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Inside this issue:

CLASS ACT	1
Insurance Premiums Up in 2011	2
PPACA Heads to the Supreme Court	3
Open Enrollment	4
Compliance Corner	4

Long-Term Care Looks Doomed as Federal Program

The Obama administration is shutting down the office charged with carrying out a long-term-care entitlement program included in last year's health care law, according to a departing employee who said the staff has been reassigned to other projects.

The news raises the question of whether the Obama administration is pulling back on implementing the program, known as the CLASS Act, which was a priority of Sen. Edward M. Kennedy, the Massachusetts Democrat who died in 2009, and was inserted into the massive health care overhaul that President Obama signed into law.

Officials doubted the viability of the program even before it became law, and a Republican report released last week cited one internal Obama administration official calling it a "recipe for disaster." More evidence of the program's shaky footing surfaced when the Senate Appropriations Committee passed a bill zeroing out any funding for implementing the CLASS Act even though the administration had requested \$120 million.

All of the staff members have been told to work on other programs, said Bob Yee, the program's actuary, who said he and seven other employees were told that they would no longer be involved in implementation. In a letter circulated on Capitol Hill, he said the office would be closed by Friday, September 30, 2011.

"They just told us they wanted to take a pause," Mr. Yee told The Washington Times, "I don't know of any other employee

working on this."

Erin Shields, a spokeswoman for the Department of Health and Human Services, disputed Mr. Yee's characterization that the program has been shut entirely, though she did say the program's future is in doubt.

"We are continuing our analysis of this program," she said. "As we have said in the past, it is an open question whether the program will be implemented. A CLASS program will only be implemented if it is fiscally solvent, self-sustaining, and consistent with the statute.

She didn't respond to follow-up requests asking how many employees remain in the program and what the office's role will be.

Short for Community Living Assistance Services and Supports, the CLASS Act offers continuing care coverage to seniors and other in need of in-home services. For a monthly premium, beneficiaries would receive daily cash benefits of at least \$50.

The concern lies in whether enough healthy beneficiaries will enroll in the program to make it financially sustainable. The program is estimated by the Congressional Budget Office to bring in \$70.2 billion in the first 10 years, but that's because beneficiaries must pay into it for five years before withdrawing benefits. Over the longer term, it's seen as a major budget drain.

Months after the program was passed as part of the Affordable Care Act, Rick Foster, chief actuary of the Centers for Medicare and Medicaid Services, told officials it didn't look "workable" and

said the program likely would collapse without the help of taxpayer subsidies.

Sen. John Thune, the South Dakota Republican, praised his colleagues who moved to defund the program, calling it a "good first step." But he said Congress should repeal the CLASS Act permanently. "I commend the Senate Appropriations Committee on their bipartisan decision to provide zero funding for the CLASS Act, Mr. Thune said.

A group of Senate Republicans sent a letter to HHS Secretary Kathleen Sebelius asking her to explain the agency's plan for CLASS and respond to questions about when she became aware of the internal concerns about the program.

"This raises a very serious question as to whether a deliberate effort as made by administration officials to conceal CLASS's true cost in order to advance the president's agenda," said Sen. Jeff Sessions, Alabama Republican and ranking member of the Senate Finance Committee.

Source: The Washington Times

Costs of Employer Insurance Plans Surge in 2011

Employers' spending on health coverage for workers spiked abruptly this year, with the average cost of a family plan rising by 9%, triple the growth seen in 2010.

Family plan premiums hit \$15,073 on average, while coverage for single employees grew 8% to \$5,429, according to a survey released September 27, 2011 by the Kaiser Family Foundation and the Health Research & Educational Trust.

Workers paid an average of \$921 toward the premium of single coverage and \$4,129 for family plans.

The results mark a sharp departure from 2010, when the same survey found average family premiums up only 3%.

Although many benefit analysts say the federal health law's requirements played only a small part in the rise, the results could provide political fodder for both supporters and opponents of the law.

"It's problematic," says Democratic pollster Celinda Lake, because the No. 1 concern cited about the health law is fear that it will increase costs. Still, Lake notes that many Americans don't know much about the law, so the news of rising premiums "could also fuel support for provisions in the law that require insurance premiums of 10% or more to be reviewed." Premium increases have played a starring role throughout the debate over the health care law.

