

BENEFIT

Plan Developments



A monthly report covering plan design and legislative changes

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Act Proposes More Choices For Health Care

Legislation has been introduced in Congress that would expand the number of health care choices available to individuals. The bill, known as the **Patients' Health Care Choice of 2003 (H.R. 3423)**, has been introduced by Rep. John Shadegg, R-AZ. The proposed legislation calls for the creation of **"HealthMarts"** and **individual membership associations (IMAs)**, the expansion of **medical savings accounts (MSAs)**, a refundable **tax credit** for health insurance costs, and a **tax exclusion** for employees who elect not to participate in an employer-sponsored health care plan.

H.R. 3423 cites the need for major structural reforms in the American health care system so that a competitive system is created that's based on individual choice. It has been referred to the House Ways and Means, Energy and Commerce, and Education and the Workforce committees for further study.

Some of the proposed bill's provisions included:

—Amending of the **Public Health Service Act (PHSA)** to create HealthMarts. These entities would be operated by

health insurance issuers to provide health care coverage to individuals through: **indemnity insurance**, a **health maintenance organization (HMO)**, a **preferred provider organization (PPO)**, or other health care options—one of which would be a non-network option. HealthMarts would be required to offer coverage to all employers and eligible employees in a specific geographic area. HealthMarts would be deemed multiple employers welfare arrangements for purposes of the Employee Retirement Income Security Act (ERISA).

—Amending PHSA to establish individual membership associations (IMAs) that would operate under the direction of an association to provide health care coverage to all members of the IMA, as well as their dependents. An association would have to have been in existence for at least five years and formed and maintained for purposes other than obtaining insurance.

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The Act cites the need for reforms in the health care system.

—Providing federal matching funds to states equal to 50% of the monies expended for use with a high-risk insurance pool, a reinsurance pool, or other risk-adjustment mechanism that subsidizes the purchase of private health insurance.

—Adding a new section to the Internal Revenue Code to provide a tax credit for amounts paid for individual health insurance. The credit would be \$3,000 or \$1,000 multiplied by the number of persons covered (whichever is lower). An income exclusion would also be added to the Tax Code for “compensating payments” made to employees who elect not to participate in an employer-sponsored health care plan. The exclusion, however, would not apply to employees who are covered under a spouse’s employer-sponsored plan.

—Repealing existing limitations on the number of MSAs that can be offered under the Tax Code and permitting *all* employers to offer MSAs. Also permitting both employers and employees to contribute to MSAs and permitting them to be offered under **Section 125 cafeteria plans.**

Communication Hampers HIPAA Compliance Efforts

Despite the fact that the **Health Insurance Portability and Accountability Act of 1996 (HIPAA)** has been in effect since April 2003, only three out of four organizations have become compliant with the legislation, according to the Phoenix Health Systems Fall 2003 Survey.

The survey, which placed special emphasis on the health care industry’s Transactions and Code Sets (TCS), showed that between 73%

and 88% of all organizations were in compliance with HIPAA. Providers represented 67% of the respondents, while payers accounted for 19%, clearinghouses 3%, and vendors 11%.

The survey found that provider compliance levels remained virtually unchanged since a spring 2003 survey (76% versus 78%). Meanwhile, the survey showed that nearly 40% of providers and 22% of payers that had claimed to be privacy compliant have not completed all of their necessary business associate agreements. And about 15% of providers have not initiated processes for accounting of disclosures and for “minimum necessary” restrictions. Furthermore, about 50% of all respondents reported that their organizations had one or more privacy breaches over the previous six months.

Proposal Suggests FMLA Include Paid Time Off

The **Family and Medical Leave Act (FMLA)** would be expanded to allow employees to take *paid leave* to care for themselves or a close relation under a suggested proposal being made by Sen. Joseph Lieberman, D-CT. Businesses with fewer than 50 employees, however, would be exempt from the proposal.

Sen. Lieberman noted that many employees do not take advantage of the FMLA because they cannot afford to do so. Under his proposal, employees would contribute part of their income to a fund that would finance FMLA leaves at half-salary for a period of up to one month. The cost to employees is projected to be approximately \$30 a year.

A spokesperson for the U.S. Chamber of Commerce said the proposal, if adopted, would create

concern about lost worker productivity among the businesses that would be affected.

Rising Health Care Costs Create Ripple Effects

As health care costs have increased, employees have cut back on workplace benefits they receive at additional costs, and have switched to less expensive health plans or dropped their health care coverage completely, according to an American Express Financial Advisors survey (2003).

Of the 958 people responding to the survey, more than two-thirds said their share of health care costs had increased. As a result, 55% said they are reducing discretionary spending, 24% are cutting back on workplace benefits that carry additional costs, 12% said they are switching to less expensive health plans, and 6% are dropping their health care coverage completely.

