



A Property/Casualty Practitioner's Guide to Health Care Reform

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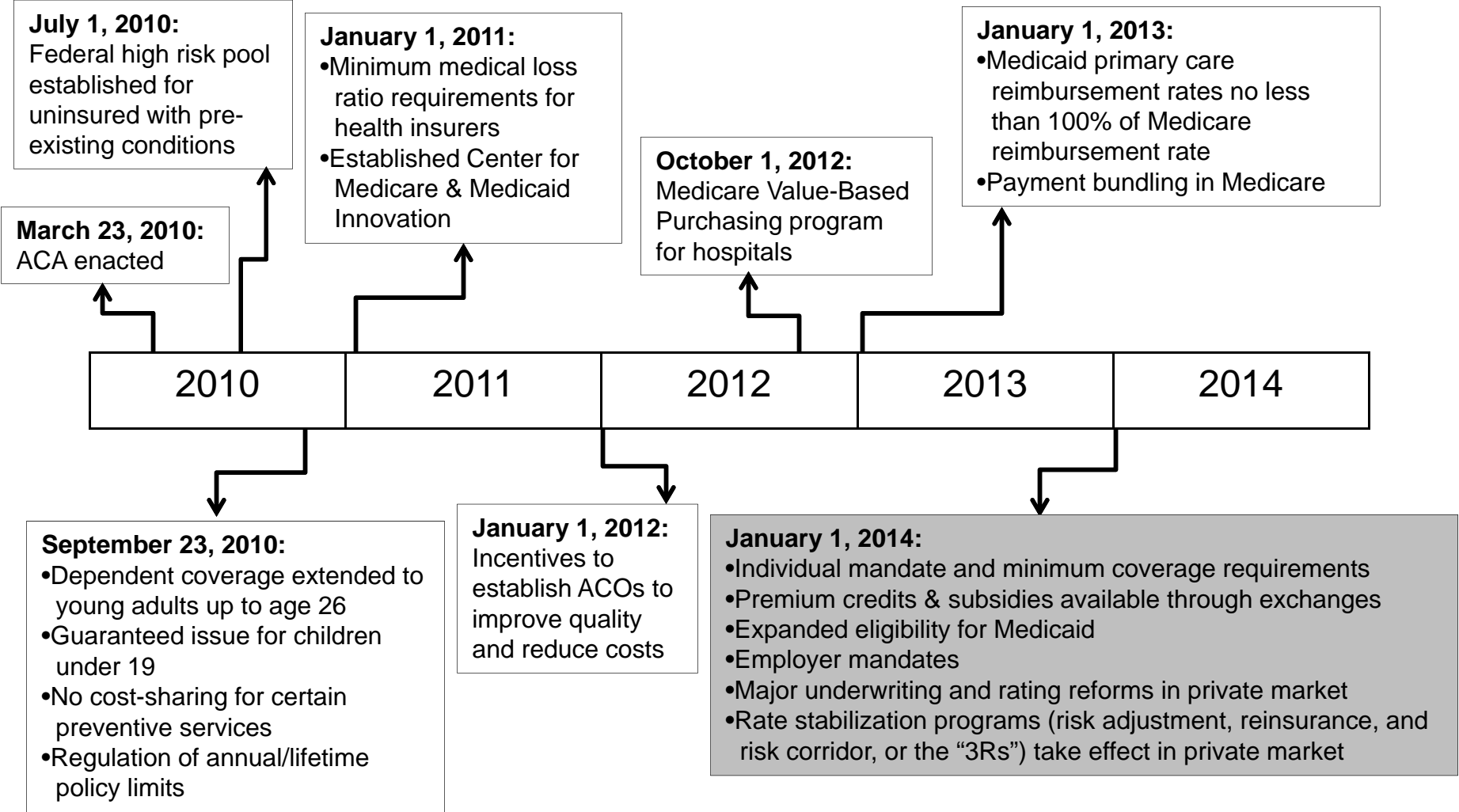
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The Patient Protection & Affordable Care Act (ACA) implements broad, historic changes to U.S. health care

