Employee Benefits & Workers' Comp News

MOC Insurance Services
Maroevich, O'Shea & Coghlan Insurance

Divisions of MOC Insurance Services
Farallon Associates Insurance Brokers
San Francisco Insurance Center

44 Montgomery Street, 17th Floor, San Francisco, CA 94104
Toll Free (800) 951-0600 | Main (415) 957-0600 | License # 0589960

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Cadillac Tax Reviewed

As this issue went to press, the IRS had just ended a comment period on the so-called Cadillac tax. The tax, part of the Affordable Care Act, is scheduled to go into effect in 2018 unless the law is changed. Some Republicans have promised to do just that.

Created by Section 9001 of the Affordable Care Act, the so-called Cadillac tax will apply to "high-cost" health plans. Section 9001 defines a high-cost plan on the basis of total premiums (or costs, for a self-insured plan). Starting in 2018, plan sponsors will have to pay an excise tax on these plans.

The Good

The tax has two purposes. First, it will raise some $80 billion over the next 10 years, estimates the Congressional Budget Office. Funds will help pay for tax credits that will subsidize health insurance coverage for lower- and middle-income Americans.

Second, the tax will discourage high-cost health plans. High-cost health plans, which often feature low or no deductibles and copayments, can

insulate individuals from the true cost of their healthcare and encourage wasteful spending. And although it's true that rich health plans have become popular benefits for executives, many rank-and-file employees, particularly union workers, also have high-cost health plans. Rather than eliminating or capping the deductibility of high-cost

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This Just In

The "Angelina effect" has prompted a new wave of cancer testing; patients and insurers are squaring off over payments.

Angelina Jolie underwent a double mastectomy in 2013 for preventive purposes. She had learned she carried mutations in the BRCA1and BRCA2 genes, which give women a higher risk of developing aggressive breast and ovarian cancers. Since her much-publicized decision, interest in genetic testing for cancer risk has soared.

Some 40 genetic mutations have been linked to the risk of developing cancer, but only about 5 percent of cancers in the U.S. have a genetic link. The Affordable Care Act requires insurers to pay for testing to identify BRCA1 and BRCA2 mutations in women with a family history of breast cancer. Some insurers refuse to pay for other genetic tests, saying

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employer-provided health plans, the Cadillac tax does an end-run around them.

So what's a high-cost plan? The law sets the "high-cost" threshold at $10,200 for single-only coverage and $27,500 for families for 2018. The threshold will adjust for cost of living increases in following years. The tax applies to any premium (or contribution) amount over the threshold, calculated on a monthly basis.

The Bad

Several problems arise with this. First, we don't know what healthcare inflation will look like by 2018, but it can cost pretty close to five figures per year to buy a good—but not extravagant—health plan in some high-cost geographic regions already.

Second, Section 9001 of the Affordable Care Act does not apply only to health insurance premiums. It lumps in all employer-sponsored health coverage that is excludable from the employee's gross income under section 106, whether insured or not. This includes contributions to an employee's HSA (health savings account), health (FSA) flexible spending account or Archer MSA (medical savings account). For insured plans, it applies regardless of a plan's grandfather status. It does not include standalone dental or vision benefits, plans that cover only specified diseases (such as cancer insurance or "dread disease" insurance) or indemnity plans, such as hospital indemnity plans, that pay benefits according to a schedule.

The law specifically states that "coverage shall be treated as applicable employer-sponsored coverage without regard to whether the employer or employee pays for the coverage" and that "coverage includes [the] employee-paid portion."

The Ugly

When used as an adjective, "Cadillac" has come to mean something luxurious or extravagant. But by these standards, many pretty ordinary plans will meet the definition of a Cadillac plan in 2018. About one-third of employers expect to be hit with the tax, found a 2014 survey by Mercer LLC.

The law allows for cost of living increases to the threshold over time. However, those increases will be less than the rate of healthcare inflation, if current trends hold. The result? More employers will end up paying the tax. Did we mention that it's 40 percent on amounts over the threshold?

The law requires the "coverage provider" to pay the tax. This means...

- For coverage under a group health plan: the health insurance issuer.
- For HSAs and MSAs: If the employer makes contributions, the employer.
- Other applicable coverage: the person that administers the plan's benefits.

In addition, employers will have the responsibility for determining whether the Cadillac tax will apply. They must "calculate for each taxable period the amount of the excess benefit subject to the tax" and notify the IRS and "each coverage provider." (In the case of a multi-employer plan, the plan sponsor will handle calculations and reporting.)

