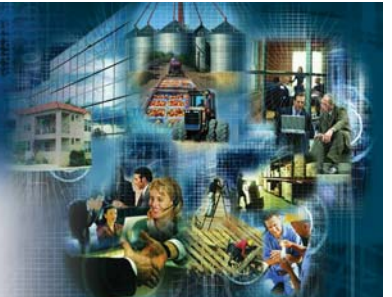




WRAITH, SCARLETT & RANDOLPH
INSURANCE SERVICES, INC

The Source

April 2010 , Volume 2, Issue 8



Landmark Legislation

National Health Insurance Law Deciphered

IN THE WAKE of the largest piece of social legislation since the 1960s, there is plenty of confusion concerning the recently enacted Patient Protection and Affordable Healthcare Act. The main concern for businesses is whether the legislation will increase or decrease the health coverage premiums they pay and if it will enable them to provide coverage for more or fewer of their employees.

While there's plenty of spin to go around, only time will tell what the long-term effects of this landmark legislation will be. But early indications are that it should provide the opportunity for more smaller businesses to offer their employees healthcare coverage.

The new law, valued at nearly \$1 trillion over the next 10 years, is expected to extend coverage to more than 32 million currently uninsured Americans. President Obama signed the bill on March 23 and a few days later he signed a "reconciliation" bill that enhanced the original measure and also eliminated some contradictory and controversial portions in the first bill.

This new legislation primarily focuses on the individual, the small group market and the uninsured. There are few provisions that are actually targeted at large corporations. Still, by increasing access to insurance for more individuals, big corporations that provide a large majority of the healthcare coverage in the country today won't have to cover the cost of the uninsured, pundits say.

That may or may not reduce premiums for mid-sized and larger employers, but analysts say that it will likely reduce the rate of premium inflation – which has averaged in excess of 10% in many years of this past decade.

The new law offers tax credits to small businesses to reduce the cost burden of providing health coverage for their employees. Under the legislation, tax credits of up to 35% will be immediately available to companies that choose to offer coverage. The small business tax credit will cover up to 50% of premiums starting in 2014.

That's when small businesses, self-employed individuals and others who do not have coverage will be able to purchase insurance offered by the new state-based purchasing pools or exchanges. The risk of these small employers and individuals will be pooled, giving them the same kind of purchasing power larger employers benefit from. This is expected to make paying for coverage much more affordable for the typical

small employer that may have wanted to offer insurance to its workers.

Also starting in 2014, companies with more than 50 employees must provide health insurance coverage to their staff or face a \$2,000-per-employee tax. Companies with fewer than 50 employees will be exempt from this provision and will not be required to provide health insurance for their employees.

Other notable provisions of the legislation include:

- Starting this year, insurers will be barred from placing lifetime dollar caps on policies. The law will also bar insurers from revoking coverage from any policyholder that gets sick.

Please see "Coverage" on page 2



CONTACT US



WRAITH, SCARLETT & RANDOLPH
INSURANCE SERVICES, INC

283 W. Court St.

Woodland, CA 95695

Phone: (530) 662-9181

Toll Free: (877) 920-8500

www.wsrins.com

License No. 0B48084

If you would like to receive this newsletter electronically, e-mail us at: info@wsrins.com.

Workplace Safety

Federal OSHA Ramping Up on All Fronts

THE U.S. Department of Labor is increasing enforcement in areas such as the use of independent contractors and its Occupational Safety and Health Administration (OSHA) division is ramping up worksite inspections to new levels.

While the DOL is asking for a budget that's slightly reduced, OSHA is substantially increasing its budget in order to step up worksite inspections and hire more inspectors. As part of this effort, it is reshuffling how its budget is spent and redirecting resources towards new efforts, increased regulatory activity and creating new obligations for employers.

Also, there is a major push within the DOL to make investigations more transparent. Strategies include increasing the number of press releases on investigations it sends out. This could provide unwanted attention from the local press and community for any employers under investigation.

OSHA is asking for a budget of \$573 million, up \$14 million or 2.5%. Also, funding for OSHA state programs, which cover 27 states and territories, will increase 2%. This will allow states to hire more compliance safety and health officers (CSHOs) and expand enforcement efforts under their jurisdiction. This increase in resources comes after an earlier shift in resources away from cooperative and compliance assistance programs and a larger budget increase for the current 2010 fiscal year. In a word, employers should be prepared for this increased oversight.

For example, OSHA earlier increased its internal enforcement capabilities by transferring 35 employees from compliance assistance to enforcement, as well as hiring 25 new CSHOs. That comes on the heels of the agency hiring an additional 250 in-

spectors in 2009. OSHA Assistant Secretary David Michaels said in a prepared statement that these new resources will allow the agency to conduct more inspections under national and local emphasis programs as well as other targeted inspections.

It will also expand use of the "general duty clause" in areas such as ergonomics and will require that employers keep records of any repetitive motion injuries sustained by employees.

OSHA has announced that it plans to conduct 42,250 inspections in fiscal year 2011, which starts Oct. 1, 2010. This is the most significant increase in the level of inspections per year since the 1990s.