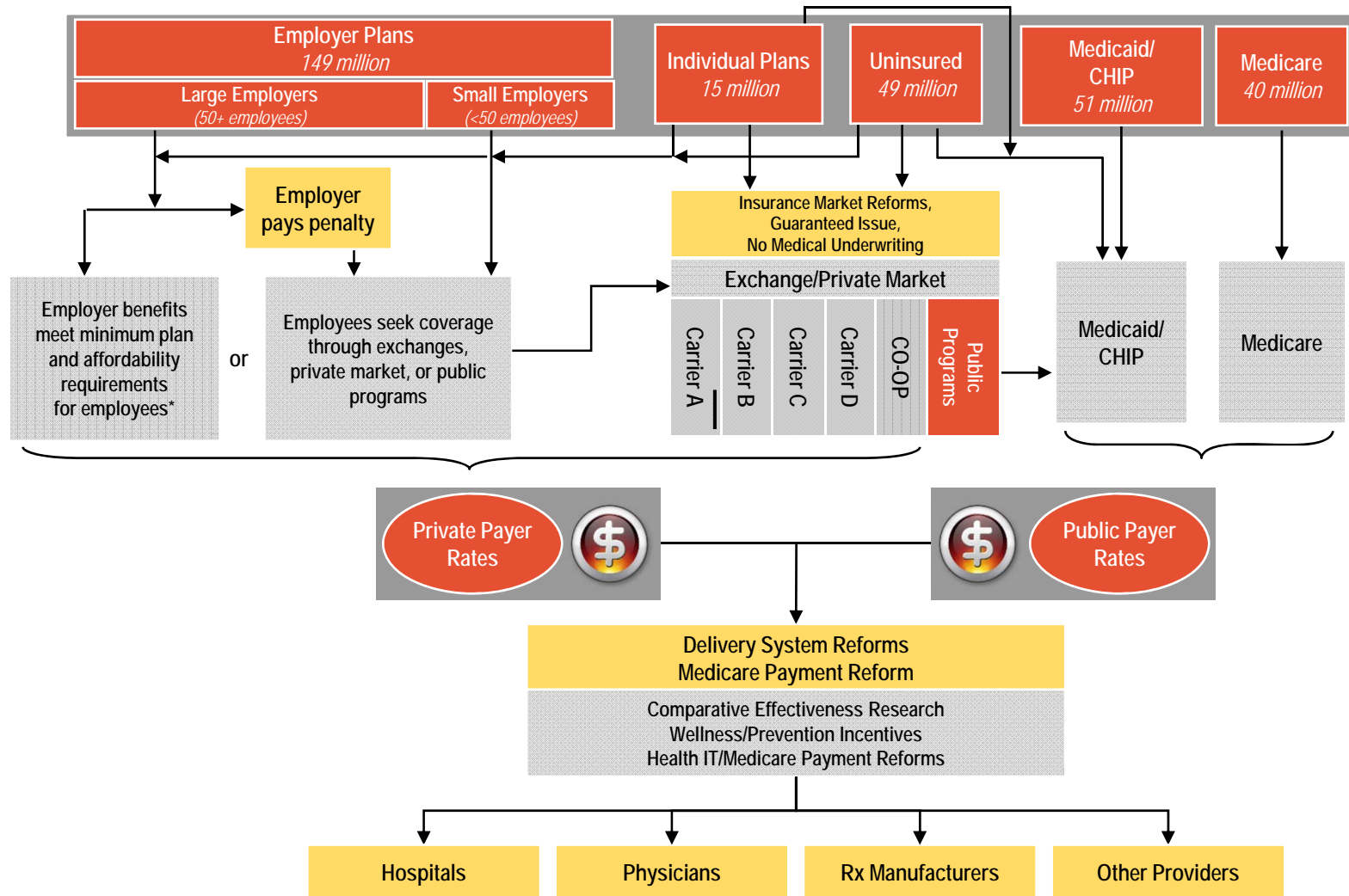
- Expand **access** to health insurance and care...
 - Guaranteed issue of coverage in private insurance market
 - Expanded Medicaid eligibility
 - ...and improve **affordability** for certain populations
 - Subsidies and premium tax credits for low and modest income individuals
 - Restricted rating factors and other significant changes in private insurance market
 - Enhanced regulatory rate review processes
- Focus on **containing medical costs**...
 - Incentives to create medical homes and Accountable Care Organizations (ACOs)
 - Measures to reduce waste, fraud, and abuse
 - ...while improving **quality outcomes**...
 - Comparative effectiveness research
 - Value-based Medicare payment structure
 - ...and promoting **prevention and wellness**
 - No cost-sharing for preventive services
 - Support for employer-based wellness programs

While some reforms have already taken effect, most become effective January 1, 2014



Source: U.S. Department of Health and Human Services.

