



The ViewsLetter

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Avian Flu Planning

By now, most of us have heard of the avian or bird flu. This virus may spread rapidly around the globe. Since the virus is new, people may not have any natural immunity; therefore, it could be far more deadly than other seasonal flu viruses. Moreover, a vaccine for the bird flu might not be available for six to eight months after a global outbreak occurs.



This virulent strain of flu initially affected only birds. However, just recently, in the Asia-Pacific region, sixteen cases of the flu were proved to have been transmitted from birds to humans. This virus is highly contagious, and more than half of the laboratory confirmed cases have been fatal.

A person infected with influenza virus could be contagious for 24 hours before the onset of symptoms and for seven days thereafter. If it mutates, the virus can easily spread rapidly to large numbers of people whenever an infected person coughs or sneezes.

A global outbreak could last for several weeks or months, and it could recur in waves. The U.S. Centers for Disease Control and Prevention (CDC) predicts the virus could potentially spread rapidly and infect as much as 25%-30% of the U.S. population. For that reason, the government has begun disaster planning for the impact of a potentially deadly outbreak of the disease.

As the virus spreads, it could also cripple the vital operations of many organizations. Just like the government, employers

should review their policies to determine whether they have a plan in place if the bird flu impacts their organization. Employers should consider several areas including legal concerns and operational issues.

Legal Concerns

If there is a major flu outbreak, employers will need to resolve employee benefit legal issues. Several areas should be reviewed:

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About the ViewsLetter

We welcome you to the third quarterly issue in Volume Nine 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.

Avian Flu Planning cont.

- **Family Medical Leave Act:** The FMLA applies to employers with 50 or more employees within a 75-mile radius. The FMLA requires employers to provide eligible employees up to 12 weeks of leave for a serious health condition or the serious health condition of an immediate family member. During the leave, the employee is entitled to the same health benefits offered to active employees. In addition,

returning employees should retain their previous positions and seniority. The leave is not required to be paid.

Certainly, the bird flu would be considered a serious health condition. Your organization needs to make sure the appropriate FMLA medical leave policies are in place and all the required notices are available if a large number of employees need to take medical leaves.

- **Disability Benefits and/or Workers' Compensation:** Short- and possibly even long- term disability claims may increase during a bird flu outbreak. Workers' compensation claims may also increase.

If an employee becomes ill after being exposed on the job, the employee could file a workers' compensation claim. However, the employee must prove the medical condition arose from occupational exposure. Because many employees may be exposed to this serious flu strain at the office, employers should make sure their workers' compensation policy adequately covers potential bird flu liabilities.

- **Occupational Safety and Health Act (OSHA):** The Occupational Safety and Health Act (OSHA) requires employers to provide a safe and healthy work environment. OSHA can fine employers if they fail to protect their employees from recognizable health and safety hazards. This issue may arise if there is a substantial avian flu outbreak. OSHA will expect employers to develop an emergency action plan and to provide respiratory protections, sanitation materials and employee training.

These laws and benefit coverages may affect employers if a major flu outbreak occurs.

Operational Concerns

Aside from the legal concerns, the flu could have a serious impact on an organization's ability to operate efficiently. Although your local employees are at risk, the bird flu may impact your employees abroad first. The

YOUR QUESTIONS

- Q.** I recently started with a new company. I am seeking the information I will need to complete a Form 5500. My former employer included our EAP information when filing a 5500. The EAP was included in our ERISA plan. My new employer does not include the EAP in the ERISA plan. Should the EAP benefits be subject to ERISA?
- A.** Your confusion makes sense, because the answer is, it depends. Employee Assistance Program (EAP) benefits vary widely. Some EAPs are simply a phone referral service. When employees call, they are directed to various services. These referral service type EAPs are typically not subject to ERISA.

On the other hand, an EAP may be subject to ERISA if the EAP provides some type of medical service. For example, EAPs offering visits to a mental health professional definitely would be considered a medical plan because they are providing medical services. This distinction is easy to determine based on plan design.

However, the DOL has issued several Advisory Opinion Letters that define medical treatment in plans subject to ERISA. The definition of treatment is much broader than just offering medical visits. In fact, when trained counselors staff the EAP phone line and offer advice in crisis situations, the Department of Labor considers this service medical treatment. ERISA considers EAPs offering trained professionals for telephone counseling to be medical plans.

