

# EMPLOYEE BENEFIT ADVISOR

Quarterly Newsletter

April 2010

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*As always we welcome your comments and suggestions regarding this issue of Employee Benefit Advisor. For more information on this publication or on articles or information contained within this publication, please contact your Sales Representative, Account Manager or visit the Mourad Agency web site at [www.aemourad.com](http://www.aemourad.com).*

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## NEWS & VIEWS

### Health Care Reform Legislation – How it will Impact your organization

On March 21, 2010 the U.S. House of Representatives passed major health care legislation. The House passed a bill previously approved by the Senate called *The Patient Protection and Affordable Care Act*. President Obama has recently signed the legislation, so it will become law.

In one more important step, the House passed an amendment to the health reform legislation called the *Health Care and Education Affordability Reconciliation Act of 2010*, which was recently approved by the Senate

The process of passing health care reform was complex, and further political and legal battles appear likely to follow. **None of the health care reform changes affecting employer health plans will be effective until later this year**

We know many of our clients have questions about what the newly passed health care reform legislation, H.R. 3590, contains and how it will impact your business and current health plans. The A.E. Mourad Agency, Inc. is working hard to provide you with the information and tools you need to better understand the changes and what impact it will have on your current and/or future health plan offerings.

The current amount of information about the reform bills are staggering, and A.E. Mourad Agency, Inc. feels that it is very important to make sure we analyze these measures thoroughly. We ask that you keep in mind that the passage of this legislation is just the beginning point, and the implementation and regulatory processes surrounding these measures will take place over several years.

The NAHU in cooperation with the A.E. Mourad Agency, Inc. has developed charts illustrating the timeline for implementation of the law. The first attachment is a [very detailed chart](#) that explains how all of the new health insurance reforms in both the Senate bill and the reconciliation bill will impact private health insurance. The second chart is a [simplified timeline](#) that explains how both pieces of health care reform legislation will impact both our individuals and groups.

A.E. Mourad Agency, Inc. will continue to keep you advised as details are released.

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## FMLA Fraud

Every year the Family and Medical Leave Act (FMLA) helps employees across the nation manage serious health issues and care for ill family members. With this comes a major frustration for employers – the suspected abuse or direct appearance of an employee using this leave inappropriately under FMLA. In fact, suspected employee abuse is the number one FMLA-related concern for employers – with more than 60 percent believing they have granted unfounded leave to employees in the past.



Though many have encountered possible FMLA fraud, employers tend to be wary when confronting suspected abuse – and for justified reasons. According to the Equal Employment Opportunity Commission (EEOC), employees who successfully sue for wrongful termination based on an FMLA absence receive on average \$87,500 to \$450,000 in damages. Abusing the federally protected right to job leave is an issue that many employers are faced with, but there are ways to detect possible FMLA abuse in the workplace as well as steps to take to curb or even prevent fraud.

### Signs Indicating Possible Abuse

- Frequent leave requests immediately preceding or following a weekend
- FMLA leave requests after denial of vacation on the same or similar days
- Very sudden or abrupt leave requests
- Increase in the number of leave requests
- Complaints from other employees that an individual is abusing leave
- Sightings of an employee on leave engaged in strenuous activities, or activities indicating the employee is capable of performing his/her job
- Repeated injuries/re-injuries shortly after returning from leave

### Tips to Prevent and Head Off Abuse

- Require employees to use all paid leave before taking unpaid FMLA. Employees are less likely to abuse FMLA if they have to use up vacation time before doing so.
- Obtain medical certification directly from the doctor. The Seventh Circuit Court has held that an employer does not interfere with FMLA rights by requiring that the completed certification form be faxed or mailed directly by the doctor.

- Require medical certifications within 15 days of taking leave. Employers that are specific about the documentation needed to take FMLA leave as well as the penalties for not complying have a much easier time taking action if the employee fails to do so.
- Have employees provide notice for expected FMLA leave. Requiring advance notice gives the employer the time to plan around future absences, minimizing abuse.
- Establish attendance and call-in policies for all leave. Consistent enforcement of leave policies, including FMLA, can be designed to prevent fraud.
- Utilize private investigators if necessary. Courts have been reluctant to rule against an employer for terminating an employee when he/she is caught directly engaging in fraud.
- Obtain “fitness for duty” certifications for employees when they return from FMLA leave. However, this cannot be required of an employee if returning from intermittent FMLA leave.
- Establish a policy prohibiting an employee from working a second job while on FMLA leave. Note that the Sixth Circuit Court in 2003 ruled that there may be instances when an employee can lawfully take FMLA leave from an employer and still work a second job, and some state FMLA laws may also allow this practice.

