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House Overturns Committee Report on Medical Record Privacy Bill

This week, the House rejected HB 1587, relative to patient healthcare information. The bill purports to improve privacy protection with respect to medical records by giving patients more control over access to such records and the information contained therein. Health care providers universally believe that in practice the bill would provide minimal privacy protection beyond that which currently exists under the federal HIPAA privacy rule while interrupting the efficient delivery of care, slowing the development of electronic medical records, creating confusion among medical office workers and patients, and, in a worst-case scenario, diminishing the quality of care that is delivered to New Hampshire citizens. Privacy is important, especially when it comes to information as personal as medical history. However, restricting access by health care providers to the best and most complete information available about a patient can be dangerous.

The House rejected the committee version of HB 1587 by a vote of 150-166 then voted by voice vote to refer the bill for interim study. Thus, work on this issue will continue in the summer and fall and a new bill is expected next session. The Greater Manchester Chamber of Commerce, along with the Business and Industry Association and the Greater Nashua Chamber of Commerce, opposed HB 1587 and will continue to be actively involved in the issue going forward.

House Commerce Committee Rejects Subcommittee Amendment and Supports Work of RFID Commission

The House Commerce Committee voted 12-2 this week to recommend the RFID Study Commission version of HB 686, regulating tracking devices, after rejecting a competing subcommittee amendment by a vote of 5-9. This is good news for industries that have expressed concern about the regulation of RFID (Radio Frequency Identification Devices) and similar technologies that are used for a variety of purposes including improved inventory control, improved safety of consumer products, improved recovery of stolen goods, and improved security and efficiency in the delivery of consumer services. One of the biggest sticking points relates to mandatory labeling of products which contain a tracking device. The amendment adopted by the House Commerce Committee does not include a labeling requirement at this time; however, the RFID Study Commission continues to meet and is working on labeling language that might be presented in future deliberations on the bill. The subcommittee amendment does contain language

mandating labeling, language that is not acceptable to many stakeholders.

HB 686 will reach the House floor for a vote next week and a floor fight is expected. It will be interesting to see how House leadership reacts to this bill since a majority of committee members support one version while a majority of Democrats on the committee support the other.

Supreme Court Issues Opinion on Tax Exempt Status for Non-Profits

As municipal costs rise and property taxpayers push back, more and more cities and towns are examining tax exemptions for government entities, religious institutions, schools, and charitable organizations more closely and, in some cases, demanding payment from organizations that have historically been considered exempt. Last year, the NH Supreme Court established a four-part test against which charitable tax exemptions must be evaluated. To be exempt, a charitable organization must meet all four factors, as follows:

1. The organization must be established and administered for a charitable purpose.
2. The organization must have an obligation to perform its stated purpose to the public rather than simply to members of the organization.
3. The tax-exempt property, in addition to being owned by the organization, must be occupied by it and used directly for the stated charitable purpose.
4. Any of the organization's income or profits must be used for the purpose for which the organization was established and no pecuniary profit or benefit may accrue to the organization's officers or members.

In assessing these factors, the court considers the charter and other documents governing the organization as well as the organization's practices.

Shortly after the Supreme Court established the four-part test, the Hillsborough County Superior Court (North District) applied it in a case involving the MacDowell Colony, a non-profit corporation in Peterborough dedicated to nurturing the arts. The court held that the MacDowell Colony serves a charitable purpose through its artist-in-residence program, that the four-part test is met, and that the MacDowell Colony is entitled to a charitable tax exemption under state law.

Today, the NH Supreme Court agreed. The court recognized that the MacDowell Colony artist-in-residence program is open only to those artists selected through a private admission process; however, it held that the program advances the intellectual well-being of the general public and primarily benefits society as a whole.

The court clarified two factors in the four-part test: (1) that the inquiry is not whether the general public benefits from use of the property but whether the public benefits from the organization's performance of its stated purpose; and (2) that the obligatory service requirement relates not to whom the service is provided but to whether the organization is required to provide the service at all.

While this decision may not directly impact most Chamber members, it will have an indirect impact on the amount of property that will be subject to taxation in communities throughout the state and a direct impact on those charitable organizations supported by business leaders.

