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Medicare's Life Expectancy Shortened Sharply

Each year, the Trustees of the Medicare trust fund, report in detail on its financial condition. The 2004 report indicates that the Hospital Insurance (HI) Trust Fund will be exhausted in 2019, seven years earlier than last year's projection. Even so, the Part A Trust Fund is still in much better shape than it was several years ago. As recently as 1996, the Trustees projected the trust fund would be exhausted in 2001.

The shorter life span for the HI Trust Fund is due to a combination of factors. Administration officials indicated that additional costs under the Medicare reform bill enacted last year account for about two years of the seven-year difference from last year's projection. The other five years are primarily due to lower payroll-tax revenues and higher hospital spending.

Closing the gap between revenues and expenditures would require that benefits be cut 48% or that Medicare payroll taxes be increased 108%. The Trust Fund may stop running a surplus as soon as this year, rather than 2013, as projected last year.

The increased costs due to the Medicare reform bill are related to increased payments to HMOs, not to the new prescription drug benefit. The prescription drug benefit is not funded through the HI Trust Fund.

Separately, controversy about the projected costs of the Medicare reform bill has been swirling through the corridors of power in Washington, D.C. The Medicare actuary claims he was threatened with firing if he revealed his forecast of the cost of the proposed legislation before Congress voted on it. Congress believed the new prescription drug benefit and other reforms would cost less than $400 billion over 10 years, but the actuary projects the cost to be over $500 billion.

The combination of the more pessimistic projection for the Medicare Trust Fund and the controversy about the actuary will likely play a role in the Presidential election.

IRS Clarifies Its Position On COBRA And Medicare Entitlement

On March 8, 2004, the Internal Revenue Service published Revenue Ruling 2004-22 clarifying its position with regard to Medicare entitlement as a second qualifying event for a COBRA continuee. A COBRA continuation coverage period can be expanded from 18 to 36 months if a second qualifying event occurs. Medicare entitlement of a covered employee is one of the events that can be a second qualifying event. This ruling holds that Medicare entitlement is not a second qualifying event unless it would result in a loss of coverage under the group health plan (ignoring the first qualifying event).

This clarification does not change the special rule for measuring the maximum coverage period in a case where the covered employee's entitlement to Medicare precedes a termination or reduction in hours. Under this special rule, when a covered employee's Medicare entitlement is followed within 18 months by a loss of coverage due to termination or a reduction in hours, the covered spouse and dependent children may elect COBRA for up to 36 months from the date of Medicare entitlement. This special rule applies regardless of whether the Medicare entitlement is a qualifying event. Because a covered employee is not a qualified beneficiary with respect to any 36-month qualifying event, the expanded period that applies in connection with the special rule does not apply to the covered employee, but only to the spouse or a dependent child.

Tenth Circuit: FMLA Does Not Bar Termination For Absenteeism

The Tenth Circuit U.S. Court of Appeals in *Dry v. The Boeing Company* (No. 01-3294) ruled that the termination of an employee for excessive absenteeism did not violate the employee's rights under the Family and Medical Leave Act (FMLA). Boeing granted Mr. Dry a number of requests for leave to care for his wife. In his final absence, Mr. Dry called about once a week to say he would return to work on the following Monday, but always failed to appear or to call to explain his absence. Mr. Dry also failed to provide the medical documentation requested by Boeing, even though he said he would provide it. Mr. Dry also failed to return to work after the physician treating his wife said that he could return to work. At that point, Boeing terminated Mr. Dry for excessive absenteeism. He then filed suit, alleging that the termination violated his rights under the FMLA. The court ruled that he was terminated for voluntarily missing weeks of work without explanation and that the termination did not violate his rights under FMLA.

California Supreme Court Rules Catholic Charities Not Exempt

California, like 19 other states, requires that health plans include contraceptive coverage if the plan covers prescription drugs. California exempts religious employers. The Supreme Court of the state of California has ruled that Catholic Charities does not fall under the category of religious employers because the group offers social services to people of all faiths and employs people of all faiths.

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Garner Consulting does not practice law. Please seek qualified counsel if you need legal advice. For employee benefits consulting, please call Zaven Kazazian or Andy Keowen at (626)440-0399.