OSHA will also shift more of its resources into drafting new standards and regulations. To assist in an expanded rule-making effort, the agency's directorate in charge of standard setting will see its budget increased by 20% to hire 20 new employees.

Finally, in conjunction with the Department of Treasury, the DOL is rolling out a new initiative aimed at detecting and deterring misclassification of employees as independent contractors, and to strengthen and coordinate Federal and State efforts to enforce labor violations arising from misclassification.

This initiative includes \$12 million to hire 90 new investigators who will specifically target "industries with misclassification characteristics, such as construction, child care, home health care, grocery stores, janitorial, business services, poultry and meat processing, and landscaping."

The bottom line for employers is that OSHA and the DOL will be out in force. Don't let your workplace safety efforts lapse, lest your company is tagged and fined and made an example of. ■



Continued from page 1

Denying Coverage for Pre-existing Conditions Barred

- Parents will be able to keep older children on their policies until the age of 26 (takes effect this year).
- Later, in 2014, insurers will be prohibited from denying coverage to people with pre-existing medical problems and from charging them more than other individuals. Charging more based on a person's gender will also be banned.
- It requires new private plans to cover preventative services with no co-payments, and these preventative services will be exempt from deductibles. (This takes effect six months after enactment.)
- It requires plans in the individual and small group market to spend 80% of premium dollars on medical services, and plans in the large group market to spend 85%. Insurance

companies that don't meet these thresholds must provide rebates to policyholders. (Takes effect Jan. 1, 2011.)

- It provides access to insurance for Americans who are uninsured because of a pre-existing condition through a temporary high-risk pool. (Takes effect in six months.)
- It increases funding for community health centers to allow for nearly a doubling of the number of patients seen by the centers over the next five years. These centers will treat common ailments and injuries such as influenza, bronchitis and sprains, strains and breaks.
- Starting in 2013, the maximum amount an employee will be able to contribute to a flexible spending account will be \$2,500. ■

Workers' Compensation

Rates Up? Could Be the Way X-Mods Are Calculated

DUE TO mandatory changes to the way experience modifications are calculated, many of our clients have seen their X-Mods increase even if they have not had any new claims. While this is disconcerting to any company that is keen on running a safe workplace, the changes were approved by California's insurance commissioner. All insurance companies must use these new calculations.

Fortunately, it's only a small group of employers that have seen their X-Mods increase, while many have seen them decrease as a result of the changes to what's known as the California Workers' Compensation Experience Rating Plan.

Some employers have seen swings in their premiums of up to 30-40% as a result of the changes.

This article will explain what's happening without bogging you down in too much actuarial jargon.

California Insurance Commissioner Steve Poizner last year approved changes to the rating plan that were intended to simplify the experience rating system, improve its predictive accuracy and enhance its ability to provide a financial incentive for workplace safety.

The changes, some of which took effect Jan. 1 (and others that will take effect a year later), are based on recommendations made by the Workers' Compensation Insurance Rating Bureau's experience rating task force.

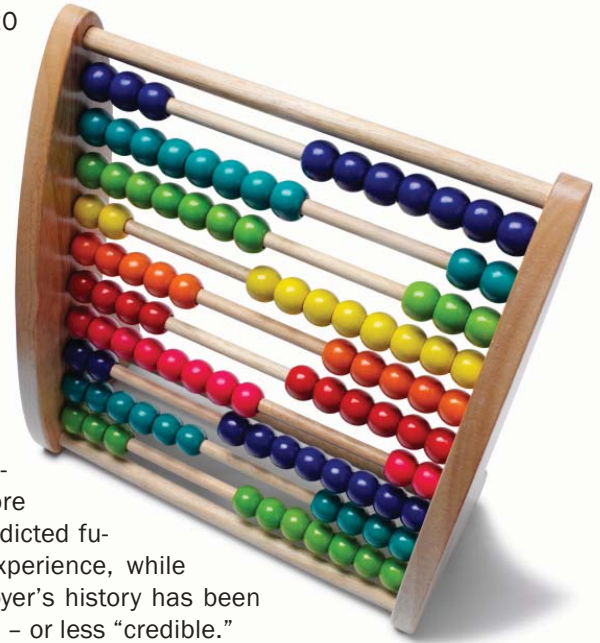
Until now, each claim's costs were split using a complex algebraic formula into "primary" and "excess" costs. To simplify the experience rating formula, the Rating Bureau proposed a "single split" approach whereby the first \$7,000 of a claim's value is considered primary and any remainder is considered excess (up to \$175,000). This single split formula is designed

to simplify the experience rating formula without impacting its predictive value.

As a result of the changes, about 60% of employers are seeing either a lower X-Mod or little to no change. Approximately 6% have seen a 10-20% difference, and about 2% have seen a difference of greater than 20 points.

The Rating Bureau also assigns value to an employer's claims history to predict future claims costs. Historically the claims experience of a large employer has more accurately predicted future claims experience, while a small employer's history has been less predictive – or less "credible."

