



Source: NY Times

A Primer on the Details of Health Care Reform



With the debate over, the future of health care now shifted from Capitol Hill to town halls, supporters and critics of the Democrats' legislative proposals are polishing their sound bites and sharpening their attack lines.

Increasingly, the battle looks like a presidential contest, with expensive advertising campaigns and Internet driven efforts to mobilize local support. It can be difficult to sort fact from fiction as angry protesters denounce the legislation at raucous public forums.

Here is a guide to the main fight points:

SOCIALIZED MEDICINE

Or Uniquely American?

Republicans harshly criticize Democratic proposals to create a government-run insurance plan, or public option, to compete with private insurers. Republicans say the public plan would drive insurers out of business and lead to "socialized medicine" or a government takeover of health care. Democrats say they want a "uniquely American" system with public and private elements.

Major versions of the legislation all rely heavily on a continuation of private health plans, offered by employers and by insurance companies, subject to sweeping new federal regulations.

The Congressional Budget Office has estimated that, under the House bill, the number of people with employer-sponsored insurance would climb to 162 million in 2016, which is 3 million more than expected under current law.

Further, it said, enrollment in the proposed public plan might total

11 million, far lower than estimates cited by Republicans. An additional 10 million people, most of them now uninsured, would enroll in Medicaid, the budget office said.

BLAMING INSURERS Or Ensuring Blame?

Democrats have unleashed a blistering attack on private health insurers as they try to convince the vast majority of Americans who already have coverage that the current system is tilted in favor of corporate profits, not patients, and that insurers are a main obstacle to passing legislation.

Insurers say they support some of the most important Democratic proposals, including a ban on denying coverage or charging higher premiums based on pre-existing medical conditions.

Most Americans do not know the full cost of their employer-sponsored insurance. And it is easier for Democrats to paint insurers as greedy than to explain the complex math that shows current health care spending is unsustainable.

The Congressional Budget Office has yet to issue cost estimates for the latest versions of the bill approved by three House committees. But it has warned that the legislation "would probably generate substantial increases in federal budget deficits" beyond 2019. In part because health care costs are rising faster than the rate of inflation and proposed new taxes would not keep up.

EUTHANASIA

Conservative critics say the legislation could limit end-of-life care and even encourage euthanasia. Moreover, some assert, it would require people to draw up plans saying how they want to die. These concerns appear to be unfounded. AARP, the lobby for older Americans, says, "The rumors out there are flat-out lies."

The house bill would provide Medicare coverage for optional consultations with doctors who advise patients on life-sustaining treatment and "end-of-life services," including hospice care.

CUTTING MEDICARE

To help finance coverage for the uninsured, Congress would squeeze huge savings out of Medicare, the program for older Americans and the disabled. These savings would pay nearly 40 percent of the bills' cost.

The legislation would trim Medicare payments for most services, as an incentive for hospitals and other health care providers to become more efficient. The providers make a plausible case that the cutbacks could inadvertently reduce beneficiaries' access to some types of care. The Senate Republican leader, Mitch McConnell of Kentucky, said Democrats would make "massive cuts to Medicare to pay for more government-run health care."

President Obama told AARP last month, "Nobody is talking about reducing Medicare benefits." All the savings, he said, would come from measures to "eliminate waste and inefficiency in Medicare."

The major bills in Congress would cut more than \$150 billion over 10 years from federal payments to private health plans that care for more than 10 million Medicare beneficiaries.

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The Paul Wellstone and Pete Domenici Mental Health Parity and Addition Equity Act of 2008

Effective for plan years beginning on or after October 3, 2009

(January 1, 2010 for calendar year plans).

This act requires private group health benefit plans that provide mental health and/or substance use disorder benefits through a group health benefit plan that also offers medical and surgical benefits do so on an equivalent basis. The act imposes several plan design requirements on group health benefit plans that offer mental health and/or substance use disorder benefits including equity in cost sharing, treatment limitations and coverage decision requirements.

Michelle's Law

Effective for plan years beginning on or after November 8, 2009 (January 1, 2010 for calendar year plans).

