INSURANCE SPECIALISTS

December 15, 2009
Volume 12

EMPLOYEE BENEFITS NEWSLETTER~DECEMBER

Health Care Reform Progress Report

Our best wishes to all our valued clients for a happy and healthy holiday season. We are honored to have the opportunity to serve you with your insurance needs.

Liberman Says He Will Vote Against Health Bill if Medicare Expansion Remains

(as of 12.14.09)

Source: Fox News

Senator Joe Liberman, whose vote is critical to the bill's prospects, threatened Sunday to join Republicans in opposing health care legislation if it permits uninsured individuals as young as 55 to purchase Medicare coverage.

WASHINGTON— Senate Democrats who thought they had found a workable compromise on health care reform learned otherwise from independent Senator Joe Liberman over the weekend.

The Connecticut senator, whose vote is critical to the bill's prospects, threatened Sunday to join Republicans in opposing health care legislation if it permits uninsured individuals as young as 55 to purchase Medicare coverage.

Lieberman expressed his opposition twice Sunday, 12/13/09: first in an interview with CBS, and more strongly later, according to Democratic officials, in a private meeting with Senate Majority Leader Harry Reid.

Reid, who is hoping to pass the legislation by Christmas , needs 60 votes to overcome Republican objections and has been counting on Lieberman to provide one.

But appearing on CBS, Lieberman said of the Medicare proposal, "Though I don't know exactly what's in it, from what I hear, I certainly would have a hard time voting for it because it has some of the same infirmities that the public option did.

"It will add taxpayer costs. It will add to the deficit. It's unnecessary," he added of a provision that Reid last week hailed as part of a breakthrough between liberals and moderates.

Democratic aides, speaking on condition of anonymity, said Liberman later told Reid he would support a Republican-led filibuster against the bill if it contained the Medicare provision or permitted the government to sell insurance in competition with private companies.

The same aides added that Lieberman had responded differently last week when Reid asked him privately about the proposed Medicare provision. "He voiced support for the idea," said one official. Lieberman's public comments last week were also generally favorable. The aides spoke on condition of anonymity, saying they were not authorized to comment publicly.

In an interview that aired Sunday night—but was recorded last week–President Obama voiced optimism about his call for sweeping legislation to expand coverage while cracking down on the insurance industry. "I think it's going to pass out of the Senate before Christmas," he told CBS' 60 Minutes.

If Lieberman follows through on his plans, he leaves Democrats with few options as they try and pass legislation before Christmas. Most obviously, they could strip out the provisions he opposes, and hope liberals overcome their inevitable unhappiness and vote for the bill. For that approach to have any chance of success, Obama would have to lobby heavily in its favor.

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U.S. Employers Say They'll Pass Along Health Reform's Added Costs

U.S. Employers say they will not absorb any additional costs that result from health care reform and plan to reduce benefits, raise prices for customers and cut headcount to accomplish this financial goal, according to a survey of HR and benefits executives from mid-size and large U.S. organizations conducted by professional services firm Towers Perrin. The firm's *Health Care Reform Pulse Survey* report, released in September, analyzed responses collected two months prior.

U.S. Employer Actions if Health Care Reform Increases Employer Costs

Action	Percent responding very likely or likely
Reduce benefits	87%
Increase prices for customers	38%
Reduce employment	30%
Reduce salaries/direct compensation	27%
Accept reduced profits	11%
Other	6%

"The way employers would respond to reform proposals that raise or lower their costs is one of our most telling findings-one that could conceivably impact economic recovery," said Dave Guilmette, manager director of the Towers Perrin health and welfare practice.

Employers are watching Washington closely, Towers Perrin researchers found, with 80 percent monitoring developments. Executives at 23 percent of surveyed companies are rethinking benefits changes in light of possible reforms, and 89 percent plan to re-examine health benefits strategies for active employees in response to the passage of any health care reform legislation.

Employers do not expect that reform will address some of the fundamental drivers of health care costs, Towers Perrin found. For example, 65 percent of employers said health care reform will have little or no impact on consumer behaviors, an area that many leading employers have begun to target as one of their key cost-containment opportunities. And 47 percent of survey respondents said an employer "pay or play" mandate would hurt businesses.

Nearly Two-Thirds of U.S. Employers Will Shift More Health Benefits Costs to Employees in 2010	
Increase employee premium contribution	40%
Increase deductibles, co-pays/co-insurance, or out-of–pocket maximums	39%
Will not shift costs to employees in 2010	37%
Increase employee cost sharing some other way	14%

Wellness At Work For You

Cutting Costs Is Top Reason for U.S. Wellness Programs

Boosting productivity is the goal behind employer-sponsored wellness programs in five of seven regions of the world, a way to cut health care costs in the U.S., and a morale-boosting tool in Asia, according to a new global survey of more than 1,100 organizations as reported by Buck Consultants, a worldwide HR & Benefits consultancy.

Survey respondents were senior or mid-level professionals from Asia, Africa, Australia, Canada, Europe, Latin American and the U.S. who were responsible for corporate wellness strategy, execution and measurement. They represent more than 10 million employees in 45 countries.

"We're seeing really a convergence of most of the world outside the U.S. around productivity and presenteeism...In the past productivity wasn't quite so universally at or near the top" as a strategic objective for wellness programs said Barry Hall, a Buck principal who directed the survey.

It's not surprising that wellness is one of the areas that U.S. employers are looking to as a way to address rising health care costs.

"U.S. employers are really struggling with the cost of providing health care to workers," Hall pointed out. "The cost for health care in the U.S. is among the highest in the world, and employers pay on average about 80% of that, so it's a business issue, it's a competiveness issue globally for U.S. employers."