The new rating plan has changed the values it assigns to the predictability of large and small employers' claims histories, which has affected premiums some employers pay. ■



Governor Staves Off Potential Premium Increases

ONE BIT of good news for employers in California is that the state will not update a schedule for rating the injuries of workers, a move that would likely have resulted in an increase in benefits to injured workers – and in turn higher premiums.

Despite a legal mandate to update the Permanent Disability Rating Schedule (PDRS) by Jan. 1, 2010, the acting director of the Division of Workers' Compensation, Carrie Nevans, has not ordered her staff to do so. Nevans works under the direction of Governor Schwarzenegger.

Four state Senate and Assembly leaders wrote to Nevans, saying that ignoring the statutory requirement to revise the PDRS "is a flagrant violation of the law." According to California law, the PDRS must be updated every five years.

The process actually started in 2008, according to Nevans, but was dropped when the economic crisis bore down.

Nevans, in response to the Feb. 4, 2010 letter from the legislators asking why the deadline had been missed, stated that "it is not currently prudent to move forward" because of the poor economy and uncertainty following two legal decisions on the old PDRS."

Nevans also said that decisions by California's Workers' Compensation Appeals Board in two cases known as *Almaraz/Guzman and Ogilvie* have called into question how ratings are issued for permanently disabled workers (injured workers' permanent disabilities are rated on a scale of 1 to 100).

The decisions allowed injured workers to challenge permanent disability ratings they received and have increased claims costs, in some cases substantially. The decisions have both been appealed.

"In writing regulations to administer the workers' compensation system I must look to the Labor Code and also examine the circumstances affecting the system," said Nevans. "To change the PDRS with no idea how the *Almaraz/Guzman* and *Ogilvie* cases will be decided would potentially create more uncertainty by eliminating the predictability of the PDRS and the stability that predictability provides.

"Creating this type of unnecessary uncertainty in the current economic environment would have devastating effects for employers and workers. To keep Californians employed, businesses must rely on stability and predictability." ■

Agricultural Industry

Labor Department Clamps Down on Foreign Workers

THE U.S. Labor Department has just made it more difficult for the agricultural industry to hire temporary and seasonal foreign laborers.

The new regulations for the H-2A foreign worker program, which reverse more liberal hiring rules under the Bush Administration, will require agricultural employers to make a more concerted effort to hire U.S. citizens and green-card holders for crop-picking and other harvest work. Besides adding layers of bureaucracy to the hiring process, the new regs also require farms to increase pay and improve job safety for the foreign workers they do employ. The new rules took effect March 15.

This is the fourth time in two years that H-2A program regulations have been changed, heaping confusion on the agricultural industry. According to the California Farm Bureau, farmers that currently use the H-2A program will find it much more difficult to continue using the program for legitimately hiring foreign workers.

Under Bush Administration regulations, an agricultural employer had to place an employment ad to try to find domestic workers. If the response was poor or non-existent, that was enough to show the need for hiring foreign laborers for the work.

Under the new regulations, farmers will be required to list their job openings on a new online job registry – USAJobs – before resorting to trying to find foreign workers. The jobs must be kept on the registry until halfway through the contract period.

In addition, individual states' workforce agencies will be required to conduct inspections of worker housing before authorizing an employer to hire foreign laborers. Also, employers will be barred from shifting costs of fees for visas and border crossings to the foreign workers.

The Department of Labor also focused the new regs on the process for obtaining labor certifications, the method for determining the H-2A Adverse Effect Wage Rate, and ensuring that temporary foreign workers are afforded the same workplace safety and wage protections as the domestic agricultural workforce.

The new regs also reinstate the 50% rule. Under that rule, if an employer has hired workers through the H-2A program and if a domestic worker applies for one of those jobs before the contract has run more than halfway (say one out of two months), the employer must hire the domestic worker and lay off the H-2A worker.

According to Bryan Little, California Farm Bureau Federation director of labor affairs, "in the past, wages were calculated using the Occupational Employment Service (OES) system



FIELD OF CONFUSION: If you have an agricultural operation, prepare yourself for more stringent H-2A foreign worker program regulations and tougher enforcement by the Department of Labor.

run by the Department of Labor, as opposed to the Adverse Effect Wage Rate Index calculated by the U.S. Department of Agriculture."

He said the OES system was so decentralized before that a farmer with operations in two counties would often have to pay people in one county "a significantly greater amount per hour than the people in the other county."

The new rules will require agricultural outfits who employ H-2A workers to pay everyone the higher of the two wages, increasing costs across the board.

The new rules are expected to increase the average pay for temporary farm workers by nearly a dollar per hour. ■

WSR

WRAITH, SCARLETT & RANDOLPH
INSURANCE SERVICES, INC

283 W. Court St.
Woodland, CA 95695

RETURN SERVICES REQUESTED

PRST STD
U.S. POSTAGE
PAID
ZMM

Produced by Risk Media Solutions on behalf of Wraith, Scarlett & Randolph Insurance Services Inc. This newsletter is not intended to provide legal advice, but rather perspective on recent regulatory issues, trends and standards affecting insurance, workplace safety, risk management and employee benefits. Please consult your broker or legal counsel for further information on the topics covered herein. Copyright 2010 all rights reserved.