### Ways to Obtain Additional Medical Information if Fraud is Suspected

- Employers can directly contact employees’ health care providers without the employees’ permission to make certain that the health care provider is the person who actually signed the certification form.
- Clarifications regarding certification forms can be acquired from the health care provider, but only within the confines of the privacy rules of the Health Insurance Portability and Accountability Act.
- An employer may request the opinion of a second or third health care provider designated or approved by the employer, but not employed regularly by them. This will be at the employer’s own expense.
- An employer is not required to obtain additional opinions and may deny the FMLA leave without a second or third opinion when the employer has credible reason to doubt the validity of the certification.
- An employer may request a recertification of the medical condition associated with the employee’s absence every six months. If the employer has reason to doubt the employee’s stated reason for

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leave, it may request recertification in 30 days or even less.

In order to minimize FMLA fraud in the workplace, measures can be taken by the employer without violating an employee's FMLA rights. By detecting possible signs of abuse, using tips to prevent abuse and obtaining additional medical information when fraud is suspected, you take effective steps as an employer toward eliminating FMLA abuse at your workplace.

## LEGISLATIVE INSIGHT

### The HITECH Act

The HITECH Act is the Health Information Technology for Economic and Clinical Health Act. It was enacted on February 17, 2009, as part of the American Recovery and Reinvestment Act of 2009 (ARRA). The HITECH Act makes some significant changes to the privacy and security requirements of the Health Insurance Portability and Accountability Act of 1996 (the HIPAA Privacy and Security Rules), which are applicable to group health plans.

For example, group health plans (also known as Covered Entities under HIPAA) must now notify individuals of a breach of unsecured protected health information (PHI). Covered Entities may also have to comply with new rules regarding giving individual's access to their own PHI.

#### Content of the Privacy Notice

Covered Entities are required to provide a notice of privacy practices to each individual who is the subject of PHI. The HITECH Act changes will affect a Covered Entity's privacy practices and therefore the content of its privacy notice. If your health plan's privacy practices are changing as a result of the HITECH Act, your notice should be revised as well.

#### Deadline for Distributing the Privacy Notice

Under the HIPAA Privacy Rule, a revised privacy notice must be provided to all enrollees at the time of enrollment and also **within 60 days of a material revision** to the notice. Note that, while the Privacy Rule requires that the notices be provided to all "enrollees," the preamble to the Rule explains that providing the notice to the "named insured" or "employee" is acceptable.

After they the privacy notice is first sent, Covered Entities must provide notice **every three years** that a privacy notice is available and how enrollees may obtain a copy. Sending a revised privacy notice will reset the three-year notice requirement. For example, if Covered Entity changed its privacy practices and revised its privacy notice effective February 17, 2010, the revised notice should be distributed by April 18, 2010.

## RX CORNER

### First Time Generics

Generic Name	Brand Name	Approval Date	Uses
Testosterone Enanthate	Delatestryl	10/05/09	Replacement therapy (males); breast cancer (females)
Cetirizine Hydrochloride	Zyrtec	10/07/09	Antihistamine
Buprenorphine	Subutex, Suboxone	10/08/09	Treat opioid dependence
Risperidone	Risperdal	10/08/09	Antipsychotic
Sumatriptan Succinate	Imitrex	10/09/09	Migraine treatment
Topiramate	Topamax	10/14/09	Epilepsy; migraine
Fentanyl	Fentora, Onsolis	10/16/09	"Breakthrough" cancer pain
Chlorothiazide Sodium	Diuril	10/16/09	Diuretic
Melphalan Hydrochloride	Alkeran	10/27/09	Chemotherapy
Levetiracetam	Keppra	10/27/09	Epilepsy
Fentanyl Citrate	Actiq	10/30/09	Cancer pain
Lamotrigine	Lamictal	11/04/09	Epilepsy
Cefotaxime Sodium	Claforan	11/05/09	Various infections
Ketorolac Tromethamine	Toradol	11/05/09	Moderately severe, acute pain
Norethindrone Acetate and Ethinyl Estradiol	Estrostep Fe, Loestrin Fe	11/06/09	Birth control
Methocarbamol	Robaxin	11/06/09	Muscle relaxer
Benzonatate	Tessalon	11/09/09	Cough reliever
Azithromycin	Zithromax	11/09/09	Antibiotic
Lansoprazole	Prevacid	11/10/09	Ulcers
Perindopril Erbumine	Aceon	11/10/09	Hypertension
Ciclopirox	Loprox, Penlac	11/10/09	Fungal infections of the skin
Irinotecan Hydrochloride	Camptosar	11/12/09	Metastatic colorectal cancer
Tramadol Hydrochloride	Ultram	11/13/09	Moderate to severe pain
Butalbital, Acetaminophen, and Caffeine	Fioricet, Esgic	11/16/09	Pain reliever

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## BLUE CROSS UPDATES & CHANGES

### New alternative medicine partnership a natural for Blues members

Members can now reap special savings and discounts on health-related products and services they use every day. Beginning Jan. 1, Blue Cross began partnering with Healthyroads, Inc., a California-based subsidiary of American Specialty Health Incorporated, to provide discounts for wellness products and member savings across a national network of practitioners.