In addition, 37% of those responding said they are planning to decrease the amount allocated toward their savings and investment plans. Rusty Field, a vice president with AmEx's Financial Education and Planning Services, said "employees need to be well educated on the options they have to help them handle the increase in health care expenses without compromising their ability to save for the long term."

American Express said the survey results showed that increases in health care expenses can have a measurable effect on respondents' levels of financial stress. As a result, 70% said they would be interested in attending a free financial seminar to help them understand and address rising health care costs.

Suspension Not A Violation Of ADA

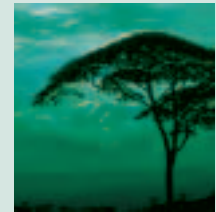
An employee did not establish that he was disabled as defined by the **Americans with Disabilities Act (ADA)** and, as a result, his claim that his employer failed to provide him with reasonable accommodation, was denied by the Fourth Circuit U.S. Court of Appeals (*Parkinson v. Anne Arundel Medical Center, et al*; No. 02-2000).

Ronald W. Parkinson began work at AAMC in 1974 as a radiology technician and by 1995 he had been promoted to chief of the ultrasound department. In June 1998, Parkinson suffered a heart attack. Although he recovered, Parkinson claimed he was prohibited from doing strenuous exercise or lifting heavy weights (activities he previously enjoyed). Parkinson's doctor allowed him to return to work if he avoided stress and did not work overtime.

When Parkinson returned to work in September 1998, he claimed that he communicated his restriction regarding overtime to AAMC. As a result, Parkinson said he was taken off "on call" status and his work schedule declined to about 40 hours from 70 hours per week. Parkinson contended, however, that his supervisors pressed him to accept overtime and criticized him when he refused it. He admits he occasionally did work overtime hours.

On December 15, 1999, Parkinson stated that the manager of the radiology department *insisted* he work overtime. After refusing, he was suspended for one day without pay and was reportedly demoted from chief to senior ultrasound technician.

In his suit, Parkinson charged that AAMC refused to honor his request



The plaintiff did not establish his disability qualified under the ADA.

not to work overtime after his heart attack, thereby failing to accommodate the limitations imposed by his disability. He also claimed retaliatory discrimination under the ADA when suspended and allegedly demoted. The district court, however, ruled in favor of AAMC and, on appeal, the fourth circuit court affirmed the ruling. The courts reasoned that Parkinson had not established either that his restriction on work or on physical activity made his impairment an actual disability under the ADA, or that his employer regarded him as having such a disability during the relevant period. As such, the courts found that Parkinson could not make out a *prima facie* case of retaliation for any actions taken by the employer.

In addition, the fourth circuit court opinion stated: “Nothing in Parkinson’s statements or actions in refusing to work overtime that day would have reasonably led [the employer] to understand that he desired accommodation of limitations imposed by his coronary artery disease. In fact, it would have been far more reasonable for [the employer] to have understood his request not to work overtime to have been made for an entirely unrelated reason: so that he would not miss an appointment he had scheduled for that afternoon.”

Prudential Programs Help Boost Productivity Levels

The Prudential Financial companies have received a “best practices” award by the Garden State Society of Human Resources Management (SHRM) for instituting

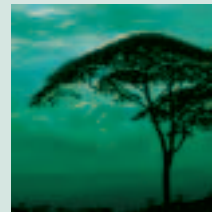
programs that are aimed at keeping employees healthy and available to work.

Chief Medical Officer K. Andrew Crighton says Prudential’s goal in offering various benefits programs “is not to just make workers feel good, though that matters. Rather, it is to move participating employees into lower health risk categories.” As a result, the doctor notes, workers are more productive on the job, otherwise lost time becomes “found” time, and health care costs decline.

Prudential’s programs include a wide array of medical, fitness, employee assistance, wellness, and work/life options. Its wellness program includes: ergonomics training and evaluations; screening and interventions for hypertension, cholesterol, and diabetes; annual flu vaccinations; cancer awareness; stress and lifestyle management; education focused on women’s health and men’s health; and smoking cessation.

The company has begun to gather objective and quantitative data regarding health care cost savings that are attributable to its wellness programs.

Dr. Crighton says smaller companies can create programs similar to Prudential’s by partnering with other organizations. For example, he said, an area health care provider could offer “lunch and learn” sessions on disease prevention and management, as well as blood pressure and cholesterol screening clinics; and a nearby hospital could provide mobile mammography exams. In addition, the doctor said smaller companies could band together to share wellness services and advice from specialists in occupational medicine.



*‘Lost time’
becomes ‘found
time’ for healthy
employees.*
