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Medicare Law Will Impact Private Fee-For-Service Plans

On July 15, Congress overrode President Bush's veto of Medicare legislation that blocked cuts in physician payments and provided enhanced benefits to Medicare beneficiaries. Most significant for employers are provisions that reduce funding for Medicare Advantage plans and that change how private fee-for-service plans must be structured.

Background

Among other things, the Medicare Prescription Drug, Improvement and Modernization Act of 2003 included scheduled cuts in payments to physicians under Medicare. Each year since the law's enactment, Congress has prevented these reductions from being implemented. As part of its legislative effort to block a 10.6% cut in physician payments for the remainder of 2008 and into 2009, Congress included some provisions to improve Medicare benefits as well as provisions intended to help pay for the physician payments (e.g., cuts in payments to Medicare Advantage (MA) plans and changes to private fee-for-service (PFFS) plans). President Bush vetoed the legislation because of the MA plan cuts, but Congress immediately overrode the veto. Although the law does not directly affect employers, it may impact those that provide retiree medical benefits, particularly employers sponsoring PFFS arrangements.

The Medicare Improvements for Patients and Providers Act of 2008

The new law contains many improvements for Medicare beneficiaries (e.g., reduction in mental health benefit co-payments to 20% over five years, improved preventive care benefits, and starting in 2013, coverage of certain barbiturates and benzodiazepines under Medicare Part D). It also includes some provisions that should be useful to providers (e.g., bonus payments for physicians who participate in electronic prescribing). Discussed below are the two aspects of the law that could most impact employers providing retiree coverage.

Reductions in Payments to Medicare Advantage Plans

Starting in 2010, payments to MA plans will be modestly reduced by phasing out the portion of the payments that are for indirect medical education (i.e., for teaching hospitals). Because these payments vary widely to the extent there are teaching hospitals in a region, the impact on MA plans will vary. In most cases, the premium impact is not expected to be significant. The law also reduces the funding for the MA Regional Plan Stabilization Fund, which is intended to provide supplemental funds to regional preferred provider organizations (PPOs). However, because this fund has never been used, the reduced funding will have no impact on MA plan rates.

> ***BUCK COMMENT.*** *Because the MA payment changes do not go into effect until 2010, employers sponsoring MA plans will not be affected in 2009.*

Changes in Private Fee-for-Service Plans

Some employers offer retirees PFFS MA plans, which currently do not require provider networks. Instead, any provider who provides services to a PFFS member is "deemed" to have agreed to the terms of the plan. Starting in 2011, employer PFFS plans will no longer be able to use "deemed providers" and will have to actually contract with providers. Individual PFFS plans can still use deemed providers, but only in counties where there are fewer than two MA network plans available.

> ***BUCK COMMENT.*** *Although this may not eliminate employers' use of PFFS plans, it does mean that these plans will have to be structured differently and will not be as attractive to many employers. One of the main benefits of PFFS plans for employers has been the ability to offer a national MA plan covering all retirees. Regional PPO plans could represent a viable option for employers to replace or supplement PFFS plans. Again, because these changes do not go into effect until 2011, employers' arrangements for 2009 are not affected.*

Conclusion

The new Medicare law may impact how employers deliver retiree medical benefits, particularly employers who sponsor, or are considering, PFFS plans. Buck's consultants would be pleased to discuss these changes with you and help you design the optimal approach for your retiree medical programs.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.

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