CAPITOL UPDATE

TEXAS ALLIANCE OF NONSUBSCRIBERS

March 2010

www.nonsubscriberalliance.org

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Legislative Hearing to Focus on Workers' Comp System, Benefits and Litigation

The House Business and Industry Committee and the House Judiciary and Civil Jurisprudence Committee have scheduled a joint public hearing for July 29, 2010 to discuss their interim charge related to the Entergy v. Summers case.

The interim charge for the committees is to "study and report on third-party liability issues involving workers' compensation, including the frequency and success rates of third-party litigation, the relationship, if any, between third-party litigation and jobsite safety, the adequacy of compensation and reimbursement to workers, and the economic costs of third- party litigation and equitable and contractual subrogation in construction activities."

The Entergy v. Summers case involves a ruling by the Texas Supreme Court declaring that a premises owner could be considered a general contractor thereby precluding an injured employee from suing the premises owner. Several legislators objected to the courts' ruling and legislation was filed to overturn the decision during the 2009 session. The legislation did not pass, and will likely be considered during the 2011 session. One of the options being discussed is increasing benefit levels to compensate for the loss incurred by an injured employee since he cannot recover damages from a third party. The Alliance has been following this issue and will continue to monitor the discussions to watch for any potential impact on nonsubscribers.

The New Health Care Law: An Overview

New federal health care legislation will cost $938 billion over 10 years and extend coverage to 32 million uninsured Americans. It will ban denial of coverage for pre-existing conditions and prohibit cancelation of policies when people get sick. Most people will be required to buy coverage. Employers will be subject to new reporting requirements. Higher paid employees will have higher Medicare payroll deductions. Below are highlights, summarized from reports by the Associated Press and The Washington Post, of key provisions that could impact the bottom lines of employees and their employers, especially companies that are self-insured:

Starting this year, health plans will be barred from placing lifetime limits on coverage or canceling policies except for fraud. They will also not be allowed to deny children coverage because of pre-existing conditions. Health plans must extend dependent coverage for policyholders' offspring until they turn 26. Uninsured people with medical problems, meanwhile, will be able to gain coverage through high-risk health insurance pools. Small businesses with up to 26 employees who provide employee health insurance will be eligible for tax credits.

Next year, employers will be required to include the value of employees' health care benefits on their W-2 tax statements. In 2012, non-profit insurance co-ops will be set up to compete with commercial insurers. A series of reforms for Medicare will start testing more efficient ways to pay hospitals, doctors, nursing homes and other health providers.

By 2013, rules will kick in to standardize insurance company paperwork and reduce administrative costs. Medicare payroll taxes set to increase for couples earning more than $250,000 and single people making more than $200,000. Income on investments will be taxed at 3.8 percent. Medical expense contributions to tax-sheltered flexible spending accounts will be limited to $2,500 annually. Medical expenses must rise from the current 7.5 percent to 10 percent of income to qualify for itemized tax deductions.

In 2014, insurers can no longer deny coverage of people with medical conditions or refuse to renew their policies. Denial of coverage based on pre-existing conditions will be barred, as will charging higher premiums for people in bad health. New health insurance exchanges are expecting to expand options for small businesses and individuals. Fines begin for people failing to buy health coverage. Employers with more than 50 workers will be fined for each employee getting government subsidized coverage. The first 30 workers, however, won't count. In 2018, taxes would be levied on high-value health plans sponsored by employers.

Republican leaders, including several state Attorney Generals, have indicated their intent to file a legal challenge to the constitutionality of the new law.

Federal Health Care Reforms Appear to Avoid Impacting Texas Nonsubscriber Programs

Over the past few months, representatives of the Alliance have worked with members of the U.S. Congress to ensure that any federal health care reforms that might be approved would not disrupt the administration of nonsubscriber occupational injury benefit plans. The bill originally debated by the U.S. House of Representatives (HR 3200) defined "employment

based health plan" by referencing the definition in the Employee Retirement Income Security Act of 1974 (ERISA). Most nonsubscriber plans fall under this definition even though workers' compensation insurance is specifically excluded. In response to the Alliance's concerns, several Texas lawmakers requested that the definition be amended to clarify that the law did not apply to nonsubscriber plans.

The final version of the bill (HR 3590) signed by President Obama is still under review by the Alliance but the definition does not utilize the ERISA reference which should make clear that Texas nonsubscriber plans do not fall under the jurisdiction of the legislation. The definition used in the final bill references the Public Health Services Act which exempts workers' compensation or similar insurance from the definition of health insurance coverage.

Richards Evans of Texas Lobby Solutions stated, "As with any major piece of legislation we'll need to complete a thorough review and legal analysis before we can say with absolute certainty that nonsubscriber plans are exempt under the new law. We will update Alliance members as soon as that review is complete."

McCathern Mooty Law Firm Joins Alliance

The Dallas-based law firm of McCathern Mooty (www.mccathernmooty.com) has joined the Alliance following the organization's successful new member recruitment luncheon held March 5th in Dallas. Levi McCathern, a firm partner, was among the nonsubscriber employers and supporters that attended the association's first recruitment event of the year.

A second recruitment event is being planned for May 12th. Alliance members interested in attending or supporting the even should contact Tim Conger at tim@nonsubscriberalliance.org.

Other law firms that are members of the Alliance include:

Adkerson Hauder & Bezney – Dallas
www.ahblaw.net

Law Offices of Travis Brewer – Austin
www.travisbrewerlaw.com

Cox Smith Matthews Incorporated – San Antonio
www.coxsmith.com

Gibson McClure Wallace & Daniels LLP – Dallas
www.gmwd.com

Owen & Fazio, P.C. – Dallas
www.owenfazio.com

Research Reflects Employee Wellness Program's Success

According to the Wellness Council of America (WELCOA) more than 400 medical studies have shown that employer-sponsored wellness programs do work. Employees who participate in these programs are the proof – they lose weight, stop smoking, and start exercising. As a result of their employees' healthier lifestyles, employers save money.