For many employers, this means creating summary plan descriptions for their EAPs and also including the EAP with their 5500 filing. EAPs are typically not filed as fully insured benefit plans with state insurance departments. Therefore, your EAP vendor would not be providing a Schedule A. Your organization would include EAP headcounts for the medical plan section of the Form 5500.

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Avian Flu Planning cont.

World Health Organization (WHO) reports human cases of the avian flu have occurred in Cambodia, China, Indonesia, Thailand, Turkey and Vietnam. According to the National Geographic News, the bird flu is expected to arrive in the United States and Canada within 12 months after the fall snow goose migrates.

The Department of Health and Human Services and the Centers for Disease Control and Prevention have been encouraging employers to plan for a possible pandemic. Both organizations have information and resources your organization can use to develop a plan at www.pandemicflu.gov and www.cdc.gov/business.

It is a good idea for organizations to develop a communicable disease policy. An effective communicable disease policy should:

- Identify communicable diseases likely to impact your workforce, including the bird flu.
- Establish immunization requirements for employees traveling outside the United States to

protect against potential communicable diseases.

- Consider posting alerts regarding potential communicable disease activity.
- Include workplace safety procedures to make sure your employees take proper hygiene measures to reduce the potential for disease transmission.
- Establish a procedure to report any disease incidence to local or national public health officials as required by law.
- Coordinate with other existing policies such as fitness for duty requirements or reasonable accommodation requirements.
- Investigate whether your organization can require employees with communicable diseases to be examined by a physician of your choice.
- State whether your organization will implement a vaccination policy. If so, the policy should explain how the organization will administer vaccinations and whether your organization will pay for them.

- Educate your employees about specific signs and symptoms of communicable diseases; it may make sense to find a number of resources your employees can use to learn more about communicable diseases.
- Assign responsibility to your internal resources to develop official communicable disease policies and procedures.

Even if the concern over bird flu ends up being overstated, developing a communicable disease policy is a good idea for most organizations.

Once you have considered the legal and policy concerns of a potential bird flu outbreak, think through the practical implications of a widespread flu outbreak. Would your operations be able to continue if 50% of your employees contracted the bird flu and were unable to work? Very few organizations would be able to continue operations.

Many employees come to work even when they do not feel particularly well. Employees have a variety of reasons for working sick. This practice is common and it could be detrimental if employees bring the very contagious bird flu virus into your workplace.

It makes sense to think through how your organization can minimize the impact. Can your organization allow employees to work remotely if the bird flu starts spreading through your city? If working remotely is not possible, will you relax your absence management policy to allow employees to stay home if they have the flu? Can you cross train employees to help co-workers short-handed because of the flu? Can you improve your sanitation process to lessen the possibil-

TREND TIDBITS

- \$ PPO plans are projected to increase 12.4% next year.
- \$ HMO plans are projected to increase 12.2% next year.
- \$ Consumer Driven Health Plans are projected to increase 12.7% next year.
- \$ Pharmacy costs are expected to increase 12.2%.
- \$ Point of service plans are expected to increase 11.9%.
- \$ These trend increases are approximately 1% less than the same projections last year.

Source: AON Consulting, June 2006

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Travel Plans and Life Insurance

ity of spreading the virus in your office setting?

If the avian flu becomes a pandemic, as some are predicting, it will seriously affect your organization's operations. If you determine in advance the steps you can take to minimize any potential issues, your organization will be able to continue key operations even if this flu spreads throughout the country.

MW

Travel Plans and Life Insurance

In order to buy life insurance, an individual must submit an application as well as blood and urine samples. Life insurance rates are based on the assumption that people will live to a certain age. A number of factors, such as health and lifestyle, can influence life expectancy.

Traditionally, life insurance carriers assess risk and probably would not insure individuals who had serious medical conditions, those who were extremely overweight, or those who smoked or drank heavily. If the risk posed was higher than normal but not excessive, the carrier might issue the policy with higher premiums or exclusions for certain conditions.

Recently, many life insurance carriers have expanded the risk areas they assess when underwriting individual life insurance applications. Foreign travel has now become a concern. Individuals who travel to other countries for work or pleasure may find it difficult to get individual life insurance.

Popular insurance carriers have added questionnaires about past and future travel plans to their application process. A carrier may decline coverage based on foreign travel activity. The thought is, if you travel to dangerous areas for either work or pleasure, the carrier may not cover you or may charge you higher premiums.

