



Business Coalition Opposes Proposed Federal UI Employer Penalty

A business coalition of 46 state and national business organizations and individual employers on July 14th sent a letter to Congress in opposition to an employer penalty provision that was included in legislation proposed before the Finance Committee in the US Senate last week and reported in a mock markup which will serve as the Committee's recommendations on the Administration's draft implementing legislation of the South Korea Free Trade Agreement.

As the debate continues about how to move ahead with Free Trade Agreements and whether to extend the Trade Adjustment Assistance Act (TAA) as requested by President Obama, legislation has been formulated to "offset" the cost of TAA.

Unfortunately, instead of choosing from a list of UI integrity items that could actually save money and could be included in legislation to help offset the cost of an extension of TAA, the Obama administration has inserted an amendment that penalizes employers when they or their agents are not able to provide all the information in tight time frames before the agency determines to pay claimants.

Section 562 of the TAA Offset amendments provides that:

SEC. 562. PROHIBITION ON NONCHARGING DUE TO EMPLOYER FAULT.

IN GENERAL.—Section 3303 of the Internal Revenue Code is amended—(1) by striking subsections (f) and (g); and
(2) by inserting after subsection (e) the following new subsection:

“(f) PROHIBITION ON NONCHARGING DUE TO EMPLOYER FAULT.—

“(1) IN GENERAL.—A State law shall be treated as meeting the requirements of subsection (a)(1) only if such law provides that an employer's account shall not be relieved of charges relating to a payment from the State unemployment fund if the State agency determines that—

“(A) the payment was made because the employer, or an agent of the employer, was at fault for failing to respond timely or adequately to the request of the agency for information relating to the claim for compensation; and

“(B) the employer or agent has established a pattern of failing to respond timely or adequately to such requests.

“(2) STATE AUTHORITY TO IMPOSE STRICTER STANDARDS.—Nothing in paragraph (1) shall limit the authority of a State to provide that an employer's account not be relieved of charges relating to a payment from the State unemployment fund for reasons other than the reasons described in subparagraphs (A) and (B) of such paragraph, such as after the first instance of a failure to respond timely or adequately to requests described in paragraph (1)(A).”

The effect of this new federal requirement, even in cases in which there is no question that an individual quit work without cause or was discharged for good cause, is to effectively shift the cause of the unemployment from the claimant to the very employer that fired the claimant for cause if the agency determines that the information it was provided by the employer or its agent was not timely or adequate.

A better approach to obtain information needed to more quickly and timely administer unemployment insurance is for US DOL and state UI agencies to work with employers and their representatives to develop ways to exchange the necessary information electronically. In fact, many employers and their agents are currently working with US DOL in implementing the State Information Data Exchange System (SIDES) to address this issue.

A copy of the letter of opposition is attached.

Please use the attached letter and the specifics of the provision quoted above as a reference if you choose to contact members of Congress to alert them to the impact of this amendment on employers and their representatives.



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By Jim Sams, Senior Editor

Medicare set-aside professionals are hoping that the federal government's selection of a new contractor to review settlement proposals will speed up reviews that are now taking up to 120 days, but they are going to have to wait a few more months to find out.

One of the unsuccessful bidders has filed a protest to the Centers for Medicare and Medicaid Services' decision last month to award a \$5,124,084 one-year contract to Provider Resources Inc. in Erie, Pa., alleging the agency's review process was flawed. That will trigger a review by the U.S. Government Accountability Office, which has up to 100 days to render a decision.

The current review contractor, Lifecare Management Partners, will continue conducting the reviews until the protest is resolved. Set-aside professionals say they don't expect the company's performance to improve, now that its contract with the government is about to expire. According to government documents, the workers' compensation review contractor must review 2,000 to 2,500 submissions per month.

Jennifer Jordan, an attorney with the Medval set-aside consulting firm in Baltimore, Md., said Lifecare has been taking longer and longer to finish its reviews ever since it learned its contract would not be reviewed.

"I just feel like they've been going through the motions for a month now," Jordan said in an interview with WorkCompCentral. "They can't be held in breach of contract, because they are out of contract. I don't think they have any incentive to alleviate the backlog."

Lifecare Managing General Partner Joseph C. Molina could not be reached for comment on Monday.

CMS' workers' compensation review contractor performs a function that is often vital for settling future-medical claims with injured workers who are eligible -- or soon will be eligible -- for Medicare benefits. Workers' comp carriers send proposed future-medical settlements to the contractor with hopes of receiving an acknowledgment that they have set aside enough money to pay for future medical costs caused by the claimant's work injury.

The reviews are voluntary, but the Medicare Secondary Payer Act allows CMS to file suit if it winds up paying for medical services for a Medicare beneficiary for injuries that should have been covered by a workers' compensation carrier.

Data and Analytics Solutions was one of four vendors that submitted bids to take over Lifecare's role as the workers' compensation review contractor, said CMS Contract Specialist Alan F. Fredericks. Lifecare has held the contract since 2005, but was ineligible to submit a bid for renewal because it no longer qualifies for Small Business Administration criteria that the government uses to steer business to qualified small businesses, he said.

Government documents show that Data and Analytics Solutions filed a protest to the contract award to its competitor on July 5. The Government Accountability Office has until Oct. 13 to make a decision on that protest.

Data and Analytics Solutions President Dawn Li declined to comment on the company's protest. Provider Resources Chief Executive Officer and President Shawn Keough-Hartz also declined to comment.

No matter which vendor ultimately wins the contract, Medicare set-aside professionals are hoping they'll get better service under a new regime. Earlier this month, news that CMS had awarded a new contract generated excited chatter on a Medicare set-aside message board that is a part of the Linked-in professional networking website.

