

Affordable Care Act

DOJ Files Brief Asking Court to Throw Out ACA

THE STAKES for the future of the Affordable Care Act just got higher after the U.S. Department of Justice in May filed a brief with a federal appeals court to strike down every facet of the landmark legislation.

The DOJ's filing in the case states that the law is unconstitutional in its entirety and should be struck down. The filing concerns a case that had been brought by Texas and other Republican-led states that challenged the constitutionality of the law.

The trial judge in the case had ruled the entire law had been nullified after Congress in December 2017 passed legislation that jettisoned the individual penalties for not securing health coverage.

A group of 21 Democratic-led states, headed by California, immediately appealed the judge's ruling. The appeal will be heard by the Fifth Circuit Court of Appeals in New Orleans. The DOJ's brief urges the Fifth Circuit to uphold the trial judge's ruling.

U.S. District Judge Reed O'Connor of the Northern District of Texas ruled in December 2018 that a congressional tax law passed in 2017 – which zeroed out the penalty imposed by the ACA's individual mandate – rendered the entire health care law unconstitutional. The ACA remains in effect pending the outcome of the appeal.

Most legal pundits expect that the lower court's ruling will be overturned. The decision not to appeal the ruling by the Trump administration had been foreshadowed, but still had many legal observers surprised that the DOJ would choose not to defend the law of the land.

Others have pointed out that if Congress's intent

had been to nullify the ACA when it got rid of the penalties for individuals who don't abide by the individual mandate, it would have written that into the legislation.

But the only part of the ACA that was addressed in the tax bill was the individual mandate penalty.

So what's likely to happen?

It's too early to know how this will all shake out. But even if the Fifth Circuit upholds the lower court verdict, the ruling would be appealed to the Supreme Court.

If the Fifth Circuit overturns the lower court's ruling, the Supreme Court may not even take up the case since it has already ruled twice before in favor of the ACA.

For now, if you are subject to the employer mandate, you should continue complying with its rules and provide your employees with coverage as per the law.

It's unclear at this juncture what would happen if the case makes it to the Supreme Court. ❖



Insurers Will Pay Record Amount of Rebates to Small Group Plans

WHILE MOST businesses rarely get rebate checks from their group health insurer, this year may be different as insurance companies are expected to pay back record excess premiums, as required by the Affordable Care Act.

The law requires that insurers spend at least 80% of their premium income on medical care and medications, but expected payouts in 2018 came in way below expectations. That means they have to pay out rebates for the overcharge.

Analysts expect that insurers will pay out \$1.4 billion in rebates, \$600 million of which would be paid to small and large group health plans, according to a report by the Kaiser Family Foundation.

The reason for the sizeable expected rebate is that insurers raised rates substantially for 2018, which was right after Congress had passed a law that eliminated the individual mandate penalty, as well as uncertainty about the law after the Trump administration introduced regulations to expand the use of short-term health plans and association plans.

As mentioned, plans must spend 80% of premiums they collect on medical claims or quality improvements if they are in the individual or small group market. The threshold is 85% in the large group market. The rest can be spent on claims administration, marketing and other overhead, as well as set aside for profit.

Rebates to small group plan and large group plan members have typically overshadowed rebates to those who purchase plans individually on government-run exchanges. In 2017, according to the Centers for Medicare and Medicaid Services, insurers paid out nearly \$707 million in ACA rebates, as follows:

- \$132.5 million to individual market enrollees.
- \$309.4 million to small group market enrollees.
- \$264.8 million to large group market enrollees.

But this year, rebates to the individual market are expected to be \$800 million, while the remaining \$600 million would be paid to enrollees in group plans.

But the insurers' fears didn't materialize. Despite payments per enrollee growing 26% to \$559 in 2017 on exchanges, per person claims increased only 7% to \$392 year over year.

Also, the repeal of the penalties and increased premiums did not drive younger, healthier consumers out of the marketplace as had been expected.

How to disburse rebates

If you are one of the employers whose health plan gets to receive a rebate, the big question that always comes up is "how do you distribute the funds?"

ACA regulations require insurers to pay rebates directly to the group health plan policyholder, who will be responsible for ensuring that employees benefit from the rebates to the extent they contributed to the cost of coverage.

