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The ERISA Industry Committee

Hearing on Mandated Benefits

Federal Trade Commission

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Introduction:

- ERIC represents:
  - 110 of the largest employers in the US
  - Typical member has about 50,000 domestic employees
  - Large proportion sponsor self-funded health plans
  - Many also provide retiree health coverage

Overview of remarks:

- The current benefit design environment
- How mandates impact plan sponsors' benefit design decisions
- Specific example - mandated mental health parity

The current benefit design environment:

- Unprecedented pressure to contain health benefit costs due to:
  - Domestic and global competition from competitors who provide less or no health coverage to employees and/or retirees
  - Current state of the economy
  - Health care cost trends
- Pressures have completely changed corporate budgeting/planning processes

Current environment, continued

- In this corporate fiscal environment, benefit mandates do not result in any net increase in coverage:
  - Individual covered services, and whole categories of covered services, increasingly compete against each other to:
    - retain the most favorable level of cost-sharing under the plan
    - remain in the benefit package

Current environment, continued

- They also compete against other benefits, *e.g.*, vision, dental, life, disability, pensions, stock ownership
- Covered services that have poor perceived value may be subject to higher deductibles, copayments or coinsurance, or omitted entirely from coverage
- Each mandate is offset by a benefit reduction of equal or greater cost

How mandates impact plan design decisions:

- Insured arrangements:
  - ERIC members contracting with national carriers, or desiring to provide uniform benefits to employees across multiple carriers, are forced to adopt coverage that aggregates the most restrictive provisions of each related state mandate in their insured arrangements in order to maintain uniformity
  - The alternative is to abandon uniformity in benefit design and cope instead with the cost and administrative complexity of overlapping and inconsistent state mandates

Design impact, continued:

- Self-funded arrangements are not necessarily immune
  - There is frequent “leakage” where carriers acting in an ASO capacity do not want to maintain separate administrative systems for their insured and ASO products

Specific example - mandated mental health parity:

- Wide range in state (and federal) versions of "parity":
  - from mandated coverage of a specified list of serious disorders to . . .
  - full parity between mental health and medical/surgical benefits

Parity, continued:

- Mandated coverage of specified list of serious disorders has modest impact on ERIC members because:
  - They don't exclude any of these specific conditions from coverage to begin with
  - The nature of the mandate requires no changes in benefit plan design

Parity, continued:

- Full parity, however, has the potential to be exceedingly disruptive:
  - Flexible interpretation and enforcement by state regulators makes it possible to keep the impact tolerable (though not acceptable from our members' viewpoint)
  - All it takes is one litigant to convince one court to adopt a different interpretation and everything could change

Parity, continued:

- For example, if full parity is applied to treatment limitations, not just cost-sharing, employer-provided mental health coverage could implode:
  - Such coverage depends on managed behavior healthcare arrangements that frequently rely on closed networks, tighter networks and/or vigorous utilization management and review
  - These techniques are typically not comparable to the out-of-network coverage, broader networks and less intense UR/UM of the medical/surgical coverage they are paired with.

Parity, continued:

- Since these techniques limit access to treatment in ways that the accompanying medical/surgical coverage does not, all of them are potentially illegal under a full parity mandate that applies to treatment limitations.
- Thus, the full extension of the concept of mandated mental health parity could lead to the dismantling of the best source for affordable mental health coverage in the market