Top Health Risk

While stress was cited consistently as the top health risk driving employer wellness programs elsewhere in the world, the top health concerns in the U.S. and Latin America were lack of exercise and poor nutrition.

Stress is a key contributor to productivity loss, presenteeism and absences, so that's consistent with regions of the world where productivity is the top strategic objective of wellness programs, Hall noted.

The U.S. and Latin America's ranking of a lack of physical activity as the top health risk that wellness programs targeted might "reflect some greater focus on obesity in those parts of the world," and perhaps different employer attitudes toward stress in those countries, Hall said.

There is increasing evidence that people put their work and family ahead of themselves. For the employer, if the wellness objective is to address personal issues such as weight loss, nutrition and smoking cessation, this means that "you may need to help people deal with stress and work and family issues first before they will put their attention on those personal issues.

Some findings:

◊ Wellness programs are most prevalent in North America, where 77% of responding employers offer them.

◊ Technology is the fastest-growing wellness program component. It includes online healthy lifestyle programs and providing employees with an electronic summary of their health information.

◊ The majority—37% said incentives are moderately successful in motivating employees to participate in wellness programs and to make lifestyle changes.

◊ Financial incentives are most typically offered for completing health risk or lifestyle questionnaires (56%), workplace health challenges (47%) and biometric health screenings (43%).

The value of financial incentives ranged from under $10 per employee to $2,000 per employee but in the U.S., the average was $163 per employee. That's up from $145 in 2008. In the U.S., the cultural attitude drives a greater use of incentives, and there is more of a connection to an awareness and tie-in to health care costs, Hall pointed out.

The soured economy has caused 24% of employers to cut back on their wellness services, but 19% have increased their wellness services. Among employers who cut back on wellness programs, it was consistent with other budget cuts. The majority of respondents, though, said they have not cut wellness programs.

"Wellness programs are largely holding their own in this challenging environment. It's a difficult time, but we're not seeing them as the first thing to be cut," Hall said.

"Wellness is globally relevant...it's relevant both to organizations and to individuals," he said. "For organizations, it's about improving performance, competitiveness of the organization. For individuals, it's about improving quality of life for every person that works for the organization and their families."

Interested in learning what a Wellness Program can do for your Company? Call our Certified Wellness Manager at:

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6th Circuit: Plan Administrator's Denial of AD&D Claim Due to DUI Found Arbitrary

The 6th U.S. Circuit court of Appeals overturned a plan administrator's denial of an insurance claim as arbitrary and capricious, awarding the policyholder $125,000. The court denied the insurance company's characterizations of the accident as self-inflicted and non-accidental, holding that the level of intoxication of the claimant was insufficient to supersede the ordinary meaning of the terms in the policy. The court also found the insurance company's use of third-party analysis of the claim appropriate.

In November 2005, an intoxicated Thomas Kovach failed to stop at a stop sign, rode his motorcycle into the four-way intersection and was struck by another vehicle. Kovach ultimately lost his leg below the knee due to the injuries he suffered in the crash. Kovach underwent blood analysis as part of his treatment, which showed that he had a blood alcohol content of .148, much higher than the legal limit in Ohio of .08. The blood test also showed the presence of opiates and benzodiazepines.

At the time of the accident, Kovach was covered by an ERISA applicable accidental death and dismemberment (AD&D) insurance policy, administered by Zurich American Insurance Company, which under its terms would provide Kovach with $125,000 as a result of his injuries.

Zurich denied Kovach's claim. Zurich argued that because of the nature of the crash and the presence of alcohol and drugs in Kovach's bloodstream, the crash should not be considered accidental. Zurich also argued that the claim should be denied under the policy's "self-inflicted wound" exclusion, which provided for denial of claims where the loss was "caused by or connected with…....a purposeful self-inflicted wound."

Kovach appealed to Zurich, and Zurich, relying on an opinion generated by a third-party investigating attorney, upheld its earlier denial. Kovach sued, lost at the district court and then appealed to the 6th circuit.

When evaluating Zurich's denial, the appeals court held that when analyzing the terms of a policy, the terms must be given their ordinary meaning. To hold otherwise would unreasonably require a policyholder to interpret case law in order to figure out what coverage they have purchased. The court concluded that, on these facts, the average person would view the crash as an accident in the usual sense of the word.

Zurich's AD&D policy contained certain express exclusions, including "skydiving, parasailing, hang-gliding, bungee-jumping or any similar activity." The court noted that if Zurich had desired to exclude driving under the influence as one of these excessively risky activities, it should have done so expressly.

Zurich also contended that the crash should have been considered a self-inflicted injury, which would be excluded under the policy. In deciding against Zurich, the court pointed to an 8th Circuit ruling in *King v. Hartford Life & Accident Insurance Company,* 414 F.3d 994 (8th Cir. 2004). In *King*, the 8th Circuit addressed very similar facts and held that intentionally self-inflicted injuries do not include unintended injuries, even where intoxication was a factor.

The 6th Circuit ultimately held that the crash was accidental and that the injuries were not self-inflicted, and that therefore the decision to deny the claim was arbitrary and capricious.

In his appeal, Kovach had argued that Zurich had improperly utilized a third party to make the denial decision.

On this point, the court agreed with Zurich. The court noted that Zurich had never delegated the actual decision-making, but it had instead used the knowledge and legal advice of a third-party firm. The court found no fault with Zurich's use of third-party assistance.

Professional Pointer:

Plan Administrators should carefully examine policy language and interpret the terms of the plan as they would be understood by the average plan participant. When selecting plans, ensure that any desired exclusions are expressly included in the policy language, and engage third-party assistance in making claim decisions as necessary.