Blue Cross joined with Healthyroads to strengthen their complementary and alternative medicine program for members while, at the same time, looking to streamline costs.

The Healthyroads CAM program adds to their suite of member discount programs that includes Healthy Blue Xtras<sup>SM</sup> and Blue365<sup>®</sup>.

Here are some of the products and services you can expect:

- Acupuncture (under development in Michigan for 2010)
- Chiropractic
- Diet and supplement advisors
- Exercise and movement
- Massage and bodywork
- Mind and body relaxation techniques
- Vitamins and supplements
- Wellness and fitness centers

NOTE: Blue Cross is continuously looking for ways to improve their network offerings. As a result, members should expect ongoing changes in the roster of network practitioners.

#### How does the program work?

To participate in the program and receive savings on products and services, members will pay an annual fee for a Healthyroads discount card. In addition, members who choose to participate receive a one-year subscription to [FitnessCoach.com](http://FitnessCoach.com), an Internet-based personal health improvement program that includes access to the provider network discounts.

Here are the programs members can choose among: Members pay an annual \$25 fee and receive access to discounts up to 25 percent on 25,000 complementary and alternative medicine providers nationwide, including acupuncturists, chiropractors, massage therapists and dieticians.

Members pay an annual \$25 fee to access discounts or best pricing at participating affinity fitness club and exercise centers.

Members pay an annual \$40 fee to access both the complementary and alternative medicine providers and the fitness club and exercise centers.

## PROPERTY & CASUALTY

### Sort Out Workers' Compensation Coverage Across State Lines

Insurance standards can vary widely between states, and workers' compensation coverage is no exception. If your business has employees in several locations across multiple states, note that workers' compensation coverage written for one location may not protect operations falling in other jurisdictions.

What makes workers' compensation coverage tricky is that even adjacent states could have completely different standards. Throw state-run OSHA programs, monopolistic states and employees who work in multiple states in the mix, and you are left with a big headache.

Employers with workers in North Dakota, Ohio, Washington or Wyoming must be aware that workers' compensation coverage may only be purchased through the state program. In many cases, you may need two or more policies in place to cover everyone and avoid penalties for failure to provide proper coverage. The bottom line is, you should check with an expert to make sure all your bases are covered.

## PRODUCT

### The national marketplace for planned medical procedures.

Arboretum Health unlocks the power of competition in healthcare and puts it to work for you.

#### Why It Works

It's simple: Arboretum Health enables health plans to reduce cost and improve quality by making it easy and financially attractive for plan members to choose care from focus facilities.

#### How It Works

Arboretum Health pre-negotiates low case rates for major medical procedures. Participating providers compete to attract your plan members as patients. Arboretum provides all the services to make it work.

#### Where It Works

Any self-insured health plan or plan offered by an

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insurance carrier, including HSA / HRA plans.



- Save 30-50% on major medical procedures while gaining control over one of the largest costs of your health plan.
- Better care quality means fewer re-dos and faster back to work.
- Easy implementation. Arboretum Health is a simple overlay adding to your existing plan. Complete kit of employee communication tools makes rollout a snap.
- Includes a portable personal health record for members



- Now you gain access to top quality healthcare while saving money, too. Eliminate worry about surprise bills and uncovered costs.
- Your personal care coordinator is available to help you all along the way.
- Most providers include a 90 day limited warranty against avoidable complications. No other network does this.
- Arboretum Health adds to your current benefits. Nothing is taken away.



- By joining this unique and innovative network, the best and most efficient providers can now compete for the opportunity to provide your care.
- Providers compete on cost, quality, patient satisfaction, and patient word-of-mouth referrals.
- **Capacity pricing:** For the first time, providers can reduce prices to help fill unused capacity, creating additional savings for plans and patients. Everyone wins!

## Procedures & Providers

Any pre-scheduled medical procedure is eligible for Arboretum Health:

Knee & hip replacement • spine procedures • heart (bypass, valve) • general surgery • more...

