



# The ViewsLetter

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## High Risk Fields Practice More Defensive Medicine

A recent study reported in the Journal of the American Medical Association suggests that fear of malpractice litigation has a strong impact on high risk providers. The study confirms defensive medicine practices are widespread and do affect cost.

It is important to understand that defensive medicine is a deviation from sound medical practice. Physicians practice defensive medicine primarily to prevent lawsuits or create a defense to a lawsuit. Defensive medicine has been widely reported in the United States but it has been difficult to determine its prevalence. Defensive medicine generally takes one of two forms:

- **Assurance Behavior:** This behavior is sometimes referred to as positive defensive medicine. It involves supplying services of little or no medical value to reduce adverse outcomes, deter patients



from filing malpractice claims, or to prove the standard of care was met.

- **Avoidance Behavior:** This behavior is sometimes referred to negative defensive medicine. It reflects physicians' efforts to avoid treating high risk patients.

This study surveyed physicians in six specialties at high risk for litigation:

- Emergency medicine
- General surgery
- Orthopedic surgery
- Neurosurgery
- Obstetrics/Gynecology
- Radiology

The study was conducted in Pennsylvania, a region that has been hit particularly hard by the recent malpractice insurance crisis. Several liability insurers had recently left the Pennsylvania market and the remaining carriers had raised their premiums dramatically. The six specialties included in the study had been acutely affected by numerous lawsuits and

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## About the ViewsLetter

We welcome you to the third quarterly issue in Volume Eight of the McGraw Wentworth ViewsLetter. It is our mission to be the leader in the employee group benefits brokerage and consulting industry to mid-sized organizations.

We have established the ViewsLetter as an integral part of our commitment to keep

you informed of benefit trends, legislative and marketplace developments that may affect your group benefit programs.

We welcome your comments and suggestions regarding the ViewsLetter. You can pass your comments directly to your McGraw Wentworth Account Director or Account Manager, or you can reach us at [www.mcgrawwentworth.com](http://www.mcgrawwentworth.com).

## High Risk Fields Practice More Defensive Medicine, cont.

steep increases in malpractice insurance premiums.

The study findings were eye-opening. Virtually all respondents (93%) reported that they sometimes or often engaged in at least one of the six forms of defensive medicine outlined in the survey. The study revealed:

- Fifty nine percent of respondents ordered more diagnostic tests than were medically indicated. For emergency room physicians, the rate was 70%.
- Fifty two percent of respondents reported referring high risk patients to other specialists to avoid treating them.
- One third of all respondents reported prescribing more medications than were medically indicated.
- One third also reported suggesting unwarranted invasive procedures.

- Cancer detection was a major concern for the physicians in all specialties. This concern caused an increase in diagnostic imaging, specialty referrals and invasive procedures.
- Thirty-nine percent of physicians reported that they definitely avoid caring for high risk patients. For orthopedic surgeons, the rate was fifty-seven percent.

Many specialists reported they practiced defensive medicine because of concern about potential malpractice lawsuits and the knowledge that the patients' medical insurance would cover the cost. Ninety percent of all respondents reported ordering unnecessary tests to appease demanding patients or to produce a trail of evidence to confirm or eliminate the possibility of an underlying medical condition.

The widespread practice of defensive medicine in these high risk specialties is alarming. Not only does it

generate significant waste for health plans, it creates an unrealistic standard of care. Defensive medicine results in more services that have little or no patient benefit. What's more, these unnecessary, purely defensive medical tests and procedures may sometimes adversely affect a patient's health.

These treatment decisions do drive up health plan claims and ultimately health plan cost. To improve the health care delivery in the United States, we need to resolve the malpractice insurance crisis which forces physicians to test for "all possible options" instead of the "most likely options" based on the patient's symptoms and health history. **MW**

## Flextime and Part-Time Arrangements Gaining Popularity

Flextime and part-time work schedules are becoming more popular. Although the survey data on part-time work arrangements is not readily available, it appears shifting workforce demographics and the mobility of the modern office contributes to more flexible work arrangements.

Managers are developing creative ideas to attract and retain talent. Because continuity in organizational know-how has become increasingly important, managers are offering their valued, long-time employees flexible arrangements.

