THE LATEST HEALTH CARE REFORM UPDATE:
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Important Legal Ruling for Employer-Sponsored Wellness Plans

In a decision filed April 11, the Southern District of Florida granted an employer health plan's motion for summary judgment in a case where the health plan's wellness program was charged with violating the Americans with Disabilities Act (ADA). The case, Seff v. Broward County, is important because it has never been clear whether wellness programs and health risk assessments that otherwise comply with the HIPAA wellness rules (particularly those that are mandatory or involve penalties) are also compliant with ADA.

The Equal Employment Opportunity Commission (EEOC), which administers the ADA, has questioned whether mandatory wellness programs or those that include penalties for noncompliance (as opposed to a reward for participation) would be permitted under this provision. However, the EEOC has not issued formal guidance. In this case, the court found that the ADA prohibition does not apply to a wellness program offered by an employer health plan where the program meets the ADA's safe harbor for bona fide benefit plans.

Importantly, the court did not address whether the county wellness program was "voluntary" under EEOC standards. Applicable regulations define a voluntary wellness program as one that neither requires employees to participate nor penalizes employees for non-participation. The EEOC has informally suggested that a wellness program may not be voluntary if the program includes a mandatory health risk assessment or a punitive trigger, but since the court did not address this, it remains an undecided issue.

Treasury Plan Would Help Determine Full-Time Workers for Health Cover

The U.S. Treasury Department unveiled potential approaches Tuesday to what constitutes a full-time employee as it pertains to the health care reform law requirement that employers offer full-time employees coverage or pay a penalty if they do not.

Under one approach suggested by Treasury in Notice 2011-36:

- An employer would calculate each employee's full-time status by looking back "at a defined period of not less than three but not more than 12 consecutive calendar months" to determine if the employee worked an average of 30 hours per work during this "measurement" period
- If the employee met the 30-hour standard by that measurement, the individual would be considered a full-time employee during a subsequent "stability" period, regardless of the number of hours the employee worked during that subsequent period.
- For an employee determined to be a full-time employee during the measurement period, the stability period would be at least six consecutive months after the measurement period.
- If an employee were determined not to be full-time during the measurement period, the employer would be allowed to exclude the individual in calculating its full-time employees during a stability period

The Treasury Department said it is asking for public comment on determining whether an employee meets the 30-hour threshold. Comments are due June 17 and can be emailed to Notice.comments@irscounsel.treas.gov Notice 2011-36 should be included in the subject line.

CMS Implements Medicare Value-Based Purchasing for Hospitals

A new initiative launched by the Department of Health and Human Services (HHS) will reward hospitals for the quality of care they provide to people with Medicare and help reduce health care costs. Authorized by the Patient Protection and Affordable Care Act (PPACA), the Hospital Value-Based Purchasing program for the first time changes how Medicare pays health care providers and facilities--

3,500 hospitals across the country will be paid for inpatient acute care services based on care quality, not just the quantity of the services they provide. The final rule establishing the Hospital Value-Based Purchasing Program will be published in the May 6 Federal Register; the proposed rule was published on Jan. 13.

In fiscal year 2013 (beginning on Oct. 1, 2012), an estimated $850 million will be allocated to hospitals based on their overall performance on a set of quality measures that have been proven to improve clinical processes of care and patient satisfaction. This funding will be taken from what Medicare otherwise would have spent, and the size of the fund will gradually increase over time, resulting in a shift from payments based on volume to payments based on performance.

The better a hospital does on its quality measures, the greater the reward it will receive from Medicare.

For a complete list of quality measures,
visit http://www.HealthCare.gov/news/factsheets/valuebasedpurchasing04292011b.html

For a fact sheet on the Hospital Value-Based Purchasing program,
visit http://www.HealthCare.gov/news/factsheets/valuebasedpurchasing04292011a.html

To learn more about Hospital Value-based Purchasing,
visit http://www.cms.gov/HospitalQualityInits