Valerie Acres

The Health Care Challenge

Each year the rising cost of health care is cited as one of the business community greatest concerns and highest priorities. Yet each year we seem to end up back where we started. Why? The reality is health care is one of the most complex, delicate, emotional, and politicized issues the business community and legislature deal with. With all these forces at work, true comprehensive reforms are difficult to achieve and implement. What then should we do? The business community must continue to advocate for comprehensive reforms, despite this challenging political environment and lack of past success.

The one thing the business community should not do, however, is condone poorly designed or short term reforms that may have severe unintended consequences. Its no secret that making health insurance more affordable and accessible for employees and employers is a goal we all agree with and strive for. The manner and details in which we reach that goal, however, is not something we can afford to merely glance over. Every proposed reform must be vetted and studied so that we fully understand what impact it will have in the immediate and distant future.

The Greater Manchester Chamber of Commerce has taken this lesson to heart. In 2008 the GMCC has voted to oppose all health care benefit mandates. A health care benefit mandates requires insurers to cover a certain procedure or illness. Supporters argue that mandates lower health care costs over time as they promote a healthier workforce. The reality is mandates lead to higher premiums as they force insurers to cover benefits that the market has not dictated they should cover. The purported long term cost savings these mandates are supposed to provide are far from a guarantee and rarely deliver.

The GMCC has also applied this lesson in its review of SB 540, the "HealthFirst" initiative. SB 540 create a standard wellness plan that aims promote a healthier workforce by offering incentives for small business employees, such as wellness programs normally offered in plans by large companies. One of the major incentives the plan hinges on is affordability. SB 540 caps the base premium for the standard wellness plan at 10% of the statewide median wage. On the surface, this initiative sounds like a good deal. A review of the details of SB 540, however, raises a number of problematic and worrisome issues. By tying the base premium to wages, the bill assumes wages and health care costs will increase at relatively similar rates. The problem is wages historically have increased at a far slower pace than costs. The result of a growing disparity between wages and costs would be a plan that costs more than its premium. This could potentially lead to cost shifting to other segments of the employer market place, cutting of benefits, and higher deductibles. That in the end doesn't represent much real progress.

SB 540 does try to mitigate this issue by including language that allows for an actuarial review of the plan if no carrier files a product in compliance with the plan's requirements. The current language, however, does not go far enough. The actuarial review should ideally be completed immediately following the creation of the plan, rather than waiting to see if insurers comply with it. Reviewing the plan out of the gate is the best way to ensure the plan's actual cost and premium will be relative to one another and to maintain an equal playing field among carriers. Maintaining an equal playing field is critical to promoting more competition in the market, which as mention earlier is critical to driving down costs.

Besides this issue, there is other language that needs to be added to SB 540. One glaring issue is whether a business that opts into the plan but do not participate in the wellness incentives should be eligible for the plan's lower premium. A business who did this would not be contributing to creating a healthier workforce, which is after all the overall goal of the bill, and should not be eligible for the lower premium. Supporters claim that employees will be motivated to participate in the wellness programs because of incentives included in the plan. But since the standard plan does not exist yet, neither do these incentives. That mean we have no idea whether it is even reasonable to expect employees to participate. SB 540 would be well served to include language that requires participation in the wellness programs. Without that requirement, this bill will simply offer discounted premiums and not achieve any serious gains in promoting wellness.

The other problem with the approach favored by SB 540 is more of a philosophical question. The bill places enormous responsibility within the state insurance department to convene an advisory committee to develop the standard wellness plan and execute most of the major functions of this legislation. After the committee develops the standard plan, the bill requires all insurers to offer the plan and prohibits them from offering similarly priced products. Does this approach really balance government oversight with the free market? The answer seems to no as the bill clearly places more power with government and limits the abilities of the free market. For years we have strived to create more competition in the insurance market to help drive down costs. This bill seems to abandon that approach. Are new insurers really going to want to enter to the NH marketplace if they are required to offer a product that costs them money?

So as you can see, despite its good intentions and laudable goals, SB 540 has some very problematic issues. The GMCC opposes SB 540 in its current form and hopes to work with the legislature to improve the bill. If the legislature includes feedback from all stakeholders including all sizes of business, business organizations, insurers, and providers, there is no question we can reach consensus on this issue.

As always, please feel free to contact the Chamber with any questions. Remember, the GMCC is here to be your business advocate and your voice in Concord. In order for us to do so effectively, we need feedback from you! Please direct any questions to michaels@manchester-chamber.org or call (603) 792-4107.

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