The demographic pressures on the workforce of tomorrow contributes significantly to the increase in flexible work arrangements that are of-

## DID YOU KNOW?

The *Met Life Annual Study of Employee Benefits Trends* revealed full-time employees were extremely concerned about the following:

- Having enough money to pay bills during a sudden income loss: 71%
- Having enough money to make ends meet: 63%
- Job security: 61%
- Financial security if a primary wage earner can no longer work because of a disability: 60%
- Having appropriate health insurance coverage: 59%
- Financial security of their family if they die prematurely: 56%
- Financial well being if a spouse or partner dies unexpectedly: 54%
- Having enough money to pay for their children's education: 54%
- Outliving their retirement savings: 49%
- Having to work full or part-time after they retire: 48%

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## Flextime and Part-Time Arrangements Gaining Popularity, cont.

ferred today. More than half of today's college graduates are women. Women also hold half of professional and graduate degrees. Their dominance in the workplace is expected to increase. According to Education Department data, over the next decade, the number of women holding post college degrees is expected to grow by 16% compared with 1.3% for men. The increase in female professional workers will push employers to accommodate their need for flexibility. Women need more flexibility as they traditionally have been primary caregivers in our society.

Women are not the only workers striving to balance work and life. Younger workers don't want to be defined by job title alone. The workers poised to take the place of retiring baby boomers are not solely focused on their careers. The desire to balance work and life is a priority for both genders.

Technology has also influenced flextime and part-time working arrangements. Because employees can work just as effectively at home as in an office, companies have become more flexible.

Flexible work hours are especially appealing to working women. Flex policies arose from the problems created when women left the job after their first or second pregnancy. Although these women typically had ten years' experience in their field, the lack of flexibility compelled them to drop out of the workforce for several years. Many organizations determined allowing flexible part-time arrangements would allow women to balance home and work. That way the employer did not lose a talented employee and often within a few years, the employee would return to full-time work.

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### YOUR QUESTIONS

- Q.** For 2006, our organization has decided to add domestic partner coverage. Coverage will be provided to both same sex and opposite sex domestic partners. Can our employees pay for their domestic partner coverage on a pre-tax basis under our Section 125 plan?
- A.** It depends. Employers get to choose whom to cover on their medical plan. However, the tax treatment of the benefits provided by the plan must meet the Internal Revenue Code requirements.

In order for your organization to allow pre-tax deductions for domestic partners, two conditions must be met:

1. The Section 125 plan should be amended to state deductions will be allowed on a pre-tax basis provided Federal law allows.
2. The plan can only offer pre-tax deductions on certain dependents. If the domestic partner meets the definition of dependent outlined in Section 152 of the Internal Revenue Code as amended by the Working Families Tax Relief Act of 2004 (WFTRA), the contribution for coverage can be taken on a pre-tax basis.

It will be rare that a domestic partner will meet the definition of dependent under WFTRA. Same sex domestic partners pose a challenge. Federal law does not permit a same sex partner from being considered a spouse, regardless of the state's position. A same sex domestic partner will not meet the definition of a spouse under WFTRA but may meet the definition of a dependent. For more information on WFTRA, please reference our website at [http://www.mcwent.com/Benefit\\_Advisor/2004/BA\\_Issue14.pdf](http://www.mcwent.com/Benefit_Advisor/2004/BA_Issue14.pdf).

In most cases, domestic partners will not meet the WFTRA requirements for a dependent. Therefore, the additional premium required when a same sex domestic partner is added to coverage must be taken on a post-tax basis. Your cafeteria plan will be disqualified if it allows premiums for not qualified IRS dependents to be deducted on a pre-tax basis.

In addition, your organization will need to impute income on the value of the coverage provided to domestic partners. Please consult your organization's tax specialist for more information on potential imputed issues.

## Flextime and Part-Time Arrangements Gaining Popularity, cont.

The cost of talent is not cheap. Many organizations readily admit the expense of replacing talent in today's market is prohibitive. It is often not easy to find talented employees and in many cases, recruiting for talent is difficult.

For women, flexible hours do matter. In a recent study reported by Workforce Management, two-thirds of women report flexible work schedules were extremely important or very important. Eighty two percent of women gave reduced work hours a high priority.

Rethinking work arrangements is imperative for many organizations. Flexible work arrangements are the wave of the future. In the next ten years, talented people will be leaving the workforce. Attracting and retaining talented employees will become more important. The issue is not just to accommodate women on the "mommy track." Many baby boomers will want to gradually reduce the number of hours they work as they prepare to retire. Organizations will benefit from a flexible arrangement that allows baby boomers to work part-time as they ease into retirement. At the same time they can mentor new workers to eventually take their place. When long-time employees retire, an organization often loses the knowledge and history necessary for problem solving positions. Offering long-time employees part-time arrangements will smooth the transition.