"I think this new WCRC contract is really encouraging news for the MSA industry, because it shows that CMS is seriously trying to fix current problems and delays," said Doug Shaw, chief operating officer at Medivest Benefits Advisors in Orlando.

Shaw said other set-aside professionals are hoping for better service with Provider Resources, should the Erie, Pa.-company overcome the bid protest and actually win the contract.

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Shaw wrote in Medivest's blog that the company's president, Keough-Hartz, is a 22-year veteran of the health care industry with extensive experience in coding, billing, compliance, information technology systems and government contracting. The company's medical director, Dennis Agostini, has advanced degrees in chemistry and osteopathic medicine and has more than 30 years' experience in directing organizations' medical policies and programs.

The current contractor has given its successor plenty of room for improvement, critics say.

Scott LeCompte, senior vice president for the Blackburn Group in Baltimore, said in an interview that at one point set-aside professionals could count on the CMS contractor to complete reviews of submissions within 65 days, but now it's taking 90 to 150 days to get an answer.

LeCompte said even more annoying is the boilerplate questions that Lifecare sends when it seeks more information. The contract often sends "rubber stamp" form letters that don't ask for specific information, leaving the consultants working on the settlement to guess at what the contractor wants to know. He said professionals have learned to call employees at the CMS regional centers to find out what additional information is needed, because the contractor rarely gives straight answers.

"People are just jaded by this whole process," LeCompte said. "It seemed like the WCRC contractor got slower and slower, almost as if they had a staffing problem."

Medval's Jordan, however, said it's impossible to know whether Lifecare's slow response time in reviewing set-aside submissions is a result of its own internal problems or unrealistic demands by CMS. She said she suspects that the number of set-asides submitted for review has increased now that the government has passed rules that require workers' comp carriers and self-insured employers to report future-medical settlements with Medicare-eligible beneficiaries.

She said it is possible that so many submissions are flowing in that the current contractor simply doesn't have time to review all of them in the time frame allotted for the task.

"The wild card is whether the contractor was the problem, or if what CMS is telling them to do is the problem," Jordan said.

Set-aside professionals will have to wait a few months to find out whether a new contractor will speed up the reviews, but they are encouraged by another promising development. On Friday, CMS reported that it has begun testing of an electronic portal that will allow set-aside professionals to submit future-medical settlements directly to the agency instead of mailing paper forms or compact discs to a contractor.

Jordan said now she and other set-aside experts must mail documents or discs to a contractor, who passes the documents along to the workers' compensation review contractor.

"This new initiative will allow submitters of Workers' Compensation Medicare Set-Aside Arrangements (WCMSAs) to directly enter case information, upload documentation, and receive case status information through the use of a secure Web portal," CMS said in its announcement of the pilot project.

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July 14, 2011

The Honorable John Boehner
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable Nancy Pelosi
Minority Leader
U.S. House of Representatives
Washington, DC 20515

The Honorable Harry Reid
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, DC 20510

Dear Speaker Boehner, Leader Pelosi, Leader Reid and Leader McConnell:

We are writing in opposition to Section 562 that was included in the provisions of the TAA Offset amendments that were approved in the version of the Administration's proposed legislation implementing the United States-South Korea Free Trade Agreement reported in a mock vote by the Senate Finance Committee on July 7th.

This section adds federally-dictated unnecessary reporting burdens for employers and their agents, increases cost for state UI administrative agencies, and would result in individual employer state UI tax rates going up due to the prohibition against crediting of employer accounts.

It is inconsistent with experience rating principles that employer accounts be charged for unemployment compensation paid to individuals who have been discharged due to misconduct.

Employers already have an incentive to report as quickly and adequately as possible, namely that failure to report is more likely to result in the claimant being paid and the employer's account charged for benefits.

The treatment of employers or agents who display a pattern of failure to report should be a matter to be dealt with under the applicable state law and not dictated by a federal statute that charges the employer for benefits that admittedly should not have been paid. In fact, states already have laws and/or administrative rules and policy that deal with this issue.

A better approach to obtain information needed to more quickly and timely administer unemployment insurance is for the US Department of Labor and state UI agencies to work with employers and their representatives to develop ways to exchange the necessary information electronically. Many employers and their agents are currently working with US DOL in implementing the State Information Data Exchange System (SIDES) to address this issue.

Sincerely,

American Bakers Association
American Staffing Association
Association of Unemployment Tax
Organizations
Arkansas State Chamber of Commerce
Associated Industries of Arkansas

Associated Industries of Florida
Associated Industries of Massachusetts
California Association of Hospitals & Health
Systems
California Manufacturers & Technology
Association

The Chamber of Commerce of Hawaii
Colorado Association of Commerce & Industry
Colorado Competitive Council
Connecticut Business & Industry Association
Denver Metro Chamber of Commerce
Georgia Association of Manufacturers
Illinois Chamber of Commerce
Illinois Manufacturers' Association
Indiana Chamber of Commerce
Indiana Manufacturers Association
Iowa Association of Business & Industry
The Kansas Chamber of Commerce
Kentucky Chamber of Commerce
Louisiana Association of Business & Industry
LUBA Workers' Comp
MAU Workforce Solutions
Michigan Chamber of Commerce
Michigan Health & Hospital Association
Missouri Association of Manufacturers

Missouri Chamber of Commerce
The Missouri Merchants and Manufacturers
Association
National Federation of Independent Business
New Jersey Business & Industry Association
New Jersey State Chamber of Commerce
North Carolina Chamber of Commerce
North Dakota Chamber of Commerce
Ohio Chamber of Commerce
Pennsylvania Chamber of Business & Industry
People Systems/NEC
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The State Chamber of Oklahoma
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UC Consultants
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Washington State Hospital Association