Before the law's passage in 2010, for example, insurer Well-Point's effort to raise rates by as much as 39% for some of its California customers drew sharp rebukes from the Obama administration and helped build support for the law in Congress.

Proponents of the law also point to this spring's decision by Aetna

to lower premiums for individual policies in Connecticut as an effect of the health law.

But opponents say the law adds costly new mandates—and has not shown results yet. "Despite the president's repeated promises that the Democrats health care law would lower the cost of health insurance, employers are still facing higher health costs," said Ways and Means Health Subcommittee Chairman Wally Herger, R-Calif., in a written statement.

Many factors drive premium growth, the main one being actual spending on medical care, including umps in prices charged by hospitals and doctors and growing use of expensive new drugs and technologies. State regulators have widely varying authority over premium increases for policies sold to individuals and small businesses. Currently, 26 states and the District of Columbia have the authority to veto rates deemed excessive for at least some types of health insurance. Additionally, seven states have the power to review rate increases in advance but not to block them.

Over the past decade, premiums have risen steadily, with double-digit increases seen from 2000-2004, the Kaiser survey and other tracking reports show. Growth in premiums moderated starting in 2006, averaging about 5% for several years, the survey found.

The benefits firm Mercer reported earlier this year that per-worker health spending by employers rose at about 6% annually for about the past five years, rising to nearly 7% last year. Projecting future increases is harder, as many surveys estimate based on initial negotiations between insurers and employers, before changes to benefits are made to slow premium costs. In a study out last week, Mercer projected

that employers may see their health spending rise 5.4% next year., while a similar survey released in May by accounting firm PwC estimated an 8.5% rise next year.

Insurers often set rates well before they go into effect, using data to estimate coming expense, including how much policyholders are expected to use medical services. Analysts have noted a slowdown in doctor office visits, births and elective surgeries they say is related to the economy .

One factor in this year's increases was that "employers and insurers expected a faster economic recovery and geared premiums to higher levels of utilization," says Drew Altman, president and CEO of the Kaiser Foundation.

The growth in premiums far outpaced the growth in workers' wages—as it has for the past decade. Wages grew by 2% this year.

Although premiums rose, employers kept the percentage of the premium workers pay about the same. An average of 18% for single coverage and 28% for family plans. Still, with rising costs, workers paid more, up an average of \$132 a year for family coverage. Since 1999, the dollar amount workers contribute toward premiums nationally has 168%, while their wages have grown by 50%, according to the survey.

The results from this survey were drawn from the responses of more than 2,000 large and small businesses. The survey was done from January to May—well before the September start date of a rule requiring states to scrutinize rate increases of 10% or more for policies sold to individuals and small businesses.

(Cont'd page 3)

Kaiser Survey Results Continued from Page 2

Other provisions of the federal law were in effect, including those that allow parents to keep their children on their coverage until age 26, a ban on lifetime benefits limits and a requirement that preventive services, such as some cancer screenings, be offered without co-payments. Insurers are also barred in most cases from canceling policies of those who fall sick.

Altman said the foundation's research found that current rules in effect "could only have had a modest impact on premiums...for about 1.5 percent to 2 percent of the 9 percent increase." Other surveys, including a government analysis, also estimated the early rules' effect on premiums in the one percent to two percent range.

Michael Thompson, a principal at PwC, said his work with employers found that the new provisions had a negligible effect on premium costs, often because employers were

already making benefit changes that shifted more costs to workers in order to slow premium growth.

The one provision of the new law that "had an almost universal impact" on employers was the one allowing parents to keep their adult children on their policies, Thompson said, although "interestingly it didn't necessarily raise their per-head cost (because young people don't cost as much to insure).

Based on employer responses, the Kaiser survey estimated that employers added 2.3 million young adults to their coverage. Recently, the government's National Center for Health Statistics found that the number of uninsured people ages 19 to 25 dropped by almost 1 million in the first three months of this year.