Michelle's Law extends eligibility for group health benefit plan coverage to certain dependent children over the age of 18 who are enrolled in an institution of higher education. Specifically, the law extends eligibility to those who would otherwise lose coverage when a medically necessary leave of absence causes the child to fall below full-time student status. The extension of eligibility is intended to protect group health benefit coverage of a sick or injured dependent child for up to one year.

The Employee Free Choice Act (EFCA)

Debate on legislation that makes dramatic changes to the way unions organize has begun to shift tone on Capitol Hill as supporters of the EFCA look for ways to get the measure moving again.

The House and Senate versions of EFCA (H.R.1409 and S.560) were introduced in March 2009 but have remained stalled in committees. They would change the way unions organize by giving workers a choice on the method by which they want to vote for union representation—either by card-check process or by a secret ballot election.

Sources say that half-dozen Democratic senators are trying to find a way to make the bill “filibuster proof” and still appeal to organized labor. One of the proposals under consideration would be to reduce the time for union certification votes significantly. Currently, a campaign for a union election runs for 60 days after a majority of employees sign union cards saying they would like union representation. The proposals under consideration would reduce the time for the election to five or ten 10 days.

E-Verify

E-Verify is an Internet-based system operated by the Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA) that allows participating employers to electronically verify the employment eligibility of their newly hired employees. E-Verify is free and voluntary, and is the best means available for determining employment eligibility of new hires and the validity of their Social Security numbers. Form I-9 continues to be valid beyond the current expiration date of June 30, 2009.

The effective date of the final rule requiring certain federal contractors and subcontractors to use E-Verify has been delayed until September 8, 2009. The rule will only affect federal contractors who are awarded a new contract after that date that includes the Federal Acquisition Regulation (FAR) E-Verify clause.

Federal Contractors may not use E-Verify to verify current employees until the rule becomes effective and they are awarded a contract that includes the FAR E-Verify clause. For more information, see www.uscis.gov.

DID YOU KNOW?

As of July 24, 2009, the federal minimum wage for covered non-exempt employees rose from \$6.55 to \$7.25 per hour. To get a federal minimum wage poster, go to: www.dol.gov/esa/whd/regs/compliance/posters/flsa.htm.

Family Responsibilities Discrimination: Where Are We Now?

Source: SHRM

She was a rising star until she announced that she was pregnant with her second child. She was reprimanded for minor errors, her hours were scrutinized and she was forced to take leave early. She received a poor evaluation because she was “unable to balance work and family” and was terminated.

He was terminated shortly after he took FMLA leave to care for his disabled spouse. His supervisors and co-workers often commented on the fact that he left work at 5:00 pm even though he worked at home in the evenings and on weekends. He was terminated for poor performance while similarly situated employees with worse performance remained employed.

She was the sole caregiver for her disabled child. She was terminated for excessive absences even though her performance evaluations were better than average and she worked from home on the days she took off to care for her child. She was never informed of her right to intermittent FMLA leave, yet her employer was aware of her child’s medical condition.

These situations are real life examples of Family Responsibilities Discrimination (FRD) drawn from the Center for WorkLife Law’s (WLLs) conversations with employees. FRD is discrimination against workers based on their caregiving responsibilities and it has been gaining ground since the 1970s.

Since then, pregnant women, mothers and fathers of young or disabled children, and employees with aging parents or ill or disabled spouses have initiated FRD claims. Men and women across the income spectrum and employers in every industry have been affected by FRD. These claims have been brought under almost all federal employment statutes as well as state anti-discrimination and leave laws, and common law causes of action.

On May 23, 2007, the U.S. Equal Employment Opportunity Commission (EEOC) shined a spotlight on FRD

when it issued enforcement guidance on Disparate Treatment of Employees with Caregiving Responsibilities. The guidance collected and analyzed key FRD cases from the past three decades, providing a roadmap for employers to often unclear FRD liability.

The law in this area has continued to expand. A growing number of FRD cases have been decided by appellate courts, further solidifying the law in this area.

FRD is simply not an issue that HR professionals can afford to ignore.

