Monthly Newsletter

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The Affordable Care Act: How It Impacts Our Senior Population

Since its passage in 2010, the Affordable Care Act has been the subject of many heated debates and a cause for some confusion among most of the population. In order to assist you in serving your senior clientele, this issue of the *ElderCounselor*™ will attempt to shed some light on how the law affects the elderly. No doubt, there will continue to be debates over healthcare reform. Regardless, the law of the land is the ACA. Its far-reaching changes have already begun and will continue in the years to come. Here is how it impacts seniors.

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Individual Mandate

Most of us have heard that under the ACA there is an individual mandate to obtain healthcare insurance. In the event that one fails to do so, a penalty will be imposed at $95 per adult ($47.50 per child) or 1% of the family income, whichever is greater, in 2014. The penalty rises each year and in 2016 will reach $695 per adult ($347.50 per child) or 2.5% of the family income, whichever is greater. However, for our senior clientele, this is not as big a threat since those over 65 are eligible for Medicare coverage. As long as they enroll in the coverage available, seniors 65 and over will not face the penalty.

Medicare Changes

Although there will be payment cuts to Medicare, there are key benefits that are absolutely protected under the ACA. Medicare Part A (hospitals, hospice care and some home health services) and Medicare Part B (medical insurance) are protected and may not be cut. The changes under the ACA, according to the National Council on Aging, give seniors even more Medicare benefits.[1]

Changes to Prescription Drug Coverage

The new healthcare law decreases the expenditure on prescription drugs for Medicare recipients. Prior to the law being enacted, Medicare recipients were subject to what has become commonly known as the "Donut Hole." Simply put, the Medicare law previously required recipients to reach a $310 deductible prior to Medicare kicking in to assist. At that point, enrollees starting paying 25% of the drug cost until they reached a total expenditure of $2800. The drug expense from $2800 to $4550 was then paid 100% by the enrollee. Once drug expenses reached $4550 Medicare would kick in again and the enrollee would pay only a small percentage of the prescription at that point. The Affordable Care Act has enacted a provision that requires Medicare to pick up more of the tab and will close the "donut hole" by the year 2020. Eventually, Medicare recipients will pay 25% of all prescription drugs across the board. This is good news for seniors since the number of prescription drugs taken typically increases with age.

Preventive Care Expanded

Another benefit to seniors under the Affordable Care Act is an increase in preventive care coverage. The ACA requires that Medicare cover preventive care procedures and screenings in an effort to reduce possible necessary future treatment. Prior to the ACA, Medicare did not cover preventive services. Such services include flu shots, tobacco use cessation counseling, cancer screenings, diabetes screenings and screenings for other chronic diseases. In addition, seniors are allowed an annual wellness visit. Previously, these services, whether recommended or not, were paid out of the patient's own pocket. No doubt the senior population sees this change as a benefit.

Changes to Medicare Advantage Plans

When a senior enrolls in Medicare, he or she may choose the traditional Medicare coverage plan or may seek what is called a Medicare Advantage Plan. The Medicare Advantage Plans have their own terms of coverage. They usually cover services not traditionally covered by Medicare such as dental or vision, but may, at the same time, require co-pays or cost-sharing fees for services covered at no out-of-pocket expense under traditional Medicare.

The ACA prohibits Medicare Advantage Plans from charging higher cost-sharing fees for seniors receiving chemotherapy and dialysis. In addition, it limits the amount of expenditures of other than medical services for enrollees. In other words, the Medicare Advantage Plans are now limited as to the amount they may spend on administrative, marketing and other non-medical expenses. While certain additional covered services under these plans may be eliminated, certain required benefits are prohibited from being cut. Presently, 1 in 4 seniors is enrolled in a Medicare Advantage Plan.

[1] http://www.ncoa.org/assets/files/pdf/130812-FAQs.pdf

The new healthcare law reduces payments to Medicare Advantage Plans by $145 billion over 10 years. Because of these cuts to the Medicare Advantage Plans, the future as to these plans is uncertain. As to whether this is a benefit to the senior depends on your point of view. At any rate, it changes the options currently available to seniors under Medicare Advantage Plans.

Non-Medicare Changes

In addition to Medicare changes that certainly affect seniors, there are other changes written into the law that should be noted as well. Most of these would be considered beneficial to seniors.

No pre-existing and conditions clauses

All health insurance carriers are prohibited from including pre-existing conditions clauses in their plans. This means that health cannot be a factor as when applying for health care coverage. Furthermore, insurance companies are prohibited from charging individuals varying amounts for coverage based on their health, sex, age or other commonly-considered factors. This appears to be good news for the ill, females and the elderly, which are the groups of people who traditionally have paid more for their coverage. Now the cost will be evenly distributed to all.