Employers can take steps to control employee healthcare spending and keep health plan costs under the threshold. Strategies include:

- **Adopting a high-deductible health plan (HDHP).** High-deductible plans generally cost less than other medical plans. They also make employees more aware of their health expenditures, encouraging them to spend more wisely.
- **Adopting wellness and disease management programs.** Disease management programs can help control the cost of treating chronic disease, while wellness programs might prevent them.

Employers with collective bargaining agreements may need time to negotiate major changes to their health benefits, so they should begin planning now. Please contact us for more information.

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their effectiveness in cancer prevention and detection is unproven.

Researchers say that the refusal to pay creates a Catch 22 situation. Patients who might benefit don't get tested because they can't afford it. That makes the pool of people who have been tested too small to allow researchers to reliably assess testing's effectiveness.

Should your health plan cover genetic testing? Please contact us to discuss this and other preventive care benefits.

The Benefits of Telemedicine

Recently, the state of Washington passed a law requiring employee health plans to reimburse providers for telemedicine services. That made Washington the 24th state to require "telemedicine parity."

Parity laws remove some of the barriers to more widespread adoption of telemedicine. Knowing they will be reimbursed for services makes healthcare providers more willing to offer telemedicine services and to invest in any technology. And the more providers that offer it, the more mainstream it will become. The laws also reduce the compliance requirements on hospitals when granting privileges to telemedicine "visiting physicians."

What Is Telemedicine?

As the name implies, telemedicine encompasses any medical activity involving distance. Today telemedicine uses electronic information and telecommunications, but the practice goes back to the days when sea captains would use ship-to-shore radio to obtain medical advice. Telehealth includes such technologies as telephones, facsimile machines, electronic mail systems, and remote patient monitoring devices, which collect and transmit patient data for monitoring and interpretation.

The Centers for Medicare & Medicaid Services (CMS) says, "…telemedicine seeks to improve a patient's health by permitting two-way, real time interactive communication between the patient, and the physician or practitioner at the distant site." CMS views telemedicine as "…a cost-effective alternative to the more traditional face-to-face way of providing medical care (e.g., face-to-face consultations or examinations between provider and patient)…"

What's so Great About Telemedicine?

Telemedicine can help an injured or sick person get proper treatment sooner, particularly in remote or rural areas where medical help or specialists might be far away. In addition, telemedicine technologies deployed in ambulances can help speed diagnosis and the initiation of important, potentially lifesaving interventions.

Telemedicine has the potential to shave $4.28 billion annually from America's healthcare bill, according to a study by the University of Texas Medical Branch. It offers these benefits:

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- Providers get greater access to specialized information and diagnoses
- Reduction in hospital admissions from emergency departments
- Reduced wait times for outpatient consultation
- Increased productivity of healthcare staff
- Reduction in patient travel time and expenses.

The University of Rochester Medical Center in Rochester, N.Y. has a telemedicine center. Its director, Kenneth McConnochie, MD, MPH, told a forum that telemedicine can handle 85 percent of pediatric primary care visits and 40 percent of emergency room visits. The average telemedicine visit there costs $75, or one-tenth of the cost of a typical ER visit.

Telemedicine also saves patients time and money. The state of Georgia launched a telemedicine partnership in 2005 to provide better health services to the state's large rural population, and to address a shortage of specialists. Paula Guy, CEO of the nonprofit Georgia Partnership for Telehealth, reported that a random sample of Georgia telehealth visits from 2011 saved the average patient travel time of 124 miles per encounter and a total of nearly $762,027 in fuel costs over 40,009 telehealth visits.

The combination of sophisticated videoconferencing, electronic medical records, and telemonitoring can revolutionize medical care for all patients. The challenge lies not in the technology, but the processes and policies that govern healthcare delivery and payment.

There's an App for That

Parity laws help bring telemedicine into the mainstream. Full integration of telemedicine into the medical system will depend on the healthcare industry's ability to address barriers, especially insurance reimbursement models, liability rules, and licensure rules that prevent healthcare providers from offering telemedicine consultations across state lines.

Some of the country's largest health insurers, including Wellpoint/Anthem, United Healthcare and Aetna, are convinced telemedicine is here to stay. They will pay for telemedicine services.

Already, a couple of smartphone apps allow users to connect with a doctor remotely. Doctor on Demand claims to be the largest provider of video physician visits in the country. Doctors connect with patients via smartphone or computer so they can discuss and/or look at a specific problem.

Although telemedicine might never replace a face-to-face doctor's visit, it has its place. It could save money and allow patients in remote areas to see the doctor more often. Does your health plan cover telemedicine? Please call us for a plan review and discussion of your organization's health benefit program. ■

Minimize Risks to Young Workers

Millions of teenagers will soon be leaving school and taking jobs either for the summer or as the start of their permanent integration into the workforce. Here's what you need to know to protect them.

