



The United States Supreme Court recently upheld the constitutionality of the Affordable Healthcare Act. Will workers' compensation be impacted?

On June 28, 2012, in a 5-4 decision, the United States Supreme Court upheld the constitutionality of the national healthcare reform legislation passed March 2010. The text of the opinion, in *National Federation of Business vs. Sebelius*, Case Number 11-393, is available [here](#).

Click [here](#) to review a copy of national healthcare reform legislation and [here](#) for a copy of the amendments.

This issue of *Spotlight* provides an update on the status of healthcare reform since the September 28, 2010 issue and reassesses how national healthcare reform may impact workers' compensation.

United States Supreme Court Decision

The Court found the individual mandate to be constitutional under Congress' taxing authority. The individual mandate is a requirement that all individuals who can afford healthcare insurance purchase insurance or in 2016 pay a fine of \$695 a year or 2.5 percent of their income, whichever is higher. The Court's decision on the Medicaid expansion was divided but ultimately the Court upheld the provision. The high court determined that Congress acted within the powers of the Constitution in offering states funds to expand Medicaid coverage. However, the Court concluded that a state can refuse to participate in the Medicaid expansion at the risk of losing only new funding, rather than losing all of their funding which was the original penalty contained in the Act. The Medicaid expansion outlined in the reform law will take effect in 2014, covering people who make up to 133 percent above the poverty line.

Because the national healthcare reform legislation was upheld, all provisions of the law that have been implemented remain in effect and additional provisions will continue to be implemented through 2018 as planned. Click [here](#) to view a timeline for implementation of the law.

Impact of Massachusetts' Healthcare Reform on Workers' Compensation

Analysis of the impact of healthcare reform on workers' compensation in Massachusetts may offer some insight on the possible national impact.

Why Massachusetts? In 2006, Massachusetts enacted legislation to provide health care coverage to nearly all state residents. On August 10, 2008 the state initiated the second phase of healthcare reform with a focus on cost containment and delivery system improvement. The laws passed in Massachusetts have much in common with the recently signed federal law, including individual mandates, employer requirements, Medicaid expansion and enhancement of the primary care workforce.

Recently, the RAND Institute for Civil Justice published a report that used the experience of Massachusetts to analyze the impact of health care reform on treatment and billing for medical care received through the workers' compensation system. The analysis suggests that healthcare reform in Massachusetts may have reduced workers' compensation billing volume and costs. Click [here](#) to review a copy of that report.

Massachusetts added 340,000 people to the list of insured from 2006 to 2009 at which time, a shortage of primary care physicians became apparent. This impact is expected nationally as over 30 million are expected to become insured. To address the anticipated shortage of primary care physicians, national healthcare reform legislation includes provisions to increase a qualified health care workforce to improve access to and the delivery of healthcare services. The act funds grants, scholarships and modification of loan repayments for the training of healthcare faculty, primary care physicians, nurses, mental and behavioral health professionals as well as oral health professionals.

As an inducement for additional physicians to choose to provide primary care, the act provides a 10% bonus payment to primary care physicians in Medicare for five years beginning January 1, 2011. Additionally, effective January 1, 2013, Medicaid payments for primary care physicians will increase to 100% of the Medicare rates for 2013 and 2014.

Direct Impact on Workers' Compensation

There are only two instances in the legislation directly referencing workers' compensation.

- **Workers' Compensation Required for Providers of Home and Community Based Attendant Services:** Section 2401 of healthcare reform, entitled "Community First Choice Option", added a new section to the federal Medicaid statute. Effective October 1, 2011, the Community First Choice option allows Medicaid state plans to provide consumer-directed home and community-based attendant services and support to eligible individuals who require an institutional level of care. This section indicates that attendant services and support must be provided in accordance with federal and state laws, such as withholding and payment of federal and state income and payroll taxes, provision of unemployment and workers' compensation.

Although this has not been seen to date, there is speculation that legislation may be proposed in states to likewise require that attendant care services under workers' compensation be provided in accordance with federal and state employment laws.

- **Standards and Operating Rules for Electronic Exchange of Healthcare Information:** Section 10109 called for the Secretary of Health and Human Services (HHS) to seek input no later than January 1, 2012 from the National Committee on Vital and Health Statistics (NCVHS), the Health Information Technology Policy Committee, and the Health Information Technology Standards Committee on specific areas related to administrative simplification, including but not limited to:

- Provider Enrollment
- Property and Casualty Industry Inclusion under the Health Insurance Portability Accountability Act (HIPAA)
- Consistency and Standardization in Audits
- Consistency of Claim Edits

The first hearing occurred on November 18, 2011. At that hearing the International Association of Industrial Accident Board (IAIABC), the American Insurance Association (AIA) and the Minnesota Department of Labor and Industry provided testimony in support of electronic standards to simplify the administration of medical payments. However, they all emphasized that the requirements for medical billing and payment for workers' compensation and automobile insurance are vastly different than for health insurance.

