAYS THE HARDEST!

However, a healthcare reform bill will still need to negotiate a number of congressional hurdles before it can become law (see chart).



President Obama has set a year-end deadline for passing comprehensive health care reform, and on a number of occasion has said the nation is “closer than ever before” to making it happen. That may be the case, but there are still a number of significant steps ahead.

SENATE:

Two committees in the Senate have jurisdiction over healthcare reform. One, the HELP Committee—passed its bill in July. The Senate Finance Committee passed its bill yesterday.

The White House and Democratic leadership in the senate pushed the Finance Committee to wrap up a vote quickly, so it can move onto step two—creating a single healthcare

bill for the full Senate to consider. The Finance Committee bill must be combined with the HELP Committee’s bill. Once this has been achieved the bill will go before the full Senate for approval.

HOUSE:

The House of Representatives has health-care legislation approved by all three of its committees with jurisdiction over the issue. Now, House leadership is tinkering with the reform bills behind the scenes, in order to reach step two—and bring one unified bill before the full House.

CONFERENCE:

If the Senate version of the bill passes, it will be sent to a conference committee with the House of Representatives’ version. Senate and House leadership will appoint conferees to negotiate which provisions in the two bills will make-up the ultimate healthcare reform legislation. Once the conferees have agreed upon the negotiated provisions, both chambers must vote on the revised bill for final approval. The timeframe for such a vote is speculated to occur in December.

Inside this issue:	HEALTHCARE REFORM PROGRESS	1
	FINAL INTERIM RULE (GINA)	2
	CORPORATE WELLNESS PROGRAMS	3
	ADA REGS REVISION PROPOSED	4



Feds Release Interim Final Rule Banning Genetic Discrimination

Source: SHRM

The U.S. Dept. of Health & Human Services (HHS), Labor, and the Treasury have jointly released an interim final rule aimed at helping prevent employers, insurers, health care providers and others from using genetic information adversely in determining health care coverage. The administration maintains the new rules will encourage more individuals to participate in genetic testing, which can help better identify and prevent certain illnesses.

“Echoing the late Sen. Ted Kennedy, our efforts to protect Americans undergoing genetic testing from having the results of that testing used against them by their insurance companies is one of the ‘first major new civil rights’ of the new century,” said HHS Secretary Kathleen Sebelius in an October 1, 2009, statement. “Consumer confidence in genetic testing can now grow and help researchers get a better handle on the genetic basis of diseases. Genetic testing will encourage the early diagnosis and treatment of certain diseases while allowing scientists to develop new medicines, treatments and therapies.”

The interim final rule with request for comments and the notice of proposed rulemaking implement Title I of the Genetic Information Nondiscrimination Act of 2008 (GINA). Under GINA and the interim final rule, group health plans and issuers in the group market cannot:

Increase premiums for the group based on the results of one enrollee’s genetic information; deny enrollment; or impose pre-existing condition exclusions; or do other forms of underwriting based on genetic information.

In the individual health insurance market, GINA prohibits issuers from using genetic information to deny coverage, raise premiums or impose pre-existing condition exclusions.

In addition, under GINA and the new interim final regulations, group health plans and health insurance issuers in both the group and individual markets cannot request, require or buy genetic information for underwriting purposes or prior to and in connection with enrollment. Plans and issuers are generally prohibited from asking individuals or family members to undergo a genetic test.

“Today’s genetic technologies yield data that are vital to helping Americans make personal, medical decisions. It is essential that we protect such information and ensure it is not misused by health plans or insurers,” said Labor Secretary Hilda L. Solis. “The rules issued on October 2, 2009 protect individuals against the unwarranted use of information related to their personal health because no one should have to fear that disclosure of their medical data will put their job or health coverage at risk.”

Additionally, HHS, through its Office for Civil Rights, issued a notice of proposed rulemaking with a 60-day comment period, to propose changes to the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule to prohibit health plans from using or disclosing genetic information for underwriting purposes.

