ANNALS OF HEALTH LAW
Advance Directive

VOLUME 20 FALL 2010 PAGES 116-124

Expanding Waistlines: How Some States and Employers are Responding to the Obesity Epidemic and its Impact on Rising Health Care Costs

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I. INTRODUCTION

Those who suffer from obesity face numerous detrimental consequences, including various health, social, and psychological effects. The economic impact of obesity cannot be ignored, especially with respect to health care costs. Some of the diseases associated with obesity are type 2 diabetes, some cancers, and heart disease.[1] As a result, obesity and the associated diseases are driving up the cost of care.[2] Although concerns regarding childhood obesity have taken center stage, adult obesity cannot be overlooked. In fact, obesity in adults is increasing more rapidly than in children.[3] This article will examine the obesity epidemic, the economic burden of obesity, the impact of healthcare reform legislation on obesity, and how some states and employers have taken an initiative to put an end to the problem that has been plaguing our country for decades.

II. THE RAMIFICATIONS OF ADULT OBESITY

A. Dealing with Obesity

Although calorie imbalance is the simple explanation for what causes obesity, there are many factors that contribute to obesity, such as genetics, metabolism, behavior, environment, culture, drugs, disease, and socioeconomic status.[4] While it is time to hold people personally accountable for obesity and the resulting astronomical costs to the

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1. WORLD HEALTH ORGANIZATION, *Obesity and Overweight*, (2003), http://www.who.int/dietphysicalactivity/media/en/gsfs_obesity.pdf [hereinafter WHO].
2. *Id.*
3. Youfa Wang et al., *Will All Americans Become Overweight or Obese? Estimating the Progression and Cost of the US Obesity Epidemic*, 16 OBESITY 2323, 2323 (Oct. 2008).
4. CTRS. FOR DISEASE CONTROL & PREVENTION, Overweight and Obesity, Causes and Consequences, http://www.cdc.gov/obesity/causes/index.html (last visited Apr. 3, 2011) [hereinafter CDC].

healthcare system, people need an accessible and affordable means to maintain a healthy weight. One of the primary difficulties with preventing and treating obesity is that behavioral change is required.[5] Since obesity is a disease that depends on individual behavior, there is no simple way to avoid the consequences.[6] The standard regimen to prevent and combat obesity is weight loss, regular exercise, dietary changes, vigilant monitoring of symptoms, and, in most cases, taking drugs.[7] Technically, health care professionals can be paid to not only diagnose a patient with obesity, but also to monitor progression of the disease and provide aid for any complications that may arise.[8] Unfortunately, current health plans are structured to reimburse providers for sickness rather than wellness.[9] Payors do not reimburse providers for monitoring patients between visits and encouraging patients to stick to their prescribed therapy program.[10] Rather than rely on providers, patients can join weight loss networks, where groups of similarly situated people provide one another with support and understanding.[11] However, even though a plethora of weight loss networks exist, they are only modestly successful.[12]

B. The Impact of Obesity on the Healthcare System

There is a high prevalence of obesity in the United States and, currently, there is no end in sight. As of 2008, 33.8% of Americans suffer from obesity, 32.2% of which are adult men and 35.5% adult women.[13] Ninety percent of individuals with type 2 diabetes also have issues with weight management.[14] By 2030, 49.9% of all adults will be obese, and by 2048, 100% of adults will be obese.[15] By 2030, the healthcare costs associated with being obese and overweight could range from $860 to $956 billion, which would

5. CLAYTON M. CHRISTENSEN ET AL., THE INNOVATOR'S PRESCRIPTION: A DISRUPTIVE SOLUTION FOR HEALTH CARE 160 (2009).

6. *Id.* (Since extensive behavioral change is necessary to control and combat the symptoms associated with obesity, and because there is no simple way to relieve the symptoms or avoid the consequences of the disease, obesity is characterized as a "behavior dependent" disease.)

7. *Id.*

8. *Id.* at 164.

9. *Id.*

10. *Id.*

11. *Id.* at 166.

12. Michael L. Dansinger et al., *Comparison of the Atkins, Ornish, Weight Watchers, and Zone Diets for Weight Loss and Heart Disease Risk Reduction,* 293 JAMA 43, 43 (Jan. 2005).

13. Katherine M. Flegal et al., *Prevalence and Trends in Obesity Among US Adults, 1999-2008,* 303 JAMA 235, 235 (Jan. 2010).

14. WHO, *supra* note 1.

15. Wang et al., *supra* note 3, at 2328-29.

account for 15.8 to 17.6% of total health-care costs, or for one in every six dollars spent on health care.[16] Unless there is a major overhaul and substantial policy changes are effectuated, future predictions will become a sad reality.