Last summer, more than half of Americans from ages 16 to 24 years old held jobs, up 2.1 million from the year before. As the economy continues to recover, we expect to see more jobs become available for younger people. These workers can bring energy and enthusiasm to businesses. But they also present a unique set of safety and compliance challenges that every employer should be familiar with.

When hiring workers younger than age 18, employers must keep in mind that state laws place restrictions on the type of work they can do and the number of hours they can work in an effort to protect them.

Teenagers need this protection. It's not just typical teenage behavior that puts them at risk, though that also plays a factor. According to the National Institute for Occupational Safety and Health, young workers carry a greater risk of occupational injury because of their limited job knowledge, training and skill. Physically they are not fully developed and may be more susceptible to chemical and other exposures at work.

Every year, about 67 teenage workers die of work injuries, and NIOSH estimates that 230,000 teenagers suffer from nonfatal occupational injuries.

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Prior to hiring any worker younger than 18, you should check both federal and state labor law. State laws vary and should be checked individually.

The main federal law governing underage (and other) workers is the Fair Labor Standards Act, which applies to virtually all employers and businesses except small farms and a few others. This law bans workers younger than 18 from performing a wide variety of hazardous jobs, including:

- manufacturing or storing explosives
- driving a motor vehicle and being an outside helper on a motor vehicle
- coal or other mining
- logging and sawmilling
- operating most power-driven equipment
- those involving any exposure to radioactive substances or ionizing radiations
- manufacturing brick, tile and related products
- operating any power-driven circular saws, band saws or guillotine shears
- wrecking, demolition or ship-breaking operations
- roofing and work performed on or near roofs, including installing or working on antennas and roof-top appliances, or
- excavation operations.

Many states add other restrictions. For instance, in California no one under 18 is allowed to handle, serve or sell alcohol; operate meat slicers, or work as an outside helper on a motor vehicle. Californian workers under the age of 16 may not wash cars, load or unload trucks, work on a ladder or scaffold or work after 9 p.m. (7 p.m. from Labor Day to May 31).

The Labor Occupational Health Program at the University of California, Berkeley has performed extensive research into mitigating the dangers facing youth workers. The program's experts list a number of best practices from the field that help keep youngsters safe.

- Assign a mentor: A California zoo assigns each new teen worker a "buddy" or mentor. This can even be a more experienced teen worker who answers questions, helps give hands-on training and offers safety tips.
- Role-playing: A retail clothing chain with many young employees uses role-playing regularly at monthly safety meetings. Young workers enact specific health and safety problems and develop solutions.
- Age by color: A convenience store chain outfits young employees with different colored uniforms based on age. This lets the supervisors know at a glance who is not allowed to operate the electric meat slicer.
- Track hours: A fast food chain employing some 8,000 young workers in five states developed a computerized tracking system to ensure that teens aren't scheduled for too many hours during school weeks.
- Add responsibility: A major grocery chain includes teen workers on the safety committee that conducts safety inspections, reviews employee injuries and makes suggestions for prevention.

Finally, don't assume that workers out of their teens have much job experience. Youth unemployment rates have been unusually high for many of the past years, so even workers in their early 20s might not have much work experience. Take extra care to ensure these workers know any safety precautions required for the job, and when possible, pair them with an experienced mentor.

For more suggestions on improving workplace safety, please contact us.

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The Prohibited Acts Doctrine

Under the workers' compensation bargain, the employer agrees to compensate an employee for any work-related injury or illness…unless the employee was engaged in a "prohibited act" at the time of injury.

A prohibited act is an act that the employer expressly prohibits—such as consuming alcohol or using other intoxicants while on the job or on the employer's premises. When an employee conducts this act, the employee is considered to be outside the scope of employment, and therefore not protected by the employer's workers' compensation.

Sometimes it's clear when the prohibited acts doctrine applies—as when a delivery employee is intoxicated and has a car wreck while on his scheduled delivery route. At other times, whether the doctrine applies or not can be a gray area. For example, if an employee on a weeklong business trip has an alcoholic drink, then trips and breaks her ankle, does the prohibited acts doctrine apply? That could depend on the circumstances—did the injury occur after normal work hours? Did the event occur while the employee was dining with a business associate? In order to apply, the prohibited act should also have a causal connection to the injury. In other words, even if the employee was engaging in a prohibited act, if it had no bearing on the injury (the injury would have occurred regardless), the doctrine might not apply.

When you have a workers' compensation claim that could involve prohibited acts, it's important to get all the facts. A claims adjuster will want copies of any policies, manuals or employment contracts specifying the prohibited act, along with documentation of the incident.

For more information on handling difficult workers' compensation claims, please contact us.

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