But remember, since you as the employer also contributed to the premiums, you are entitled to your portion of the rebate. Your take should be in the same proportion as the premium you pay compared to your employees.

The way that you disburse the rebate is up to you, but whatever you do, it must be in accordance with ERISA's general standards of fiduciary conduct.

Typically, if the rebate works out to be small for each participant, it would likely not be worth your time to cut each employee a check.

The preferred method in most cases is to provide the rebate in the form of a premium reduction or discount to all employees participating in the plan at the time the rebate is distributed. ❖

HMS REFUND: *Health insurers will ship a record amount of refunds to small group plan employers this year.*



Voluntary Benefits

Integrated Disability and Health Programs Yield Fewer Absences

LOST PRODUCTIVITY due to an employee's disabling injury or illness can have a serious effect on a business. Unscheduled disability absences account for around 8.7% of U.S. payrolls, according to the "Total Impact Employee Absences" survey by Mercer/Kronos.

And according to the Cigna "Integration Value Study," employees that suffer a short-term disabling injury or illness, and that have both disability and medical coverage, spent fewer days away from work than those that didn't have an integrated program.

Cigna also found that employees that have an integrated health and disability insurance program:

- Had a 20% lower absentee rate than employees with only disability coverage.
- Had an 11% greater return-to-work rate compared to employees without an integrated plan.
- Needed an average of 13 fewer days of short-term disability leave than employees without access to an integrated program.

Savings potential

Each day of disability for a business with average benefit offerings, an average hourly loaded wage of \$29.71, and a 60% short-term disability benefit, costs the business approximately \$159.00.

A business with 5,000 medical and disability-covered employees could see around 2,500 fewer disability days, which would add up to a productivity and direct cost savings of almost \$400,000 per year.

Chronic care

It's also important for employers to remember that illness and injury prevention doesn't cease after the employee starts a long-term or short-term disability absence, as one medical condition can often lead into or cause another to develop.

Multiple studies have shown that a chronic care program is an important aspect of an employer having an integrated approach.

For example, a different Cigna study on chronic care found that workers participating in chronic care programs were absent four fewer days and had a higher return-to-work rate after a disability than non-participants.

The benefits of a chronic care program, such as coaching, support and education, can be instrumental in preventing employees already going through a difficult time from seeing their situation drastically worsen.

The takeaway

It's clear that reining in employee absentee-related costs is vital to a company's financial bottom line.

Research like Cigna's shows that integrated programs are key to having a coordinated effort in not only assisting employees to return to work, but also to stay on the job and healthy.

The greater opportunity that integrated medical and disability programs offer to employees to reduce the length of disability absences and improve their health is a win-win for employee and their staff alike. ❖





Attracting Talent

Employers Double Down on Employee Benefits

AS THE JOB market tightens and competition for workers becomes fiercer, a majority of employers are boosting their employee benefits offerings and are paying less attention to reducing associated costs, according to a new study.

The changes reflect the shifting priorities of the workforce and the newest generation to enter the job market. The challenge for employers is controlling benefit costs, while at the same time being able to attract and retain talent as competition for workers increases.

The “2018 Benefits Strategy & Benchmarking Survey” by Gallagher Benefits found that U.S. employers were most concerned with:

- Attracting and retaining talent (60% of employers).
- Controlling benefit costs (37%).

The study authors said they are noticing a “clear shift in the market” because employers are having to compete so fiercely for workers and because the workforce comprises five generations, all of which have very different priorities and needs. Besides beefing up their health insurance offerings, they are also boosting other employee benefits.

CURRENT STRATEGIES

- 45% of employers have increased employee cost-sharing of health care benefits.
- 55% provide telemedicine services that allow employees to speak remotely with medical professionals.
- More employers are focused on helping their employees reduce their medical expenses with wellness programs and prevention services. The most popular offerings include:
 - » Flu shots
 - » Tobacco cessation programs
 - » Health risk assessments
 - » Biometric screenings
- Financial wellness programs are gaining popularity, with 62% providing access to financial advisors.
- 89% of employers offer employees life insurance.
- 70% provide access to employee assistance programs.
- 47% offer financial-literacy education to help employees better manage their money.
- 22% offer employees three medical insurance plans to choose from (another 13% offer four or more).
- 46% offer tuition reimbursement. ❖