

# Employee Benefits & Workers' Comp News



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Health

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## States Actively Working to Reform Health Care

Health care reform continues to be a hot topic during the 2020 presidential election.

Even though health care reform continues to be a hot topic during the 2020 presidential election, the power to transform health care this year may lie with the states since Congress has not enacted changes.

Health care was a major topic in many governors' state of the state addresses in 2019 and numerous states passed new legislation aimed at lowering health care costs and improving quality of care. These changes could foreshadow steps the federal government may eventually take — although not all



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## Three Health Insurance Taxes Repealed; One Fee Reinstated

President Donald Trump signed a bill into law that not only funds the federal government through fiscal year 2020, but also affects employers and employees' health benefits.

The bill repeals three taxes that were enacted to fund the 2010 health care reform act known as Obamacare. The taxes include:

- ★ Sec. 4980I — also known as the Cadillac Tax — was a 40 percent excise tax on certain high-cost employer sponsored health plans.
- ★ Sec. 4191 was a medical device excise tax that was im-

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voters are in favor of federal or state-provided health care.

Here are some examples of current actions or proposed state laws that are making an impact on the health care industry:

### Price Transparency

Health care is unique because consumers often don't know what the cost will be to see a doctor or undergo a procedure until they receive the service. This lack of transparency makes it difficult for consumers to shop for health care. It also lessens competition among providers and removes the incentive to keep prices low.

To improve transparency, 16 states have implemented mandatory All-Payer Claims Databases (APCDs) to collect health care price and quality information. However, only eight states make the information available to the public.

Another consequence of lack of transparency is that patients often don't know which providers are out-of-network. This can cost significantly more money. Or, patients find out after receiving services that their insurance only covers a portion of the costs — leaving them to pay the balance. More than half of the states have passed or expanded laws to protect patients from these kinds of “surprise” or balance billings.

### Provider Payments

Most current payment models reward providers for quantity of care instead of quality. For instance, the more tests that are ordered, the more money the hospital or facility receives. Some states, such as Colorado

and Maine, have implemented accountable care organizations for their Medicaid program to encourage providers to improve the coordination of care and minimize unnecessary spending. Maine also requires some health plans to inform patients about lower-cost providers when making referrals.

Some states, such as Maryland, Pennsylvania, and Vermont, use global budgets, which provide a fixed amount over a fixed period of time per population groups rather than fixed rates for individual services or cases. The goal is to control volume by putting a cap on hospital spending.

### Market Power

Some states are trying to create a more competitive marketplace and bring down health care costs. One of the ways they are doing this is by repealing laws limiting competition.

For instance, in the 1970s, many states implemented certificate-of-need (CON) laws. CON laws limited the creation of health care facilities, because some legislators thought they would prevent overuse and keep costs down. Instead, it appears that CON laws have thwarted competition and contributed to rising health care prices. Fifteen states now have repealed CON laws.

In addition, some states want to:

- ✳ Reduce provider scope-of-practice limitations, which have contributed to shortages of primary care providers and led to higher costs and longer wait times for appointments.

posed a 2.3 percent tax on domestic sales of medical devices.

- ✳ Section 9010 was an annual fee on health insurance providers.

All three taxes previously had been postponed or suspended.

The bill also reauthorizes the Patient-Centered Outcomes Research Institute (PCORI) fee on those who sponsor certain types of self-funded health plans and on fully insured carriers. PCORI had expired for plan years ending after Oct. 1, 2019, but now will run through 2029.

The fee helps fund the Patient-Centered Outcomes Research Institute (PCORI), a non-profit government-sponsored organization charged with investigating the relative effectiveness of medical treatments, making health care more affordable and improving workplace productivity.

- ✳ Implement legislation banning anti-competitive contract terms that some large health care systems and health plans have used to gain advantages over smaller competitors.

### Cost Controls

States have utilized a variety of measures to try to keep health care prices low, including oversight commissions. In Delaware, Massachusetts and Pennsylvania, oversight commissions analyze health care cost data and make recommendations. In Oregon, the Health Policy Board develops plans to improve health care. The Rhode Island commis-

sion has regulatory control over insurers and limits providers to rate increases that don't exceed the Consumer Price Index-Urban.

Another tactic is using benchmarking to control costs. Benchmarking establishes a standard of excellence and measures how well businesses of a similar type, such as hospitals, perform in comparison. For example, the Massachusetts Health Policy Commission has set a benchmark for limiting growth of state health care costs for all payers to 3.1 percent. Those who are not able to contain costs according to the benchmark must submit improvement plans.