Premiums—and increases—vary widely around the country. Average increases for small businesses in Maine, for example, rose 17% this year,

According to state data. Regulators in Oregon, meanwhile approved small business increases ranging from zero to 15.6%, depending on the insurer. This month, Kaiser Permanente in California told 360,000 small businesses that it would reduce their already-in-effect increase by 1.2% immediately following discussions with regulators.

Marge Kraskouskas, VP of HR

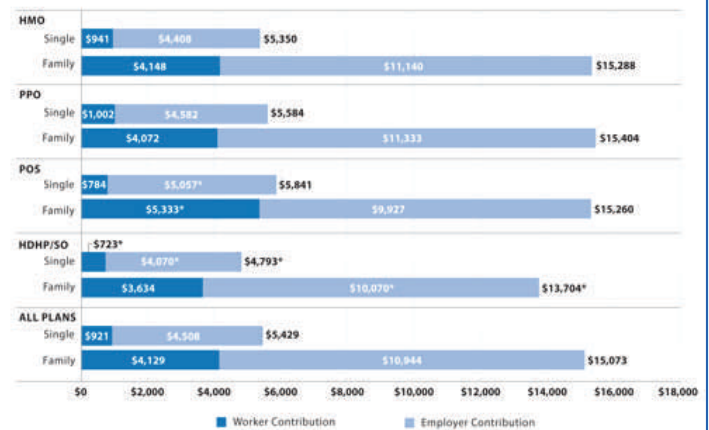
for the Hockomock Area YMCA in North Attleboro, MA, says 10 years ago, family coverage cost her firm \$567 a month; now it's \$1,455.

Her rates rose 7% this year, "one of the lowest increase in years," she said. "Still I don't care if you're talking 7% or 13%, it's a killer in the budget.

Source: Kaiser Health News

EXHIBIT B

Average Annual Firm and Worker Premium Contributions and Total Premiums for Covered Workers for Single and Family Coverage, by Plan Type, 2011



*Estimate is statistically different from All Plans estimate by coverage type (p<.05).
Source: Kaiser/HRET Survey of Employer-Sponsored Health Benefits, 2011.

Supreme Court Could Rule on Healthcare Law Early Next Year

The Obama administration set the stage Monday, September 26, 2011 for the Supreme Court to rule early next year on the constitutionality of the president's healthcare law by declining to press for a full appeal in a lower court.

The Justice Department announced it will forgo an appeal to the full U.S. 11th Circuit Court of Appeals in Atlanta. Such an appeal to the 11 member court could have taken months and delayed a final decision from the high court until at least 2013.

IN a 2-1 ruling in August, a panel of the 11th Circuit became the first appellate court to declare unconstitutional the new requirement that all

Americans have health insurance.

Now, the administration can appeal directly to the Supreme Court and ask the justices to schedule the case to be heard and decided during the term that begins early October and ends in June. If the court follows that schedule, the justices will hand down a ruling on President Obama's signature legislation just as the election campaign moves into high gear.

At issue for the court is whether Congress can use its power to "regulate commerce" to require that all Americans who have taxable income certify by 2014 that they have health insurance. If not, they must

pay a tax penalty that begins at \$95.

The two judges based in Atlanta concluded Congress had overstepped its power by regulating the behavior of person who do not wish to buy insurance. This refusal to buy is not commerce, the judges said.

The administration's lawyers say this requirement is a reasonable and necessary regulation to prevent free-loaders from taking advantage of the taxpayers. Under current law, hospitals must spend tens of billions of dollars each year to provide emergency care to person who lack insurance or the ability to pay. The new healthcare law also requires insurers to offer coverage to

Persons with preexisting medical conditions.

The ruling in Atlanta grew out of a lawsuit filed by Republican officials in 26 states and the National Federation of Independent Business. They also balked at the law's requirement that states expand their Medicaid program of providing healthcare for low-income persons. The business federation said it was pleased with Monday's decision forgoing the drawn-out appeal in the lower court. "NFIB is excited that all indications point to the government going directly to the Supreme Court to hear our case and commends the administration on their decision," said K. Harned, Exec. Director.
Source: Los Angeles Times

Open Enrollment: A Chance to Boost Employee Morale

Employee morale remains well below 2008 levels, but benefits education continues to be a reliably effective way to boost workforce satisfaction, according to research from benefits firm Unum.

