

CHAPTER 6

Employee Benefit Plans and The Americans with Disabilities Act

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§ 6.01. Introduction.

Health care reform is one of the most debated issues in today's political arena. Inevitably, health care reform will affect every entity or individual involved in the provision of, or payment for, health care, not to mention health care consumers. Many employers who provide health benefits to their employees have already attempted to contain costs. For example, conditions that are traditionally high dollar items, such as mental health and substance abuse treatment, often have been severely limited in recent years. Some employers have eliminated or capped coverage for specific diseases, such as AIDS.

The Americans with Disabilities Act of 1990 (ADA)⁽¹⁾ has important implications for the cost containment debate. The ADA specifically provides that an employee benefit plan, such as a health plan, may underwrite and classify risks as long as those activities are not a subterfuge to evade the ADA's purposes.⁽²⁾ This directive, though vague, raises the issue of whether limitations on certain care (*e.g.*, substance abuse treatment) or limitations tied to specific conditions or diseases would be viewed as subterfuges to evade the ADA's purpose. The Equal Employment Opportunity Commission (EEOC) is expected to promulgate regulations on the ADA's effect on employee benefit plans, but has given no timetable for proposing those regulations.⁽³⁾ In the interim, employers and other purchasers and providers of health care are well advised to prepare for limitations on the ways in which they may achieve cost containment. This Chapter presents an overview of the ADA to provide some context for discussing the statute's provision regulating employee benefit plans. The Chapter then examines the issues that may arise specifically with respect to employee benefit plans.

§ 6.02. Overview of the Americans with Disabilities Act.

[1]--Purpose.

The ADA is intended to "assure equality of opportunity, full participation, independent living, and economic self-sufficiency" for disabled persons.⁽⁴⁾ The ADA attempts to achieve this goal by imposing certain standards on key facets of everyday life, such as employment, public services, transportation, and public accommodations. While the ADA bears similarities to other federal civil rights laws, it is not an affirmative action statute. It imposes no quotas on public or private employers.

[2]--Areas Regulated.

[a]--Employment.