Growing number of FRD Claims

The number of FRD claims continues to climb. In 2006, the WLL reported a nearly 400 percent increase in the number of FRD lawsuits filed between 1996 and 2005 as compared to the prior decade, 1986 to 1995. The WLL is in the process of updating this data. Preliminary results indicate a sharp increase in the number of FRD cases in 2007 (316 cases) and 2008 (348 cases) as compared to 2006 (176 cases). Title VII and FMLA claims still make up the majority of FRD cases.

Further, plaintiffs continue to prevail in approximately 50 percent of FRD cases. They have received significant awards and settlements, many exceeding \$100,000 and even \$1 million.

Importantly, caregivers continue to make up a significant percentage of the current workforce. “Most children—70 percent—grow up in a family with either a working single parent or with two parents who both work”.

One in four families take care of elderly relatives and one in 10 employees is a member of the “sandwich generation,” with caregiving responsibilities for both children and elderly parents.



Five Key Strategies for Preventing FRD

The EEOC in April 2009 issued a technical assistance document, **Employer Best Practices for Workers with Caregiving Responsibilities**, that offers approximately two-dozen concrete suggestions that employers can implement to assist employees with balance working and family obligations while preventing FRD claims. Key prevention strategies discussed in the best practices include:

- Training is critical. Consider adding an FRD module to existing management training.
- Implement an EEO policy that prohibits discrimination against caregivers.
- Respond to complaints of caregiver discrimination promptly and effectively and ensure that employees are not retaliated against for filing a complaint.
- Review the language and implementation of relevant employment policies and procedures including leave programs, performance evaluations, compensation policies, hiring and promotion criteria and availability/use of flexibility programs.
- Ensure that all managers are aware of the employer’s flexible work policies and encourage employees to use the policies without risk of retribution.

Wellness At Work For You

New CDC Web Site Helps Employers Combat Obesity, Costs



CDC's LEAN Works!
A Workplace Obesity
Prevention Program.

Free web based resource.

The Centers for Disease Control and Prevention (CDC) unveiled LEANWorks! A web site designed to help businesses address obesity. LEAN stands for Leading Employees to Activity and Nutrition.

"CDC LEANWorks! Was developed in direct response to organizations asking the CDC for help in addressing the obesity epidemic. Specifically they wanted to know that interventions were effective in helping employees maintain a healthy weight," William Dietz, M.D., director of CDC's division of Nutrition, Physical Activity and Obesity said. "CDC has identified science-based interventions that work to prevent and control obesity. CDC LEANWorks! provides the tools and more. The web site provides a variety of resources to employers including:

- An obesity cost-calculator where employers can input employee demographic data to estimate the total costs associated with obesity and determine annual obesity-related medical costs for their companies.
- Resources to help employers plan, build, promote and assess interventions to combat obesity.

- Information on how employers can estimate return on investment (ROI), a measure of the cost of an intervention compared to the expected financial return of the intervention.

Adult obesity rates increased in 23 states in the past year and did not decrease in a single state, according to *F as in Fat: How Obesity Policies Are Failing in America 2009*, a report by the Trust for America's Health and the Robert Wood Johnson Foundation.

Obesity is a risk factor for high blood pressure, type 2 diabetes, stroke and heart disease. Obese individuals spend 77 percent more money for necessary medications than non-obese persons, according to the CDC.

Because organizations do not usually publish information about their worksite programs in the scientific literature, the CDC visited select businesses to identify promising worksite obesity prevention and control practices. The LEANworks! Web site provides case studies from some of those businesses to provide examples of successful worksite obesity prevention programs.

Workplace obesity prevention programs can be an effective way for employers to reduce obesity and lower their health care costs, lower absenteeism and increase employee productivity," said Dietz. Employers might see other indirect benefits when they implement these programs, such as improved employee morale, increased worker retention, and improved recruitment of new employees."

In 2000, the total cost (direct and indirect) attributable to obesity was estimated to be \$117 billion,¹ and between 1987 and 2001, diseases associated with obesity accounted for 27 percent of the increases in medical costs.² Medical expenses for obese employees are estimated to be between 29 percent and 117 percent greater than medical expenses for employees with a healthy weight.

1750 Scottsville Road, Suite 4
Bowling Green, KY 42104

Phone: 270-793-0367
Fax: 270-793-0742
E-mail: msweetman@isbgky.com

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