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The ADA Amendments Act of 2008

On September 25, 2008, President Bush signed into law the ADA Amendments Act of 2008 (the "Act"). The Act carries out the Americans with Disabilities Act's objectives of providing a clear and comprehensive national mandate for the elimination of discrimination and clear, strong, consistent and enforceable standards addressing discrimination by reinstating a broad scope of protection to be available under the ADA which had been narrowed by the courts since the passage of the ADA. The Act is effective on January 1, 2009. The EEOC and other applicable federal agencies must now issue clarifying regulations.

"Disability" under the Act

Section 4 of the Act amends the ADA to redefine the term "disability," by also defining "major life activities" and "being regarded as having such an impairment." Additionally, it sets forth rules of construction regarding the definition of "disability," including that: (1) such term shall be construed in favor of broad coverage of individuals under the Act; (2) an impairment that substantially limits one major life activity need not limit other major life activities in order to be a disability; (3) an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active; and (4) the determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of specified mitigating measures.

Discrimination on the Basis of Disability

The Act prohibits employment discrimination against a qualified individual "on the basis of disability." Current law prohibits employment discrimination against a qualified individual with a disability because of the disability. The Act also prohibits the use of qualification standards, employment tests, or other selection criteria based on an individual's uncorrected vision unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be related to the position and is consistent with business necessity.

Rules of Construction

Section 6 of the Act declares that nothing in the Act: (1) alters the standards for determining eligibility for benefits under state workers' compensation laws or under state and federal disability benefit programs; (2) alters the requirement to make reasonable modifications in policies or procedures, unless such modifications would fundamentally alter the nature of the goods, services, facilities, or accommodations involved; or (3) provides the basis for a claim by an individual without a disability that the individual was subject to discrimination because of the individual's lack of disability.

Conforming Federal Regulations

The Act clarifies that the authority of the Equal Employment Opportunity Commission (EEOC), the Attorney General, and the Secretary of Transportation to issue regulations includes the authority to issue regulations implementing the definitions of this Act.

Rehabilitation Act of 1973

Finally, the Act makes conforming amendments to certain definitions within the Rehabilitation Act of 1973.

For a copy of the new law, see www.govtrack.us/congress/billtext.xpd?bill=s110-3406.

Generic Strategies Yield the Greatest Impact

According to a recent Medco Systemed survey, 98 percent of plan sponsors surveyed have strategies in place to drive generic and plan-preferred drug utilization, and nearly 70 percent of plan sponsors believe that expanding the use of these drugs will prove to be the most potent weapon in the fight to control escalating pharmacy benefit costs in the years ahead.

When it comes to specific tactics for driving generic utilization, the largest percentage of organizations (41 percent) believe that financial incentives will be the most effective method for changing member behavior in the future. Financial incentives include approaches such as multi-tier plans, generic copayments waivers, and member-pays-the-difference programs. Plan sponsors view rules requiring the use of generics and plan-preferred drugs as the second-most influential approach (27 percent.)

Clearly, programs that engage members in lowering their drug costs, as opposed to programs that mandate generic and plan-preferred drug usage, are favored by most organizations.

Fast Fact: According to Medco Systemed, every 10 percent increase in the generic dispensing rate typically results in a 6 percent decrease in drug costs.

2009 Health Insurance Cost Predictions

The predictions for healthcare trends are now being released for 2009 and the outlook is a bit disappointing. These trends are predictions for projected changes in health plans' per-capita claims cost, as determined by insurance carriers, major insurance carriers (MCOs) and third-party administrators (TPAs).

The following factors can affect a trend: inflation, cost-shifting, fixed deductibles and copayments, utilization increases, use of more expensive treatment options, government-mandated benefits and technology changes. As a general rule, there is usually a high correlation between trend rates and actual cost increases as determined by carriers. Despite this, changes for plan sponsors may not be as similar compared to projected trends because of the uniqueness of the company.

According to The Segal Group, Inc., all medical plan types are projected to be higher than inflation for 2009; specifically, more than four percent higher than the consumer price index for all urban consumers (CPI-U). This was 5.6 percent in July of 2008, which is also higher than the annual increase in average weekly earnings (2.8 percent in July of 2008.)

In addition, specialty drug price trends are almost double the retail trend, and utilization predictions for drugs are higher for generics as compared to brand drugs.

According to PriceWaterhouseCoopers' (PwC) Health Research Institute, the percentage rate of increases has diminished each year since 2003, in spite of the fact that healthcare costs outpace inflation. While new technology and patient behavior changes have limited costs in the past, medical costs are expected to increase by over nine percent in 2009.

Mercer Health & Benefits predicts a different trend. According to their preliminary survey findings, cost growth is predicted to slow in 2009, to 5.7 percent, the lowest increase in more than 10 years. The average total cost to renew current health plans is expected to grow by eight percent, or closer to 10

percent for smaller organizations (10 to 499 employees). Unlike the PwC survey, Mercer finds that employers are trying to hold down costs by shifting costs to employees. In fact, more than half of respondents will reduce their 2009 cost increase by raising deductibles, copayments, coinsurance or employee out-of-pocket spending limits. Other companies (19 percent) will add a consumer-directed health plan (CDHP) to help lower 2009 health costs. This is predicted to increase costs by only 4.5 percent, as compared to 6.4 percent for employers not offering a CDHP.

Employee Alcohol Use Contributes to Absenteeism, Increased Healthcare Costs, and Lost Productivity

According to the American Psychiatric Association and the American Psychiatric Foundation, nine percent of American workers abuse alcohol, which then contributes to absenteeism, increased healthcare costs and lost productivity. Unfortunately, less than 10 percent of these individuals receive treatment for their problem.

Alcohol abuse is more prevalent in men than women and is more common in certain fields. According to the American Psychiatric Association, the following is a breakdown of how widespread alcohol problems are within some of the most common industries:

Leisure, Hospitality, Arts	15%
Construction, Mining	15%
Wholesale Trade	12%
Professional	11%
Retail Trade	10%
Finance and Real Estate	9%
Manufacturing	9%
Transportation, Utilities	8%
Information, Communication	7%
Agriculture, Forestry, Fishing, Hunting	7%
Other Services	6%
Education, Health, Social Services	5%
Public Administration	5%

In order to reduce and eventually eliminate alcohol abuse from your workplace, consider implementing a screening and intervention process into your organization. Screen employees with a questionnaire (either through a short interview or a written questionnaire) on their drinking habits, including frequency and amount.

If a test reveals a problematic drinking pattern, offer an intervention program through your Employee Assistance Program (EAP). This program should outline specifically what is expected of the employee with regard to treatment, alcohol testing and their employment future.

Screening can be administered after employees have tested positive for alcohol and/or drug use or as part of a health promotion or wellness program. Excessive alcohol use can have a dramatically negative impact on your employees' performance, productivity and general well-being. It is better to attack this problem head-on versus waiting for it to spiral out of control. Plus, since your employees spend a majority of their waking lives at work, your organization is a great place to assist with these problems.

Please contact your TWG representative for more information.