Retaining employees that think globally and add value to your organization is imperative. Rethinking your work structure and finding ways to be flexible with your talented employees will improve your organizational efficiency and your bottom line. **MW**

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### TECHNICAL CORNER

#### Electronic Medical Records - Will they cut costs and improve care?

President Bush is strongly encouraging health care providers to shift from paper to electronic medical records. This change is expected to reduce health care costs by as much as 20%. In addition, electronic access to medical records should improve the quality of care individuals receive.

Several health care organizations, including the Cleveland Clinic, are working on developing an information technology standard. The move to electronic files will reduce the space needed to store paper files and improve access to medical records. Electronic medical records will allow physicians immediate access to a patient's health care information and help them choose appropriate treatments. In the ideal situation, providers would have immediate access to patients' medical histories, diagnostic and lab test results, and current medications.

President Bush has challenged the nation's health care providers to eliminate paper medical records over the next decade. The Department of Health and Human Services is developing a "medical Internet" so that confidential medical records can be sent across the country electronically.

Understandably, patients will be concerned about their privacy when their medical records are on the Internet. Certainly, even though the intent is to keep the records confidential, patients will question the measures taken to secure these records. Providers may find it dif-

ficult to guarantee the confidentiality of medical records transmitted over the Internet.

Providers can see the merit of electronic records, but they are concerned with the added expense of maintaining the records electronically. This added expense will have a significant impact on the cost of doing business for most health care providers.

However, the benefits could fundamentally change our health care system. It is estimated as much as 30% of the care individuals receive today is not life improving and can actually cause harm. Access to electronic medical records will eliminate duplicate tests and diagnostic procedures when an individual changes health care providers or seeks care from a specialist. In addition, providers will be able to look for referrals and consultations throughout the country because medical information can be shared easily. Immediate access to electronic records will also help physicians choose appropriate treatments in emergencies.

It is unlikely all medical records will be available electronically within the next decade. However, moving toward this goal could reduce the cost and improve the quality of health care in the United States. **MW**

# Charging Smokers More for Health Coverage

An approach for managing health plan cost that is getting significant press is charging smokers more money to participate in the employer-sponsored group health plan. The logic is simple. In general, smokers will use health benefits more than non-smokers. Therefore, smokers should pay more to participate in the plan.

Organizations across the country are adopting this approach. However, it is not as simple as charging smokers more for coverage. If your organization is considering this strategy, there are several areas you need to review to make sure your plan does not violate federal or state law:

- HIPAA Non-Discrimination Requirements
- Potential state "Smoker Rights" or "Lifestyle Laws"

## **HIPAA Non-Discrimination Requirements**

The basic principle of HIPAA's non-discrimination requirements is that health plans cannot condition eligibility for benefits or require an in-

dividual to pay a higher contribution to participate in a plan based on a health status factor. It is not particularly clear if "smoker status" could be construed as a health factor.

HIPAA does allow premium differential for participation in bona fide wellness programs. If your organization structures your premium differentials as a part of a bona fide wellness plan, the premium differential would be permitted. For more information on bona fide wellness plans, please read our Benefit Advisor at [http://www.mcwent.com/Benefit\\_Advisor/2002/Issue%20Two.pdf](http://www.mcwent.com/Benefit_Advisor/2002/Issue%20Two.pdf).

## **State "Smoker Rights" Laws**

Many states have "smoker rights" laws or "lifestyle laws" that would preclude employers from charging smokers a higher rate for health plan coverage. It is important to consult an attorney to determine if you have any concerns from a state law perspective prior to implementing a higher smoker contribution.

Michigan does not have either a "smoker rights" law or "lifestyle law" that would prohibit higher contributions for smokers.

Before finalizing a strategy to charge smokers a premium surcharge for health plan participation, it is important to consult your attorney to determine if that strategy will be permitted under federal and state law. It is important to review state law in every state you have employees. **MW**

## **TREND TIDBITS**

For 2005:

- \$ PPO plans with prescription coverage are expected to trend at 13.1%; PPO plans without prescription coverage are expected to trend at 12.6%.
- \$ Interestingly, high deductible PPO plans with prescription coverage are expected to trend at 13.5%; high deductible PPO plans without prescription coverage are expected to trend at 13.1%.
- \$ HMO plans with prescription coverage are expected to trend at 12.4%; HMO plans without prescription coverage are expected to trend at 13.1%.
- \$ Carve-out prescription drug plans are expected to trend at 15.2%; a full 3% lower than 2004 projections.

Source: 2005 Segal Health Plan Cost Trend Survey

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