In 2014, much of the current structure of the health insurance market remains, but with new dynamics



Source: Kaiser Family Foundation.

Based on 2011 data; figures do not include approximately 4 million covered by other public programs.

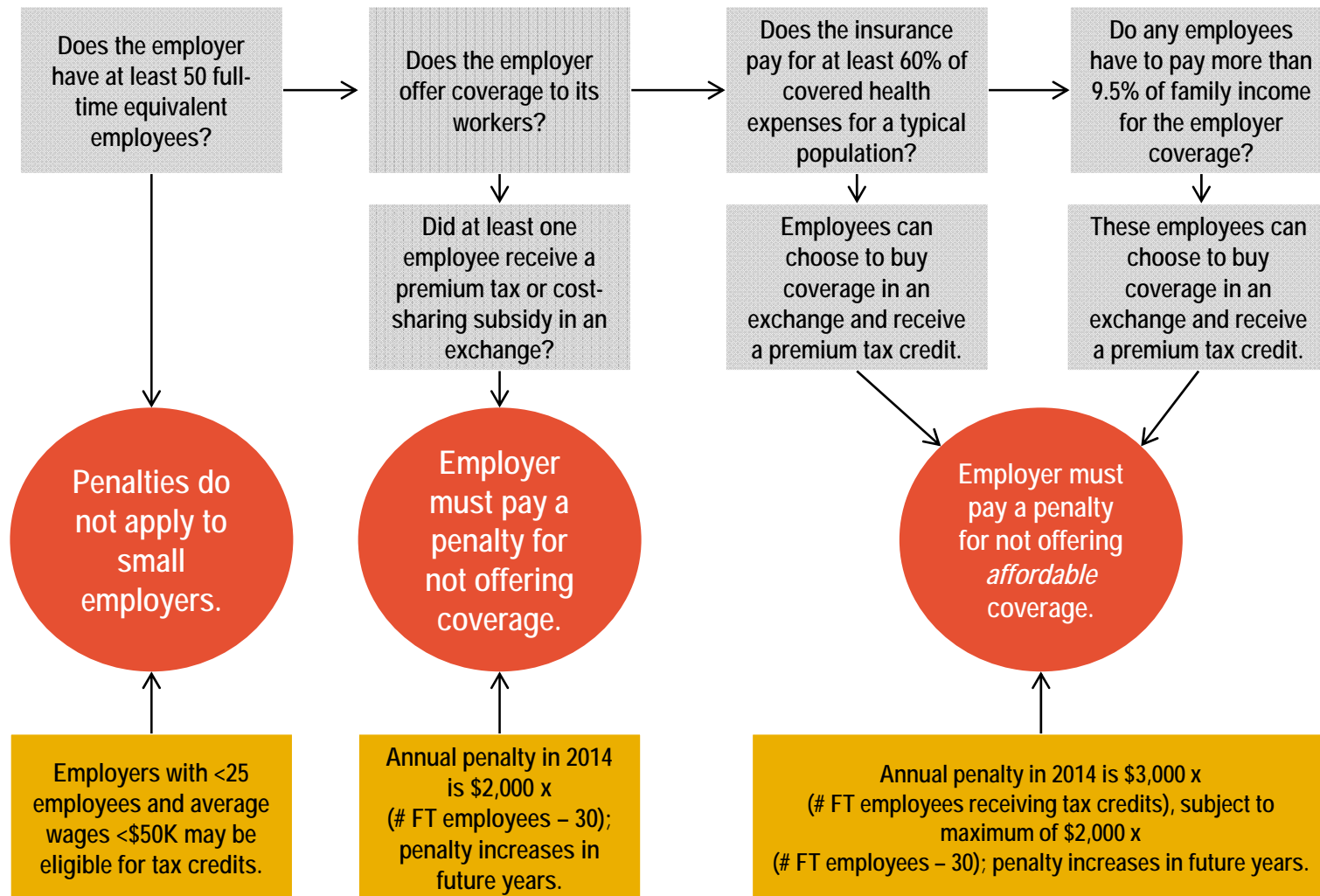
The private health insurance market faces uncertainty as it prepares for 2014