The concern about foreign travel does not apply to all countries. The countries that life underwriters are concerned about are the ones that typically appear on the State Department's travel warning list. Such countries include Iraq, Israel, Indonesia, Kenya, Columbia, and others experiencing internal conflict.

With the uncertainty in today's world, you may have thought foreign travel would have declined over the last several years. On the contrary, air travel overseas increased 5% in 2005 according to estimates from the U.S. Commerce Department. Travel to the Middle East increased 14% in 2005 and travel to Asia and South America increased by 10%.

Many individuals with family or responsibilities outside the country are understandably upset when they are denied life coverage because of anticipated foreign travel. They question the insurance carriers' decisions and have requested actuarial evidence that foreign travel truly affects the mortality table. Insurers respond that because of global terrorism, foreign travel is indeed a valid risk factor; especially for countries on the State Department travel warning list.

Several states are passing laws to keep insurance carriers from denying coverage based on travel plans. The National Insurance Association of Insurance Commissioners is evaluating whether using foreign travel considerations as part of the underwriting process is justified. Expect more states to consider this issue as carriers refuse to insure travelers. Believe it or not, many elected officials are having difficulty securing life coverage because of the travel they do in office. Many congressmen and women have experienced insurance declinations due to these travel plans. These elected officials are

DID YOU KNOW?

How your health plan premium dollars are spent?

- 17% is spent on inpatient hospital services.
- 18% is spent on outpatient hospital services.
- 21% is spent on physician services.
- 15% is spent on prescription drugs.
- 10% is spent on liability and defensive medicine.
- 6% is spent on administrative services, government payments and compliance activities.
- 5% is spent on other medical services.
- 5% is spent on consumer services, provider support and marketing.
- 3% is spent on insurance carrier profits.

Source: *American Health Insurance Plans, January 2006.*

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Travel Plans and Life Insurance cont.

a strong driving force for legislative change in how life insurance carriers determine acceptable risks.

Business or pleasure travelers must understand the impact foreign travel may have on life insurance. Typically, insurance carriers may look at travel plans for the six months before and for the two years after the individual applies for coverage.

Depending on the insurance carrier, you may be able to appeal a decision to decline or limit coverage because of foreign travel considerations.

If you are a frequent traveler, you may need to investigate carrier underwriting policies as well as rates to find a carrier who will issue a policy for you. It also makes sense to take advantage of any voluntary life options your employer offers. At this point, group health plans generally do not ask questions regarding foreign travel plans. **MW**

Technical Corner

Technology often simplifies our work life and enhances our personal lives. Unfortunately, not many of us understand the intricacies of how technology operates. Technological advances have changed our society; many of our day-to-day activities now rely on electronic devices. While these advances are often fascinating, we don't always think about security.

Recently, a rash of laptops thefts has been reported. Many of these stolen laptops contain personal data that can potentially compromise the identity of millions of Americans. Many of these laptops were stolen from individuals working at home. These thefts should be a wake up call for anyone who loads sensitive data to laptop to work remotely.

Organizations need to ensure data housed on local networks or accessed remotely is secure. They need to review personal data used for various functions and they need to analyze how employees use the data. After assessing the situation, your organization should establish the appropriate security procedures. This is especially important for your workforce members that regularly access data remotely or members that download data to portable media and memory devices. It is also important to review the work processes of your employees that work with personal information of clients or employees.

In addition to securing the data, educate your employees on safeguarding sensitive information. Employees unfamiliar with technology really do not understand the extent of the problem. In one instance, an employee accessed the work network remotely

on a hotel's computer. The employee followed all appropriate security steps, but he had no idea that a copy of the sensitive data was saved to the hotel computer's hard drive. Fortunately, an employee from the Centers of Medicare and Medicaid Services discovered the data. The discovery limited the potential for theft. As much as employees need to follow security procedures for all portable electronic computing devices, they also need to understand technology in order to protect sensitive data.

As technology advances, computers get smaller and more portable. They enhance our work lives, allowing us to conduct business virtually anywhere. Unfortunately, these advances also mean we need to pay greater attention to securing data on portable devices.

When employees work with personal data, they need to be very security conscious to make sure they do not compromise your clients' or your employees' the personal data. **MW**

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THE VIEWSLETTER

Our newsletters are written and produced by the McGraw Wentworth staff and are intended to inform our clients on general information relating to employee benefit plans. They are not intended to provide either legal or tax advice. Consult your legal counsel or tax advisor in matters that directly affect your benefit plans.

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