The Affordable Care Act and Developments in Insurance Law:

NCLSN – November 6, 2014

David L. Trueman, J.D., Ph.D.
Columbia University School of Law
Law Offices of David L. Trueman, P.C.
New York City, Mineola

truemanlaw@optonline.net
Copyright © 2014 David Trueman. All Rights Reserved.
The Affordable Care Act: Goals

- The major goals of the Patient Protection and Affordable Care Act ("ACA") were to:
  - Expand health care coverage, ideally, to all U.S. citizens and legal immigrants;
  - Make health care more affordable;
  - Provide consumer protections for those with insurance;
  - Reduce costs in the health care system; and
  - Improve the quality of care.
ACA’s Interlocking Changes to the American Health Care System

• In order to accomplish its goals, the ACA promoted these interlocking changes:
  – Medicaid expansion;
  – Health Care Exchanges (a.k.a. Marketplaces);
  – The individual mandate;
  – Employer responsibilities;
  – Insurance protections for consumers;
  – Limited changes to Medicare; and
  – Quality of care and cost-saving mechanisms.
The Affordable Care Act and Insurance Reforms 1

- The ACA enacted significant changes to both non-group and group health insurance, which took full effect in 2014.
  - Prohibits insurers from rescinding coverage except in cases of fraud.
  - Prohibits pre-existing condition exclusions.
  - Prohibits individual and group health plans from placing lifetime limits on the dollar value of coverage.
  - Prohibits individual and group plans from placing annual limits on the dollar value of coverage.
The Affordable Care Act and Insurance Reforms 2

- Health plan premiums are only allowed to vary based on the following:
  - age (by a 3 to 1 ratio),
  - geographic area,
  - tobacco use (by a 1.5 to 1 ratio), and
  - the number of family members.
- Health plans are required to cover certain preventive care with no cost-sharing.
- Medical Loss Ratio: Requires health care plans to spend on medical costs at least 85% of premiums for large employers and 80% for plans in the individual and small group market.
The ACA: Making Coverage More Available

- Medicaid has been expanded. The ACA has made available a Medicaid expansion, thereby covering individuals with up to 138 percent of the federal poverty level, which in 2013 was $11,490 (individual), 15,510 (two), 19,530 (three), and 23,550 (four).
- Individuals who earn between 138% of the FPL and 400% of the FPL who purchase insurance on the Exchanges will receive premium subsidies.
- Insurance availability cannot be based on health status.
- Insurers will be prohibited from denying coverage or charging higher premiums due to a pre-existing condition. Insurers must also eliminate any pre-existing condition waiting periods.
Problems with Medicaid Eligibility Under the ACA

- The ACA mandated that all states expand Medicaid to make it eligible to all people, including single individuals, who earn up to 133% (effectively 138%) of the FPL.
- The Supreme Court ruled the Medicaid expansion mandate unconstitutional.
- Therefore, states were left with the choice to expand Medicaid.
Problems with Medicaid Eligibility Under the ACA 2

- Individuals earning between 100% and 138% of the FPL in states that refuse to expand Medicaid will be unable to obtain subsidies on the Exchanges as the Exchanges provide subsidies beginning at 138% of the FPL.
- The failure to expand Medicaid results in approximately five million individuals being ineligible for Medicaid and unable to obtain premium credits on the Exchanges.
The ACA: Clinical Trials

- Beginning in 2014, the ACA required new and non-grandfathered health plans to cover clinical trials.
- Plans may not
  - deny the individual participation in the clinical trial;
  - deny, limit, or impose additional conditions on the coverage of routine patient costs for items and services furnished in connection with participation in the trial; and
  - discriminate against the individual based on their participation.
- An individual is eligible to participate in an approved clinical trial according to the trial protocol and if referred by a participating health care provider.