**Finding the Balance: How Health Reform Creates Challenges and Opportunities for Employers to Improve Health Coverage**

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No stakeholder is more anxious about health reform than United States employers. Setting aside the pending political and constitutional challenges, the Patient Protection and Affordable Care Act ("PPACA"), P.L. 111-148, is still the law of the land. At the very least, PPACA acknowledges that the United States' health system is in peril. Whatever the source of change, whether through regulation or the marketplace, change needs to occur if employers are to stay competitive globally.

Two often-buried considerations stemming from PPACA warrant employers' attention as they begin making plans to comply with the law. The first consideration concerns enforcement from employees, a growing area of employer angst. PPACA adds protections under the Fair Labor Standards Act ("FLSA") to whistleblower employees. PPACA § 1558. Effective immediately, employees are protected from retaliatory discharge or treatment if they voice a concern regarding an issue that they reasonably believe to be a violation of Title I of PPACA. Title I of PPACA contains provisions relating to the automatic enrollment requirements for large employers, changes in benefits and limitations, as well as notice requirements.

The numerous changes under PPACA will likely cause concern and confusion among employees. Employee confusion around employer responses to health reform may generate retaliation claims and invoke the new whistleblower protection, even if those claims are ultimately unjustified. Thus, to the extent that employers make changes to their health coverage options, even if the purpose of such change is lawful, employers may face a surge in FLSA retaliation claims as employees resist the change. Clear, consistent communication to employees will be a critical component to any implementation strategy relating to health reform.

A second consideration produces an opportunity to build upon a concept being championed by larger employers: in-house clinics. PPACA provides grant funding for Nurse-Managed Health Clinics that provide primary care or wellness services to underserved or vulnerable populations associated with educational or nonprofit entities. For-profit employers may find such clinics advantageous to their bottom line as well.

Employers who continue offering health coverage to employees may explore using or enhancing the use of in-house clinics as part of the "minimum essential coverage" required under PPACA. In-house clinics may also provide a necessary alternative to an ever-consolidating health care provider marketplace. PPACA encourages the formation of Accountable Care Organizations, which are organizations that promote accountability for a patient population, coordinates services

under Medicare, and encourages investment in infrastructure and redesigned care processes for high quality and efficient service delivery. Although such organizations have the potential to provide seamless, high quality and efficient care, health insurers, consumers and smaller physician practices have expressed concern that Accountable Care Organizations will amass market power leading to price fixing and other anti-competitive concerns.

The rise of in-house clinics may offer an appealing and affordable alternative to mammoth Accountable Care Organizations. In-house clinics may give employers more control over the cost of health care by tapping into a consumer desire for convenience and using less costly physician extenders to deliver basic health care services.

Of course, establishing in-house clinics presents legal challenges that can vary by state. One of those legal challenges is what business model to use, such as whether the clinic should employ health care personnel directly, lease space to an established health care provider, or create a separate health care provider entity. The appropriate business model will be impacted by a state's health care professional licensure, facility licensure, corporate practice of medicine and fee splitting laws. Other laws that affect in-house clinics include those relating to health information privacy, tax exemption, and conflicts of interest.

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