### ACA-Like Coverage

Concerned that the Affordable Care Act (ACA) will be invalidated, some states are reinforcing key ACA coverage provisions. Maine and Wisconsin are proposing that insurers provide coverage for individuals who have pre-existing conditions — a provision that already is law under the ACA. Pennsylvania and New Jersey are taking control of their ACA marketplaces from the federal government.

New Mexico and other states offer public insurance options and Washington is considering a Medicare-like plan. Colorado and Washington are implementing public insurance options some believe could be a model for Democrats at the federal level. Both plans would be privately administered, and would pay providers 160 percent or more of Medicare rates.

California is working on an ambitious state-financed coverage expansion.

### Un-ACA-Like Coverage

Not all states are working to keep ACA plans. Georgia is looking to eliminate the state's marketplace and wants to allow healthier consumers to choose pared down plans which do not meet all ACA standards but are more affordable.

Idaho is promoting short-term insurance plans as an alternative to the ACA. These plans are temporary and do not offer the same coverage as ACA. However, the plans are considerably less expensive and targeted to individuals who are between jobs, have missed open enrollment or are waiting to become eligible for Medicare. ■

# CDC Guidance for Employers and Coronavirus COVID-19

Your cleanliness and sick leave policies need to be reexamined.

To get the latest CDC recommendations and to sign up for email CDC updates, visit <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>

**T**hough it's too soon to tell as we go to press, there probably will be workers' compensation issues regarding the payment of temporary and medical benefits due to occupational exposure to the COVID-19. However, since an occupational injury or disease must usually be unique to and triggered by work conditions — and not something to which the general public is exposed — in most situations employees affected by the coronavirus would not receive workers compensation. Nevertheless, experts say that employers need to be careful about situations where exposure to the virus could be construed by some as an occupational injury.

To help prevent workplace exposure to acute respiratory illnesses, including COVID-19, the CDC has issued the following guidelines. Employers are also cautioned that to avoid workplace stigma and discrimination, determination of risk should not



be based on race or country of origin.

### Actively encourage sick employees to stay home:

- ✦ Employees who have symptoms of acute respiratory illness are recommended to stay home and not come to work until they are free of fever (100.4° F [37.8° C] or greater using an oral thermometer), signs of a fever, and any other symptoms for at least 24 hours, without the use of fever-reducing or other symptom-altering medicines (e.g. cough suppressants). Employees should notify their

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supervisor and stay home if they are sick.

- ✱ Ensure that your sick leave policies are flexible and consistent with public health guidance and that employees are aware of these policies.
- ✱ Talk with companies that provide your business with contract or temporary employees about the importance of sick employees staying home and encourage them to develop non-punitive leave policies.
- ✱ Do not require a healthcare provider's note for employees who are sick with acute respiratory illness to validate their illness or to return to work, as healthcare provider offices and medical facilities may be extremely busy and not able to provide such documentation in a timely way.
- ✱ Employers should maintain flexible policies that permit employees to stay home to care for a sick family member. Employers should be aware that more employees may need to stay at home to care for sick children or other sick family members than is usual.

### Separate sick employees:

- ✱ CDC recommends that employees who appear to have acute respiratory illness symptoms (i.e. cough, shortness of breath) upon arrival to work or become sick during the day should be separated from other employees and be sent home immediately. Sick employees should cover their noses and mouths with a tissue when coughing or sneezing (or an elbow or shoulder if no tissue is available).

### Emphasize staying home when sick, respiratory etiquette and hand hygiene by all employees:

- ✱ Place posters that encourage staying home when sick, cough and sneeze etiquette, and hand hygiene at the entrance to your workplace and in other workplace areas where they are likely to be seen. For more information visit [https://www.cdc.gov/healthywater/hygiene/etiquette/coughing\\_sneezing.html](https://www.cdc.gov/healthywater/hygiene/etiquette/coughing_sneezing.html)
- ✱ Provide tissues and no-touch disposal receptacles for use by employees.
- ✱ Instruct employees to clean their hands often with an alcohol-based hand sanitizer that contains at least 60-95% alcohol or wash their hands with soap and water for at least 20 seconds. Soap and water should be used preferentially if hands are visibly dirty.
- ✱ Provide soap and water and alcohol-based hand rubs in the workplace. Ensure that adequate supplies are maintained. Place hand rubs in multiple locations or in conference rooms to encourage hand hygiene.
- ✱ Perform routine environmental cleaning.
- ✱ Routinely clean all frequently touched surfaces in the workplace, such as workstations, countertops, and doorknobs. Use the cleaning agents that are usually used in these areas and follow the directions on the label.
- ✱ Provide disposable wipes so that commonly used surfaces (for example, doorknobs, keyboards, remote controls, desks) can be wiped down by employees before each use. ■

## How to Stay in Compliance When Employees Work Remotely

As telecommuting continues to gain popularity with it comes a new set of compliance challenges for businesses.