- Significant market reforms
 - Guaranteed issue/elimination of medical underwriting
 - Modified community rating
 - Rating factors limited to age, tobacco use, geographic area, and family composition
 - Limited variation in rating factors
 - Minimum coverage requirements
 - Essential Health Benefits
 - Actuarial Value (e.g. “metal” tiers)
 - Limitations on out of pocket maximums, annual/lifetime limits
 - Transparent marketplace
 - Exchanges
 - Rate review
- Rate stabilization programs
 - Risk adjustment
 - Reinsurance
 - Risk corridor

Public programs benefit from some reforms and provide platform for pilot programs

- Medicare
 - Medicare Advantage rates restructured to reflect differences in Medicare fee-for-service rates
 - Quality bonuses for Medicare Advantage plans and primary care providers
 - Incentives to create Accountable Care Organizations (ACOs)
 - Reduce Medicare payments for preventable hospital readmissions and hospital-acquired conditions
 - Bundled payment pilot for various services for an episode of care that begins three days prior to a hospitalization and spans 30 days following discharge
 - Hospital value-based purchasing program
- Medicaid
 - Medical homes
 - Increase prescription drug rebates
 - Prohibit federal funding for Medicaid services related to health care system acquired conditions
 - Increase reimbursement rates for primary care providers

Employers need to understand responsibilities and options under the new law



Source: Kaiser Family Foundation.
towerswatson.com

Changes to delivery of care promote prevention and quality...

- Focus on preventive medicine and primary care
 - Low or no cost-sharing for preventive care and primary care services in private plans
 - Increased Medicaid reimbursement rates for primary care services
- Incentives to enhance coordination of care through ACOs, medical homes in public programs
 - Aimed at improving quality and reducing costs
 - ACO providers share in savings
 - May support trend toward employed vs. private practice physicians
 - Once established, ACO and medical home models may easily expand beyond public programs
- Comparative effectiveness research initiatives
- Support for rural health care providers
 - Funding for prevention and wellness services in rural areas
- Payment linked to quality outcomes
 - Medicare value-based purchasing program for hospitals; plans to expand beyond hospitals
 - Quality bonuses
 - Plan quality ratings listed on exchanges

...but demand for medical services is a source of risk and uncertainty

- Guaranteed issue and individual mandate expected to reduce uninsured population
 - Individual mandate may or may not be effective
 - Varying opinions on relative morbidity of uninsured populations and impact of pent-up demand
 - Cost-sharing design of private health plans may change incentives to seek care
- Focus on primary care and preventive medicine will increase demand for these services
 - Demand must be balanced with pressure to control costs while maintaining quality
 - More reliance on physician extenders to meet demand
 - Specialists may or may not be as acutely affected by increased demand

Property/casualty risk profiles are likely to evolve for health insurers, employers, and health care providers

- Medical professional liability
 - Health care providers
 - Insurance and other risk-financing mechanisms
- Workers' compensation
 - Employers, employees, and health care providers
 - Insurance and other risk-financing mechanisms
- Directors & officers, errors & omissions, and employment practices liability
 - Health care providers
 - Employers
 - Health insurers
- Automobile liability

Discussion of ACA and Property Casualty Coverages

- In the following slides, we identify areas for discussion as relates to Property Casualty Insurance and health care reform.
- Our opinion is that it is too early to definitively state what will be the impacts of health care reform on property casualty coverages – and how that impact will vary based on how ACA manifests in various states.
- The information within the next few slides is speculative and meant to provoke thought and discussion. It is not an exhaustive listing of all of the possible impacts.

Decrease in the uninsured\Increase in newly insured population

Provision

- Individual mandates\ guaranteed issue
- Subsidies to help small biz and individuals obtain coverage
- Medicaid eligibility expansion



Likely Impact

- Fewer uninsured and more units of service delivered
- More patients on Medicaid

How this could LOWER liability

- More access → Less delay in diagnosis
- Earlier treatment can lead to better outcomes
- Early prenatal care → less pregnancy risk
- Future economic losses possibly smaller for those eligible for expanded coverage

How this could RAISE liability

- More units of service → more potential risk
- Capacity shortage can lead to increased errors
- If previous care was delivered by “Good Samaritans,” they were usually shielded from malpractice liability

Change in Provider Model to Increased use of non-physician practitioners (NP, PA, Pharmacists/“Health Care Extenders”)

Provision

- Increased access will lead to increased use of HCE to meet need



Likely Impact

- Expanded scope of care for HCE's, pharmacists, etc.

