IADC Committee Newsletter

PROFESSIONAL LIABILITY

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This month's newsletter gives an overview of some of the taxes that will be imposed pursuant to the Patient Protection and Affordable Care Act.

A PRIMER ON THE TAXES EMBEDDED IN THE HEALTHCARE REFORM ACT

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ABOUT THE COMMITTEE

The Professional Liability Committee consists of lawyers who represent professionals in matters arising from their provision of professional services to their clients. Such professionals include, but are not limited to, lawyers, accountants, corporate directors and officers, insurance brokers and agents, real estate brokers and agents and appraisers. The Committee serves to: (1) update its members on the latest developments in the law and in the insurance industry; (2) publish newsletters and Journal articles regarding professional liability matters; and (3) present educational seminars to the IADC membership at large, the Committee membership, and the insurance industry.

Learn more about the Committee at www.iadclaw.org. To contribute a newsletter article, contact:

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We are now all aware that the United States Supreme Court has upheld most of the provisions contained in the Healthcare Reform Act, aka the Patient Protection and Affordable Care Act ("The Act"). Many of us, however, are not aware of several of the new taxes contained in The Act, which may have a significant impact on our clients in the Healthcare Industry for many years to come.

One such tax is a 2.3% excise tax on the sale of "medical devices." Importantly, this is a tax on sales, not on profits. The tax is paid by the manufacturer or importer, not the ultimate consumer. Of course, it is anticipated that the cost will be passed along to hospitals, patients, and health insurers in the form of higher costs for the taxable items. Included are "big ticket" items such as MRI and X-ray machines and other hospital equipment. The tax also applies to smaller items for individual patients such as hip and knee joint replacements, other prosthetics, dental implants, pacemakers, etc. Excluded from the tax are items generally purchased by the public at retail for individual use. This would include such items as eyeglasses and other items commonly purchased at a local drug store.

Budget committees estimate that this tax will generate approximately $2 billion in 2013, increasing to more than $3 billion by 2022, with a total ten year impact in excess of $20 billion. Although the long term impact on the medical device industry is uncertain, one concern is that manufacturing jobs in the U.S. may be sent overseas to supply markets where this excise tax does not exist.

A $23 billion tax will also be imposed on the pharmaceutical industry at the rate of $2.3 billion annually, to be paid based on market share. As with the tax on medical device manufacturers, the ultimate impact of this tax is still to be determined. Keep in mind that the United States is the largest prescription drug market in the world. If, as some analysts project, prescription drug sales balloon over the next ten years, from $350 billion in 2012 to more than $700 billion by 2022, then the impact of the tax increase will be blunted. However, if cost pressures under The Act continue to mount, we can expect that the big pharmaceutical manufacturers may well cut back on research and development, focusing more on cost savings than innovation. Such a shift undoubtedly would lead to job reductions in the pharmaceutical industry.

A third new tax will impact the health insurance industry beginning in 2014. Health insurers will be assessed a $60.1 billion tax, payable over ten years, based on premium market share. The tax has gradual increases from 2014 through 2018, at which point it will be fully implemented. After 2018, the tax will increase at the rate of inflation. Of course, we must not forget that one of the intended consequences of The Act is that there will be millions more Americans covered by health insurance, and therefore paying the premiums which will help cover the tax increase.

At the same time, health insurers will be monitored to make certain that at least 85% of premium dollars are spent on direct healthcare costs, with no more than 15% for administration and profit.

There is one additional provision in The Act that may have a significant revenue impact on hospitals, but which also has the most potential for positively impacting patient care. Starting last month (October 2012), Medicare will begin reducing reimbursements to hospitals with high 30 day readmission rates.

The penalties will range from 1% in 2012 to 3% in 2014. More than 2,000 hospitals nationwide may be subject to the penalties.

The purpose of the penalties is to cause the hospitals to focus on overall quality of care, with the benchmark being a reduction in the number of patients being readmitted to the hospital within 30 days. Approximately two million Medicare patients are readmitted each year within 30 days of discharge with an estimated cost of $17.5 billion. This provision places the burden for the cost of readmission squarely on the hospitals, and should encourage facilities to develop better procedures to ensure that patients are following discharge instructions, taking medications, and following up with their physicians.

Obviously, there are many other revenue components contained in the Patient Protection And Affordable Care Act (including those that directly affect individuals and families). The provisions summarized above create the most direct impact on health insurers, medical device manufacturers, pharmaceutical companies, and hospitals. Together, these provisions account for more than $100 billion in revenue, yet make up only about 10 percent of the anticipated cost of The Act.

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