The proposed rule modifies the HIPAA Privacy Rule pursuant to GINA Title I to clarify that genetic information is health information and to prohibit the use and disclosure of genetic information by covered health plans for eligibility determinations, premium computations, applications for any pre-existing condition exclusions, and any other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits. In combination with the new penalties for violations of the HIPAA Privacy Rule could result in a fine of \$100 to \$50,000 or more for each violation.

Visit us on the web at:
www.insurancespecialists-usa.com

Wellness At Work For You

Corporate Wellness Programs Pay Off

Do wellness programs contribute to a company's profitability or are they simply "feel good" programs to improve employee morale? What factors are important to consider when designing a wellness program? What information should be measured? How does a company get started developing wellness program?

This article will answer these questions as well as demonstrate how properly designed wellness programs can help corporations reduce employee benefit expenses, increase productivity and positively affect the bottom line.

In fact, employee morale measurably improves in 56% of the companies that offer wellness programs. Companies with effective health management programs can expect to:

- Generate up to 20% more revenue per employee
- Improve market value by as much as 16%
- Deliver up to 57% more in shareholder returns.

Health care costs per employee have ballooned more than 40% in the last five years alone. If food prices had risen at the same rates as medical care, we would be paying over \$80 for a dozen eggs and \$102 for a pound of butter today.

Despite a substantial investment in health care, the U.S. currently ranks only 45th in the life expectancy in the world –with an average of 77.9 years. The low life expectancy is attributed to: the lack of health insurance, high obesity rates, high infant death rates, disparity of care by race and a primary focus on treatment rather than prevention.

Companies are responding to higher health insurance rates through larger deductibles and higher co-pays for services and prescriptions, changing

providers and finally, 58% of employers are adopting wellness programs as a way to reduce health care costs.

In addition to illness and disease, a wide variety of issues affect employee productivity, from lifestyle risks such as participating in dangerous sports, smoking or driving without a seat belt to "presenteeism", when an employee feels that he must show up for work even when he is too sick, stressed or distracted to be productive.

Elements of a Well-Designed Wellness Program

Get support from the top. The leadership of the company must understand the benefits and "buy-in" to the program. Results are best when top management "walk the talk".

Conduct an assessment. A "risk factors" chart is a good place to start to capture baseline information about your target population. How many EE's smoke? How often? How many drinks per day? How much do they weigh? This must be conducted as a confidential survey.

Decide on measurement tools. How will you determine whether the program is successful? Some factors to measure might be: employee participation, reduction in insurance costs and changes in lifestyle behaviors, etc.

Communicate, communicate... make sure your program has a clear message theme that's reflected in all of your employee communication materials. A wellness program is not an event, it's a process. Make sure your program information is communicated consistently and often.

Allow for both group and individual approaches. Not everyone is comfortable working out in a gym or

sharing personal fitness goals with others. Make sure your program allows enough variation to accommodate those who wish to have the support of others as well as self-help approaches, such as anonymous internet support for those who wish to work on their own.

Offer incentives. Employees may need to realize immediate and tangible benefits for their efforts. Offer incentives to enroll in the program, when significant plateaus are reached and when goals are met.

Expect the unexpected. Some companies have found employees may be suspicious about the program and wonder: Is the company just looking for a way to discover my particular health issues?

In closing, employers offer health insurance as a benefit to employees once they're sick. Wellness programs offer tools to educate employees in ways to prevent and avoid disease. Healthy employees are happier, more focused on the job, absent less often and less expensive to insure.

Insurance Specialists
1750 Scottsville Road, Suite 4
Bowling Green, KY 42104

Interested in learning what a Wellness Program can do for your Company? Call our Certified Wellness Manager at:

Phone: 270-793-0367

Fax: 270-793-0742

E-mail: msweetman@isbgky.com

Notice of Proposed Rule to Revise ADA Regs

The Federal Register published the Equal Employment Opportunity Commission (EEOC)'s notice of proposed rulemaking to revise its American with Disabilities Act (ADA) regulations. The proposed rule has been issued to align the ADA regulations' definition of "disability" with the ADA Amendments Act (ADAAA) of 2008, which took effect January 1, 2009.