How this could LOWER liability

- Non physicians are more likely to follow algorithms and practice evidenced based medicine
- HCE typically have lower loss costs

How this could RAISE liability

- Lower level of expertise may lead to more missed difficult diagnoses
- Shortage of physicians could lead to inadequate supervision
- Current nursing shortage could be exacerbated

Value based payment models

Provision

- Medicare to establish “Hospital Value Based Payment Program” – provide incentive payments for meeting performance criteria – both improved care and safety to be included
- Reduce\prohibit payments for re-admit and hospital-acquired conditions



Likely Impact

- Hospitals are financially rewarded based on performance
- Will increase efforts to eliminate ‘defective’ care

How this could LOWER liability

- Increased incentive for patient safety; should lower frequency of loss and possibly severity
- Improvement of care due to transparency of information on quality

How this could RAISE liability

- Failure to qualify for incentive payments be interpreted as evidence of negligence
- The incentive model may exacerbate the supply shortages

Accountable Care Organizations

Provision

- Payment to Medicare providers based on episode of care rather than Fee For Service
- ACO's to develop voluntarily based on efficiencies, will share in cost savings, will report on quality and costs



Likely Impact

- Further provider consolidation and possible return of capitation-like arrangements
- Required adequate primary care participation; processes to promote evidenced-based medicine; report on quality and costs and coordinate care

How this could LOWER liability

- Increased coordination and collaboration can lead to lower malpractice risk
- In the case of a claim, one organization has liability rather than multiple
- Reporting on quality and costs could provide transparency on best practices
- Coordination of Defense across providers

How this could RAISE liability

- Larger organizations more likely to have higher limits of liability which will be exposed
- Increased exposure of "managed care" type liability relating to denial of care types of claims under tighter cost controls
- Consolidation process could increase D&O exposure
- Could it exacerbate the primary care physician shortage

Comparative Effectiveness Research

Provision

- \$3.5 billion available for comparative effectiveness research (PCORTF)
- Purpose is to compare clinical effectiveness of medical treatments



Likely Impact

- Increase in knowledge and transparency of evidence-based protocols on a national basis

How this could LOWER liability

- Could lead to innovations\ better standards of care
- Fewer patients should receive care known from evidence to be harmful

How this could RAISE liability

- Act states that findings may not be construed as recommendations for payment, coverage or treatment, but:
 - A “clear” community standard could lead to more liability risk – could this standard be used in litigation?
 - Risk of bright line of providing care rather than the evaluation of the uniqueness of the medical case

Adoption of Health Care IT

Provision

- PPACA and American Recovery and Re-investment Act of 2009 offer large incentives to providers to adopt EMRs and Computerized Physician Order Entry (CPOE)



Likely Impact

- Higher take-up rate of these tools which should lead to easier coordination of care and better data for tracking and analysis

How this could LOWER liability

- Could lead to less errors in communication of provider “orders”
- Coordination of care could lead to less errors due to better communication
- Ability to analyze data could lead to better protocols, less patients harmed

How this could RAISE liability

- Inadequate training and/or inappropriate use (eg: ‘cut\paste’) could increase adverse outcomes
- Delays in data transfers, output, incomplete or missing data could increase errors
- Additional exposure for data breaches
- Data could provide potential ammunition for plaintiff attorneys

Malpractice Tort Reform Pilot Programs

Provision

- Provides for \$50 million for states to develop, implement and evaluate alternatives to malpractice tort litigation



Likely Impact

- Pilots will occur
- Preference given to states that have alternatives that include stakeholders and have proposals likely to enhance patient safety and improving access to medical liability insurance

How this could LOWER liability

- Pilot programs could identify effective ways to reduce malpractice litigation and liability
- Funding is relatively small thus diminishing chances of imminent impact of results of pilots

How this could RAISE liability

- Depending on the outcomes of the study liability could increase as unintended consequences of poorly designed reforms
- There is an opt-out provision for patients which could make the pilots a testing ground for plaintiff cases

Increased Primary Care Reimbursement

Provision

- Medicare to increase FFS payment levels available for primary care services
- Provide 10% bonus to primary care physicians in Medicare from 2011 thru 2015