The third annual survey of workers, done most recently following the 2010 benefits enrolment period, found that 63 percent of U.S. employees think their employer values their work, down from 70 % in 2008. The survey, conducted among 1,172 employed adults, found that even fewer, 56%, felt that their employer cared about their well-being—a 7 point drop since 2008.

“In this difficult economic environment, there may be many reasons employee morale has not bounced back,” said Bill Dalicandro, vice president at Unum. “But our research shows that benefit education can be a highly effective, low-cost way to boost engagement.

Benefit Education Gets Short Shift

In an environment where nearly 30% of employees have seen colleagues laid off and one in four has experienced a salary freeze, employers should be spending more time with communicating about benefit with their employees so that they feel valued.

But the research shows that they're not.

Employers continue to focus on other areas of their business affected by the economy, spending less time and fewer resources on employee engagement, particularly in relation to benefits education:

- Nearly one-third of employees said the benefits

education provided by their employers was insufficient.

- Only about half of employees said they received printed information or brochures, down from 70% in 2008.
- Just over a third of employees were offered a chance to attend an information and question-and-answer session about benefits, down from 52% in 2008.
- The percentage who had access to online materials fell from 51% in 2008 to 36% in 2010.

A good benefits education program can have a big impact on workforce satisfaction. The survey found that:

- 80% of employees who rated their benefits education highly also rated the employer as an excellent or very good place to work.
- Conversely, only 31% of employees who rated their benefits education poorly said their employer was an excellent or very good place to work.
- Some 77% of those who rated their benefits education highly said they would choose to stay with their current employer

“People are the lifeblood of any successful business, and in this challenging economy employers need to work even harder to demonstrate their concern for employees and their well-being,” said Dalicandro. “Everyone benefits when they do.”

Source: SHRM

Compliance Corner



Q. May an employer automatically terminate an employee with a disability who needs a longer leave than the time allowed under either FMLA or the employer's written policy?

A. No. As background, under the Americans with Disabilities Act (ADA), employers with 15 or more employees are prohibited from discrimination against individuals with a disability, which would include termination. Additionally, the U.S. Equal Opportunity Commission (EEOC) maintains that an automatic policy requiring that employees be terminated following the expiration of leave under the federal Family Medical Leave Act (FMLA) violates the ADA. A policy of this type that allows an employer to automatically terminate employment either after FMLA expires or following non-FMLA leave under a employer's policy is generally known as a “no-fault” leave policy. Enforcement guidance issued by the EEOC states: If an employee with a disability needs additional unpaid leave as a reasonable accommodation, the employer must modify its ‘no-fault’ leave policy to provide the employee with the additional leave. This is consistent with the requirement under the ADA that employers must reasonably accommodate individuals with disabilities, and a leave of absence may constitute a reasonable accommodation in some circumstances. An employer would not necessarily need to modify the ‘no-fault’ leave policy if it can show that there is another effective accommodation that would enable the person to perform the essential functions of his or her position or granting additional leave would cause an undue hard-

Keep in mind that the ADA does not protect disabled employees who are unable to perform the duties of their job. The law only protects those who are able to perform their duties with or without accommodation. Thus, an employer should determine whether a disability can be reasonably accommodated with a temporary leave of absence or extension of an existing leave. As a result of the more recent enactment of the ADA, it is easier for employees to qualify as disabled, meaning it is more important for employers to consider and explore reasonable accommodations in order to ensure that their policies are in compliance..

Therefore, as a best practice, fixed leave policies should be amended to make clear that the leave period can be extended or adjust as a reasonable accommodation where such an extension or adjustment would not result in undue hardship to the employer. Unfortunately, the EEOC has not provided guidance about how much leave an employer must provide if extended leave is a reasonable accommodation, but it is clear that the appropriate length of leave under the ADA will require an individualized analysis to determine whether additional leave might be an appropriate accommodation, and that an employer cannot have a policy in place that never allows for the possibility of extended leave as a reasonable accommodation.

Source: NFP