Wellness program activities can include smoking cessation initiatives; on-site screening for breast, prostate and colon cancers; on-site blood pressure and cholesterol checks; on-site exercise classes or gyms; and nutritional counseling. There is a wealth of information available online that can help employers structure a wellness program that will meet their needs.

A WELCOA study of 32 wellness programs found that health care claims for participants were reduced by 28 percent, physician visits dropped 17 percent, and disability costs were reduced by 34 percent. Having healthier employees directly translates to fewer cases of absenteeism due to illness or injury, which means greater productivity. Companies that offer wellness program also experience higher levels of employee morale and retention. As a result, they spend less on recruiting, hiring and training new employees.

In addition, employees who participate in these programs, take the lessons learned home to their families, and healthier families means fewer missed days of work to care for ill family members. A study by the University of Michigan found that health care costs are 9.7 percent higher for spouses of employees than they are for employees themselves.

Having healthier employees translates to real money saved. The WELCOA study found that most employers can expect a return on investment (ROI) of 3-1. Some employers in the study realized a ROI of 6-1. In terms of dollars, employers are realizing a $3-$6 savings for every $1 invested in employee wellness and prevention programs.

Even during these tight financial times, companies are finding that investing in employee health makes sound fiscal sense.

Federal legislation being monitored by the Alliance is listed below:

HR 635 by Rep. Baca (D-CA)

Description: Establishes the National Commission on State Workers' Compensation Laws.

STATUS: Referred to the House Committee on Education and Labor on January 22, 2009.

HR 991 by Rep. Gutierrez (D-IL)
Description: *Consumer Fairness Act of 2009* - Amends the Consumer Credit Protection Act to treat as an unfair and deceptive trade act or practice under federal or state law any written provision in a consumer transaction or contract that requires binding arbitration to resolve a controversy arising out of or related to the transaction or contract, or the failure to perform any part. Declares such a provision unenforceable. Permits a written agreement to determine an existing controversy by binding arbitration if the parties agree after the controversy has arisen.
STATUS: Referred to the House Committee on Financial Services on February 11, 2009.

HR 1020 by Rep. Johnson (D-GA)
Description: *Arbitration Fairness Act of 2009* - Declares that no pre-dispute arbitration agreement shall be valid or enforceable if it requires arbitration of: (1) an employment, consumer, or franchise dispute, or (2) a dispute arising under any statute intended to protect civil rights. Declares, further, that the validity or enforceability of an agreement to arbitrate shall be determined by a court, under federal law, rather than an arbitrator, irrespective of whether the party resisting arbitration challenges the arbitration agreement specifically or in conjunction with other terms of the contract containing such agreement. Exempts from this Act arbitration agreements in collective bargaining agreements.
STATUS: Referred to the Subcommittee on Commercial and Administrative Law on March 16, 2009.

HR 1237 by Rep. Sanchez (D-CA)
Description: *Fairness in Nursing Home Arbitration Act* - Provides that a pre-dispute arbitration agreement between a long-term care facility and a resident (or anyone acting on the resident's behalf) shall not be valid or specifically enforceable.
STATUS: Referred to the House Committee on Judiciary on February 26, 2009.

Referred to the Subcommittee on Commercial and Administrative Law on March 16, 2009.

Referred to the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law and the Subcommittee on Crime, Terrorism, and Homeland Security on July 23, 2009.

S 512 by Sen. Martinez (R-FL)
Description: *Fairness in Nursing Home Arbitration Act* - Provides that a pre-dispute arbitration agreement between a long-term care facility and a resident (or anyone acting on the resident's behalf) shall not be valid or specifically enforceable.
STATUS: Read twice and referred to the Committee on the Judiciary on March 3, 2009.

Important Compliance Information for Nonsubscribers

State law requires employers in Texas that do not carry workers' compensation insurance to file DWC Form-5 with the Texas Department of Insurance-Division of Workers' Compensation (TDI-DWC). Additional information on DWC Form-5 is available at: **http://www.tdi.state.tx.us/forms/dwc/dwc005nocov.pdf.**

Nonsubscriber employers with four or more employees are also required to use form DWC Form-7 to report each work-related injury resulting in more than one day of lost time, all occupational diseases of which the employer has knowledge (regardless of lost time), and all fatalities occurring during the calendar month. The completed form reporting all such injuries that have occurred during a calendar month must be filled with the TDI-DWC no later than the 7th day of the following month. For more information on DWC Form-7 go to: **http://www.tdi.state.tx.us/forms/dwc/dwc7.pdf.**

Failure to comply with either requirement is an administrative violation and could result in administrative penalties. The Alliance encourages its members and all nonsubscribers to comply with these requirements.

Links to DWC-Forms 5 and 7 are available on the Alliance Web site at: **www.nonsubscriberalliance.org.**

Future Board Meetings (All calls are 1:00 p.m. CST)

- **May 19, 2010 – Conference call**
- **July 21, 2010 – Conference call**
- **September 15, 2010 – Conference call**
- **October 20, 2010 – Annual meeting in Dallas**

TEXAS
ALLIANCE
OF NONSUBSCRIBERS

The Texas Alliance of Nonsubscribers

An employer-driven, nonprofit trade association dedicated to ensuring that nonsubscription interests are better prepared, more cohesive, and strategically proactive in preserving their choice to manage occupational injury claims.

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