Likely Impact

- Increase in number of primary care physicians

How this could LOWER liability

- Increased physician count can alleviate concerns on physician shortage

How this could RAISE liability

- If no increased physician count, then more units of service provided per physician

Considerations for Workers Compensation

- **Background:**

- Workers Compensation Medical Costs estimated as less than 3% of total health care spending in 2011
- WC Medical severity had been rising at twice the Medical CPI rate

- **Cost shifting concerns:**

- Will reform force providers to adjust to fiscal restraints such that all types of medical care are beneficiaries OR
- Will costs not absorbed by public programs and other negotiated fees be passed to other payors – such insurance liability or workers' compensation payors?

- **Direct impacts on WC:**

- Changes to the Federal black lung program - ACA reinstates two provisions centering on coal miners' and survivors' entitlement to benefits that had been cut by 1981 amendments to the BLBA
- “Libby” care in Libby, MT– Medicare to cover medical care for any person (not only employees) that are exposed to asbestos
- Medical device excise tax of 2.3% - Most medical devices become subject to a 2.3% excise tax collected at the time of purchase.
- Increased taxes on pharmaceutical industry likely to be passed on to workers' compensation payors

MOST IMPACTS ARE INDIRECT AND WILL VARY BY STATE

Decrease in the uninsured\Increase in newly insured population

Provision

- Individual mandates\guaranteed issue
- Higher Medicaid enrollment



Likely Impact

- Fewer uninsured and more units of service delivered
- More patients on Medicaid

How this could LOWER costs

- More access → healthier workers, fewer injuries, shorter claim duration
- Could be claim\cost shift to Group Health as GH system less administrative burden to access
- GH will now cover pre-existing conditions- WC may have had to previously absorb the cost as EE had no alternative

How this could RAISE costs

- Capacity shortage can delay treatment, delay RTW resulting in higher indemnity benefits (Specialist availability expected to be less impacted than primary care)
- Could be claim cost shift from GH as GH more likely to have deductibles, co-pay, etc. which are expected to increase to cover cost of reform

Change in Medicare Fee Schedules

Provision

- Changes to FFS rates and hospital payments
- Less frequent fee updates
- Establish independent board to review growth in Medicare spending



Likely Impact

- Fees change for services tied to Medicare fee schedule

How this could LOWER costs

- If fees are tied to the Medicare schedule and schedule decreases then fees may decrease
- If fees for specialty services (such as surgeries and MRI's) decreases, then perhaps less incentive to do these procedures

How this could RAISE costs

- Providers may look to alternative sources of income to close the gap from reduced revenue from Medicare.
- Increased utilization lead to longer RTW determinations
- Fee schedules may be tied to changes in Medicare formulas or allocation of payments by type of service. Changing fee schedules may impact disproportionately

Comparative Effectiveness Research

Provision

- \$3.5 billion available for comparative effectiveness research (PCORTF)
- Purpose is to compare clinical effectiveness of medical treatments



Likely Impact

- Increase in knowledge and transparency of evidence-based protocols

How this could LOWER costs

- WC treatment could benefit from this research. Expectation of greater agreement on questionable treatments (eg: back surgeries) if changes in treatment are adopted by states as appropriate levels of care for WC injuries

How this could RAISE costs

- New protocols will not necessarily be focused on occupational medicine and thus might not optimize the capability to work
- New protocols could increase utilization and costs

Other Property Casualty Lines of Business

- Directors and Officers Liability\EPLI
 - Anti-trust concerns for larger systems
 - Merger and Acquisition exposure
 - Health Insurers
 - Considerations Public\Private; For Profit\Non for Profit
 - Concerns on workforce demographics and ACA requirements
- Reinsurance of A&H exposures
 - Uncertainty as to consistency of books of exposures as the individual risks may choose to be with exchanges rather than prior coverage
- Automobile Liability
 - Where provision of medical care is concerned, how care is delivered could impact costs of Auto Liability
- Fiduciary Liability
 - For organizations as respects provision of employee benefits

(Non) Conclusions

- It is too early to determine the actual impacts of Health Care Reform on coverages.
- The impacts will vary by state due to how health care is regulated/provided at the state level as well as tort and no-fault provisions.
- Insurance professionals can prepare now to collect, analyze and monitor data. Be prepared to react in a timely manner.
 - Consider what data should be collected and by whom?

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