While it does not appear that a recommendation will be made to include property and casualty insurance under HIPAA at this time, this issue will be reviewed every three years. The workers' compensation community needs to be aware of and participate in the public hearings each and every time this is being considered by the Secretary of HHS.

Section 1173 of the Social Security Act addresses the adoption of uniform standards for financial and administrative transactions and data elements to enable the electronic exchange of health information. The goal is to "improve the operation of the healthcare system and reduce administrative costs".

One provision of the national healthcare reform legislation has directly impacted workers' compensation.

- **Black Lung Benefits Act:** Section 1556 amended the Black Lung Benefits Act to restore the presumption that black lung disease is due to employment in the mines if the miner has worked in the mines for at least 15 years. The presumption is rebuttable if the miner did not work in the mines for 15 years or was a smoker. This change applies to claims filed under Part B or C of the Black Lung Benefits Act after January 1, 2005 that were pending on or after the date of enactment of this amendment. The act was also amended to reinstitute entitlement to survivor benefits without having to prove that the miner's death was due to pneumoconiosis. Both of these benefits had been removed by Congress in 1981.

On March 30, 2012 the Department of Labor proposed regulations to implement these amendments to the Black Lung Benefits Act (BLBA). The comment period expired on May 29, 2012. The proposed rules clarify how the statutory presumption is to be invoked and rebutted as well as the application and scope of the survivor-entitlement provision. The proposed rules also eliminate several unnecessary or obsolete provisions. Click [here](#) to view the proposed regulations.

Indirect Impact on Workers' Compensation

The following outlines provisions in the acts that may indirectly impact workers' compensation benefits and costs:

- **Prevention and Reduction of Fraud, Waste and Abuse:** Throughout the healthcare reform act, the HHS secretary is required to immediately establish procedures to prevent and reduce fraud, waste and abuse in the healthcare system. In addition to \$350 million for the Health Care Fraud and Abuse Control Program (HCFAC), the following includes additional tools and resources now available to fight healthcare fraud:

- Increase of the federal sentencing guidelines for health care fraud offenses that involve more than \$1 million in losses and establishment of penalties for obstructing a fraud investigation or audit;
- Enhancement of screening and enrollment requirements for providers and suppliers including licensure checks and site visits to confirm legitimacy and location;
- Since December 2011, the use of an Automated Provider Screening (APS) system that continuously verifies information submitted on a provider's Medicare enrollment application, including licensure status, from public and private sources;
- Expanded overpayment recovery efforts.

In fiscal year 2011, the government's health care fraud prevention and enforcement efforts recovered nearly [\\$4.1 billion](#) in taxpayer dollars.

It is anticipated that the efforts to reduce fraud, waste and abuse will have a wide reach and result in improved compliance by all healthcare providers, including those treating workers' compensation patients.

- **Excise Tax on Medical Devices:** Section 9009 imposes an excise tax of 2.3 percent on the sale of taxable medical devices by their manufacturer or importer beginning on or after January 1, 2013. Devices generally purchased by the general public at retail for individual use such as eyeglasses, contact lenses or hearing aids are exempted from the excise tax.

This tax is expected to bring in over \$20 billion over ten years. Manufacturers and importers are expected to pass on the cost of this tax to payers like workers' compensation insurance carriers and self-insured employers.

- **Health Cost Containment:** A number of options to achieve health cost containment, health efficiencies and more affordable health services are included in healthcare reform. Medicare and Medicaid are establishing pilot programs to develop and evaluate the use of Accountable Care Organizations (ACO) and episodes of care for which a single, bundled payment will be made to include all physician, inpatient and outpatient care for a knee or hip replacement or heart attack.

Depending on the results of these pilot programs, workers' compensation may also adopt these strategies.

Future Challenges

Despite the Supreme Court decision upholding the constitutionality of healthcare reform, full implementation of the act is not yet assured. On July 11, 2012, less than two weeks after the Supreme Court decision, the House passed a bill to repeal healthcare reform. It is unlikely that the bill will pass the Senate, and President Barack Obama has indicated he will veto any bill that attempts to repeal or defund healthcare reform.

However, with presidential candidate, Mitt Romney, pledging to repeal the law if elected; healthcare reform will likely be a key issue in the upcoming November 2012 elections.

The Workers' Compensation Practice Group will continue to monitor efforts to repeal the bill as well as the development of proposed regulations. We will report back periodically on any impact to the handling of workers' compensation claims.