In addition to those factors that may not be taken into consideration upon applying for coverage, there is also the protection of consumers once they are enrolled in the plan. The healthcare law says that once enrolled in a plan, the insurance company may not dis-enroll a person for becoming ill.

Grants as Incentives to Hospitals

The ACA incentivizes hospitals to take extra care of seniors by providing grants to them for working with seniors who are at high risk for frequent hospital readmissions.

The Elder Justice Act

The Elder Justice Act is aimed at protecting seniors from crimes and abuse including physical and mental abuse and financial exploitation. This was enacted under the ACA.

Nursing Home Care Changes

There are several provisions under the ACA that concern nursing homes. For example, the ACA requires the Center for Medicare and Medicaid Services to provide a comprehensive website where consumers may find information regarding local nursing homes, including inspection and complaint reports.[2] From this, the consumer may find the number of violations and complaints a specific nursing home has received. In addition, the consumer will be able to find information about the nursing home such as the owner of the nursing home, how much the nursing home spends on resident care compared to administrative costs, the number of hours of nursing care received by residents and staff turnover rates.

In addition to being able to evaluate a nursing home more completely prior to choosing one, the law has made changes meant to make it easier to file complaints about the quality of care within the nursing home. It also prohibits retaliation for filing such a complaint.[3]

[2] http://www.canhr.org/newsroom/newdev_archive/2013/ACA%20Nursing%20Home%20Report.pdf
[3] *Id.*

Further, in the event a nursing home decides to close its doors, the ACA imposes new, expanded notice requirements for its residences. Not only must the nursing home provide notice of a closure far enough in advance for its residence to relocate, but it must ensure that all residents have been successfully relocated prior to actual closure. [4]

Finally, the ACA provides all states with the option to enroll in federal grants to pay for criminal background checks on more staff working at the nursing home. This will ensure that not only are nurses and certified nursing assistants background checked, but that any staff coming into contact with patients may be subject to such a safety procedure as well. Again, this is an optional program left to the discrepancy of each state.

Community Based Long Term Services and Supports

The ACA aims to strengthen the emphasis on home and community-based care by giving states several options to expand such programs for Medicaid enrollees.

There are three voluntary provisions for the expansion of home and community-based services (HCBS) under Medicaid. First, a state may choose to offer a community first choice option to provide attendant care services and supports. Second, a state may amend its state plan to provide an optional HCBS benefit. And, finally, states may rebalance spending on long term services and supports to increase the proportion that is community-based. The first and third provisions offer states enhanced federal matching rates as an incentive. Although the new provisions are valuable, the law does not set minimum standards for access to HCBS, and the new financial incentives are limited especially for the many states facing serious budget problems. Wide variations in access to HCBS can be expected to continue, while HCBS will continue to compete for funding with mandated institutional services.[5]

How is the ACA Funded by Seniors

The benefits received under the ACA must be funded. Although too lengthy to detail in this writing, we will outline how our seniors will bear part of the burden of funding the law.

As already mentioned, there will be some cuts to the Medicare Advantage Plans that will support the funding of the ACA. This is in the form of $145 billion over a ten (10) year period. Those seniors enrolled in such plans will no doubt undergo adjustments as the changes are implemented.

In addition, the ACA will be funded with a surcharge tax of 3.8% to unearned or investment income of singles with an annual income over $200,000 and couples with an annual income over $250,000. Therefore, seniors who fall within this income bracket will be subject to the tax.

Another impact on seniors is the increase in the floor for medical expense deductions from 7.5% to 10% of Adjusted Gross Income. This change will impact taxes paid for 2013.

[4] http://www.healthindustrywashingtonwatch.com/2013/03/articles/regulatory-developments/hhs-developments/other-cms-developments/cms-finalizes-aca-nursing-facility-closure-notification-rules/

[5] http://www.ncbi.nlm.nih.gov/pubmed/22497357

Finally, working seniors may be subject to the additional 0.9% Medicare payroll tax on high income earners (defined as taxpayers with over $200,000 in earned income, $250,000 for families). This additional tax applies to the excess over the stated limits. This change takes place in 2013.

Conclusion

Clearly there are many changes made by the Affordable Care Act that will affect seniors and their loved ones. It is important to have a general understanding of what seniors are facing in terms of their health care coverage. With seniors facing so many changes during a susceptible time in their lives, it is crucial that they be directed to resources that can assist them to make educated decisions about their health, their finances and their care options. Our firm is dedicated to helping seniors and their loved ones work through these issues and implement sound legal planning to address them. If we can help in any way, please don't hesitate to contact our office.