Telecommuting occurs when employees do some or all of their work away from the company's main office. Computers, laptops and cell phones, and the availability of high-speed internet connections and secure servers, make working from home, hotels, airports, libraries or coffee shops much easier.

According to the 2017 "State of Telecommuting in the U.S. Employee Workforce Report," almost three percent of U.S. employees worked from home at least half of the time. This is a 115 percent increase in telecommuting jobs since 2005. Globally, the percentage of employees who work away from the office is higher. In 2018, IWG, a Switzerland-based service office provider, reported that 70 percent of professionals work remotely at least one day a week, while 53 percent work remotely at least half of the week.

Telecommuting's appeal to employees is that the increase in flexibility creates better work-life balance and the decrease in travel

time means less time on the road and less wear and tear on their vehicles.

The principal appeal to employers is that less office space is needed, meaning lower facility and infrastructure costs. Global Workplace Analytics reports that a typical business can save about \$11,000 per person in reduced office space and associated costs when employees telecommute.

As good as that might sound, there are legal issues surrounding telecommuting. Consider talking to an employment law attorney to put in place a formal company policy before starting your telecommuting program.

Here are a few of the compliance issues you might face:

### Time and Compensation

Although findings from the Champlain College's Online Masters in Law degree program indicate that salaried workers are more likely to work remotely than nonexempt employees, that doesn't mean you don't need to monitor employees' productivity. It's particularly important when nonexempt employees telecommute. The Fair Labor Standards Act (FLSA) requires employers to keep accurate records of the hours employees work, as well as to pay employees for all hours worked — including overtime for more than 40 hours per week. Telecommuters also must be allowed rest and meal breaks.

Human resource experts recommend employers have a written telecommuting policy that employees sign off on. The policy can include the number of hours expected to be worked each day or week and how hours are

recorded. It also should stress that non-exempt employees are prohibited from working off-the-clock.

In addition to possibly using an electronic system to track hours, managers and supervisors should communicate regularly with employees who work off site.

### Company Property

If you require your employees to use company-owned equipment, such as a computer or cell phone, you should determine ahead of time who will be responsible for any damage or theft of the equipment. Have your employees sign paperwork acknowledging their responsibility and whether the equipment can be used for personal reasons.

### Security

Businesses that deal in confidential and proprietary information must ensure that remote employees are working from a secure connection or through a VPN. Employees also should secure access to company information by using encryption, passwords and network firewalls and avoid the use of personal devices for company business.

### Workers' Compensation

Employees who are injured on the job — even when working at home — can file

worker's compensation claims because employers are responsible for the safety of their employees. To reduce the possibility of injuries, it's helpful to have employees set aside the part of their home used as office space and reduce fatigue by designating set times for breaks and lunch.

### ADA and FMLA Laws

Employees who are disabled often are better accommodated when they work from home. These employment situations are governed by the Americans with Disabilities Act; the Family and Medical Leave Act (FMLA); state workers' compensation laws; privacy concerns; and workplace safety. Your managers and supervisors must ensure they are providing reasonable accommodations and are in compliance with those rules and regulations.

For more information on compliance issues and telecommuting, please contact us.



# Top 5 Workers Comp Fraud Schemes

According to the National Insurance Crime Bureau, fraud costs insurers and employers over \$7 billion a year. Studies show 10 percent or more of all property/casualty insurance claims are fraudulent. The most common fraud schemes are:

- 1 Fraudulent billing and billing codes.** The provider bills for visits or services that never happened or bills separately the workers' comp insurer and the patient's health insurance for the same incident, also known as double-billing or double-dipping.
- 2 Unnecessary treatments.** The provider does provide services, but the services are not related to the claim.
- 3 Illegal kickbacks.** When providers receive payments in exchange for a referral.
- 4 Soliciting on behalf of colleagues.** Providers work with runners, cappers or steerers, to direct injured workers to a certain medical provider.
- 5 Pharmaceuticals and medical equipment.** Pharmacies bill for brand-name prescriptions but the patient receives generic drugs or is billed for medical equipment that was never utilized.

Medical fraud perpetrators may be single providers but may also act as part of organized crime rings conducting multimillion-dollar schemes. Data and new technologies are helping carriers to identify



these schemes and watch out for new potential frauds. But employers and other stakeholders also need to be aware of these practices. Please call us if you would like more information. ■

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