

“What keeps you up at night?”

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Pennsylvania health care reform impacts employers, providers, insurers

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On June 10, 2009, Governor Rendell signed into law four new pieces of health care legislation designed to reduce the costs of health care, enhance patient access, and improve the quality of care. Three of the four new laws are part of Governor Rendell's Prescription for Pennsylvania, which was first unveiled in January 2007 and is the administration's integrated strategy for reforming health care in Pennsylvania. The fourth new law expands the ability of small business employees who lose their jobs to continue to purchase health insurance through their former employers. The four new laws are summarized below.

HOUSE BILL 84 (ACT 1 OF 2009):

HB 84, entitled the Preventable Serious Adverse Events Act, prohibits health care providers from knowingly seeking payment from a health care payor or patient for a “preventable serious adverse event,” or for any services required to correct or treat the problem created by such an event when the event occurred under their control. A “preventable serious adverse event,” also commonly referred to as a “never event,” is defined as an event that occurs in a health care facility and is within the health care provider's control to avoid, but occurs because of an error or other system failure and results in a patient's death or serious injury.

If a health care provider discovers that payment was unknowingly sought for a preventable serious adverse event, or for services required to treat the problem created by such an event, the provider must immediately notify the payor or patient. The health care provider must also refund any such payment received within 30 days of discovery or receipt of payment, whichever is greater. If a health payor discovers that payment has been sought for a preventable serious adverse event, or for services required to treat the problem created by the event, the payor must notify the health care provider that payment will not be made. Any information exchanged

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pursuant to these notice requirements is not discoverable or admissible in any action relating to Pennsylvania’s Medical Care Availability and Reduction of Error Act.

The Department of Health and the Department of State are charged with the responsibility for investigating complaints concerning providers and health care facilities who seek payments prohibited under the act. Substantially all provisions of HB 84 take effect on August 9, 2009. The full text of HB 84 and related details can be viewed at

<http://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2009&sind=0&body=H&type=B&BN=0084>.

HOUSE BILL 1089 (ACT 2 OF 2009):

With the enactment of HB 1089, Pennsylvania joins the majority of states with “mini-COBRA” laws. Effective July 10, 2009, Pennsylvania’s mini-COBRA law applies to employers with between 2 and 19 employees (federal COBRA applies to employers with 20 or more employees). It permits continuation of health care coverage under group health plans, including HMOs, on a similar basis as federal COBRA, except that dental and vision plans are excluded and the individual seeking continuation coverage must have been continuously covered for three months prior to the qualifying event. Coverage is mandated for up to 9 months (rather than federal COBRA’s 18 months or longer depending on additional qualifying events), but will terminate if the individual becomes eligible for Medicare or other group coverage, regardless of enrollment in such coverage. Notice obligations are abbreviated and employers should ensure that they understand who carries the burden of notice to employees, whether the insurer, the employer, or the employer’s administrator.

For small business employees who lose their jobs, Pennsylvania’s mini-COBRA law creates access to the COBRA subsidy provisions of the American Recovery and Reinvestment Act of 2009 (ARRA). Although the ARRA subsidies will expire at the end of 2009 unless otherwise extended, they are available to employees of Pennsylvania’s small employers who lose employment but are faced with paying for continuing health care coverage.

Like federal COBRA, premium payments for continuation coverage under Pennsylvania’s mini-COBRA law must be made on a monthly basis (regardless of ARRA subsidies), up to 105% of the group rate. Upon expiration of mini-COBRA coverage, a covered individual may convert to an individual policy. The full text of HB 1089 may be viewed at

<http://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2009&sind=0&body=H&type=B&BN=1089>.

SENATE BILL 89 (ACT 3 OF 2009):

SB 89 reauthorizes the Pennsylvania Health Care Cost Containment Council (“PHC4”). The PHC4 had been operating under an executive order issued by Governor Rendell after the Health Care Cost Containment Act, 35 P.S. §§ 449.1 et seq., was allowed to “sunset” on June 30, 2008. The PHC4 is an independent state agency established in 1986 to address rapidly growing health care costs. Recognized nationally as the leading agency of its kind, the PHC4 collects, analyzes and makes available to the public, data concerning the cost and quality of health care in Pennsylvania.

SB 89 amends the act by extending the sunset date to June 30, 2014. Other amendments to the act include: (i) establishing a payment data advisory group for the purpose of producing recommendations for the collection, analysis and public reporting of payment data by the PHC4; and (ii) prohibiting the PHC4 from requiring data sources to contract with a single vendor for the submission of any specific data elements to the PHC4. Substantially all provisions of SB 89 are effective immediately. View the full text of SB 89 and related details at

<http://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2009&sind=0&body=S&type=B&BN=0089>.

SENATE BILL 189 (ACT 4 OF 2009):

SB 189 amends the Insurance Company Law of 1921 by expanding health care coverage for children of insured parents. Under SB 189, group health coverage is now available, at the option of the employer policyholder, for an adult child of an insured employee through the age of 29, subject to certain restrictions. To qualify for

coverage, the child must meet the following requirements: (i) must not be married; (ii) have no dependents; (iii) must be a resident of Pennsylvania or enrolled as a full-time student at a college or university; and (iv) have no other health insurance or be eligible for benefits under any government program.

Under prior law, insurers were only required to provide coverage to dependent children under their parents' policies until the age of 19, if the employer offered dependent coverage. SB 189 takes effect on September 8, 2009, and applies to new health insurance policies and renewals occurring 180 days after June 10, 2009. The full text of SB 189 and related details can be viewed at <http://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2009&sind=0&body=S&type=B&BN=0189>.

Further details concerning the implementation of these new laws will likely emerge in the coming months. Saul Ewing LLP will keep you apprised of future developments as they occur. Please contact the authors if you have any questions or need any additional information.

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