The proposed rule notes that the ADAAA retained the ADA's basic definition of "disability" as an impairment that substantially limits one or more major life activities, a record of such an impairment or being regarded as having such an impairment. However, the proposed rule notes that the ADAAA changed the way these statutory terms should be interpreted in several ways.

As expected, the **proposed rule** includes examples of impairments that will consistently meet the definition of disability, which would be a change from the current case-by-case determination of whether an impairment is a disability. EEOC Commissioner Constance Barker had voted against the proposed rule partly because of this change, maintaining at a June 17, 2009 EEOC meeting that it went beyond the requirements of the ADAAA.

Presumptive Disabilities

In its appendix to the proposed rule, the EEOC states that the ADA and the proposed rule "do not attempt an exhaustive 'laundry list' of impairments that are 'disabilities'" and says that there still should be an individualized assessment of disability.

However, the agency says that the proposed rule "offers examples to illustrate that characteristics associated with some types of impairments allow an individualized assessment to be conducted quickly and easily, and will consistently render those impairments disabilities."

The ADAAA's legislative history lends support to the view that some impairments consistently meet the definition of disability and are covered by the law. "The legislative history states that Congress modeled the ADA definition of disability on the definition contained in the Rehabilitation Act, and said it wishes to return courts to the way they had construed that definition,"

the appendix elaborates. "Describing this goal, the committee report states that courts had interpreted the Rehabilitation Act definition 'broadly to include persons with a wide range of physical and mental impairments such as epilepsy, diabetes, multiple sclerosis, and intellectual and developmental disabilities,' even where a mitigating measure lessened their impact. Like the ADAAA, the proposed rule provides that the ameliorative effects of mitigating measures other than the ordinary eyeglasses or contact lenses are not to be considered when determining whether someone has an ADA disability.

'Substantially Limits' and 'Major Life Activities'

The proposed rule also would revise that portion of the regulations defining the term "substantially limits" by providing that a limitation need not significantly or severely restrict a major life activity to be a covered ADA disability. The proposed regulations also would delete reference to the terms "condition, manner or duration" under which a major life activity is performed.

And the proposed rule would expand the definition of "major life activities" through two non-exhaustive lists, including major bodily functions, such as functions of the immune system, special sense organs, and skin; normal cell growth; and digestive, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal and reproductive functions, many of which were specifically included by Congress in the ADAAA.

'Regarded As' Prong

The EEOC has proposed amending the ADA regulations to provide that the definition of "regarded as" no longer requires a showing that the employer perceived the individual to be substantially limited in a major life activity. Instead, the proposed definition would provide that an applicant or employee who is subjected to an action prohibited by the ADA because of an actual or perceived impairment will meet the "regarded as" definition of disability, unless the impairment is both transitory and minor.



"As long as the employer bases an employment action on an actual or perceived impairment that was not transitory and minor, the employer regards the individual as disabled, whether or not myths, fears or stereotypes about disability motivated the employer's decision," the proposed rule states. Like the ADAAA, the proposed rule defines transitory as lasting or expected to last for six months or less. For example, the proposed rule says an individual who is placed on involuntary leave because of a broken leg is not regarded as disabled, because the broken leg is transitory and minor.

Actions Based on Symptoms

The EEOC is seeking comment on the proposed rule's provision that actions based on an impairment include actions based on impairment's symptoms. The proposed rule provides two examples to illustrate this point— an employer who refuses to hire someone with a facial tic associated with Tourette Syndrome and the an employer who refuses to hire someone for a driving job because he takes anti-seizure medication.

In the appendix, the EEOC notes that a person bringing an ADA claim still would have to establish that he or she was qualified with or without an accommodation to perform essential job functions. For example, an employer who withdraws a conditional job offer because a post-offer pre-employment examination reveals that the applicant takes anti-seizure medication has regarded the person as having a disability under the proposed rule. But the applicant still would need to establish that he/she is otherwise qualified for the position. The employer still could raise any applicable defenses, such as if the applicant posed a direct threat to health or safety, or if another federal law required the exclusion of individuals who take anti-seizure medication from the job.