**Put the Arboretum Health marketplace to work today for your plan and your plan members.**

## Procedures

Any pre-scheduled medical procedure is eligible for Arboretum Health. Examples:

### Cardiovascular

- Coronary Bypass (CABG)
- Heart Valve Surgery
- Implantable Defibrillators
- Permanent Pacemakers
- Carotid Stent
- AAA (aortic aneurysm)

### Cancer

- Prostate Brachytherapy
- Prostatectomy (robotic)
- Gamma Knife
- Craniotomy

### Orthopedic

- Joint Replacement
- Reconstruction & Repair
- Arthroscopy

### Spine

- Lumbar & Cervical
- Laminectomy & Discectomy
- Spinal Fusion
- Artificial Disk

### Podiatry

- Diagnostic Imaging**
- Women's Health**
- Urologic Procedures**
- Bariatrics** (if covered)
- General Surgery**
- Complex Care**
- Dental Surgery**

## Representative Providers

Contact Arboretum Health for a full provider list.

### Texas Back Institute

HealthGrades 5 star. Top spine program in TX and among best in U.S.

### Indiana Orthopaedic Hospital

HealthGrades 5 star. Top ortho hospital in Indiana. Top 50 in U.S.

### Providence Memorial, Everett Washington

HG 5 star. Top heart hospital in WA. Top 50 in U.S.

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## Key Features & Benefits

	Value for Plan/Employers	Value for Member/Employees
<b>World Class Facilities &amp; Doctors</b>	Costly surgical re-operations and recovery times are reduced as a result of facilities that focus on their specialty.	Members receive treatment from premier providers who utilize the latest technologies to deliver excellent outcomes the first time.
<b>Comprehensive Case Rate Pricing</b>	Prepaid rates provide up to 30%-50% overall savings vs. typical negotiated rates.  Comprehensive cases are easy to monitor and manage over time. Gain control over your expenditure on major procedures. Competitive platform lets you take control of your buying power, just like other purchasing.	Members know their personal financial impact of a major procedure up front. No surprises.  Members save money when the plan saves money. Eliminate co-pays, deductibles and coinsurance, and a GetWell Benefit™ can put cash in their pocket following surgery.
<b>Personal Care Coordinators</b>	We help your members every step of the way, from initial inquiry through recovery and follow-up. No added burden on HR staff.  An added benefit for employees.	Members receive personalized attention to help guide them through the process. Travel and lodging expenses for member and a companion at no cost for most procedures.
<b>Technology</b>	Comprehensive patient tracking.  Utilization, outcomes and satisfaction monitoring and reporting, including follow-up.	Secure, web-based benefits portal for easy provider and benefit comparison supplements assistance of personal care coordinators.  Includes a portable electronic personal health record.

<b>Independent Case Review</b>	Prevent unnecessary surgeries and surgical "up-sells." Objective case reviews on all surgery diagnoses.	Members avoid the risks, inconvenience and associated costs of unnecessary surgeries thanks to case reviews by leading specialists.
<b>Simple Plan Integration</b>	Simple to add to any existing health plan. And, our powerful communication toolkit makes it easy to promote utilization.	Members avoid the flood of paperwork that typically precedes and follows a major medical procedure.

## LIVE WELL, WORK WELL

### Emphasize Nutrition

What better time to start focusing on nutrition in your life than during National Nutrition Month? Sponsored by the American Dietetic Association, National Nutrition Month® focuses on the importance of making sound food choices and developing positive eating and physical activity habits. Here are some ways to incorporate healthy food choices and physical activity into your life this month:

- Keep a food diary. Knowing what you eat will help you to make changes where necessary. Starting today, write down when you eat, as well as what, how much, where and how you're feeling when you eat.
- Plan ahead. If you plan your meals for the week, you can save time and money.
- Shop smart at the grocery store. Eat a snack before you leave to shop and stick to what's on your list. Shop the perimeter of the store first, as it typically contains the healthiest foods.
- Read the nutrition facts label. Look at the serving size, and try to keep saturated fat, trans fat, cholesterol and sodium at 5 percent of your recommended daily value or less.
- Choose foods that have 20 percent or more of your daily value of fiber, iron, calcium, potassium, and vitamins A and C.
- Snack on healthy foods. Eat small, healthy snacks throughout the day, such as baby carrots or a handful of almonds. This will keep you from overeating at mealtimes.

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- Make smart choices at restaurants. Consume only half of your meal and take the rest home. Ask for dressings and sauces on the side.
- Walk. Park farther away from the store or work. Opt for the stairs instead of the elevator. Take a walk during your lunch break. Your steps will add up!