Coupled with the increasing trend of obesity is the high cost of care. In 1998, the cost of obesity was as high as $78.5 billion[17], or 6.5% of aggregate medical spending.[18] By 2006, the costs attributable to obesity had risen to 9.1%.[19] The increase in annual costs per person that were attributable to obesity was estimated to be 36% for Medicare, 47% for Medicaid, and 58% for private payers.[20] Furthermore, across all payers, the disparity of cost between obese individuals and their non-obese counterparts was $1,429 (42%).[21] The cost of obesity has almost doubled since 1998, and is currently estimated to be as high as $147 billion.[22] Given the current economic situation, both the private and public sectors would benefit from reducing the rate of obesity and the health care costs associated with this disease.

III. RESPONDING TO THE OBESITY EPIDEMIC

A. Increased Health Insurance Premiums and Denial of Coverage

In the private insurance markets, obesity may be a factor used to deny coverage or charge higher premiums. In the small-group market, only nine states expressly prohibit the use of obesity as a factor in determining health insurance rates.[23] In the individual market, only five states expressly prohibit the use of obesity as a factor in determining health insurance rates and eligibility.[24] If an obese individual is fortunate enough to find health care coverage, weight may be taken into consideration in determining the appropriate premium. In a 2007 survey, the Texas Office of Insurance Counsel

16. *Id.* at 2329.
17. Eric A. Finkelstein et al., *Annual Medical Spending Attributable to Obesity: Payer- and Service-Specific Estimates*, 28 HEALTH AFFAIRS w822, w822 (2009), http://obesity.procon.org/sourcefiles/Finkelstein AnnualMedicalSpending.pdf.
18. *Id.* at w828.
19. *Id.*
20. *Id.* at w826.
21. *Id.*
22. CDC, VITAL SIGNS: ADULT OBESITY 1 (Aug. 3, 2010), http://www.cdc.gov/VitalSigns/pdf/2010-08-vitalsigns.pdf.
23. Jennifer S. Lee et al., *Coverage of Obesity Treatment: A State-By-State Analysis of Medicaid and State Insurance Laws*, 125 PUB. HEALTH REPS. 596, 600 (2010).
24. *Id.*

discovered that 100% of the insurance companies used body mass index to deny coverage, while 86% of the companies used body mass index to charge higher premiums.[25] Even if an obese individual is eligible for health care coverage, there is a possibility that his health care plan will not cover treatments that are in any way related to his obesity.[26]

Fortunately, health care reform legislation may help curb some of the issues that afflict obese individuals. The Patient Protection and Affordable Care Act (PPACA) will prohibit insurance companies from denying coverage based on pre-existing conditions[27] or discriminating based on health status[28], such as obesity.[29] However, prohibitions against denying coverage based on pre-existing conditions do not become effective until 2014.[30] In the meantime, the federal government has set aside five billion dollars to provide temporary health insurance coverage to qualified high-risk individuals with pre-existing conditions[31] at a standard premium rate.[32] When the temporary coverage ends in 2014, not only will obese individuals be guaranteed health care coverage, but premiums will only vary based on family structure, geography, the actuarial value of the benefit, age, and tobacco use.[33]

B. Penalizing Individuals for Unhealthy Behavior

The public sector has taken matters into its own hands and initiated its own solutions to the obesity epidemic and the healthcare costs associated with this disease. Some states have responded to increased healthcare costs by monetarily penalizing obese individuals. At 31%, Alabama has the ninth highest obesity rate in the nation.[34] Furthermore, obese employees cost the state 40% more in health care costs than their non-obese

25. Office of Pub. Ins. Counsel, *2007 Individual Health Insurance Underwriting Guidelines*, 3 http://www.opic.state.tx.us/docs/442_2007_health_ug.pdf (last visited Apr. 3, 2011).

26. Lee et al., *supra* note 23, at 603.

27. Patient Protection and Affordable Care Act (PPACA), Pub. L. No. 111-148, § 2704(a), 124 Stat. 119, 154 (2010).

28. *Id.*

29. *Pre-Existing Medical Conditions List: Summary of Deniable Disorders by Health Insurance Companies*, VAUGHN'S SUMMARIES, http://www.vaughns-1-pagers.com/medicine/pre-existing-conditions.htm (last updated Mar. 10, 2011).

30. Pub. L. No. 111-148, § 1101(a), 124 Stat. at 141.

31. *See* Pub. L. No. 111-148, § 1101(a), (g)(1), 124 Stat. at 141-43.

32. Pub. L. No. 111-148, § 1101(c)(2)(C)(iii), 124 Stat. at 142.

33. Pub. L. No. 111-148, § 2701(a)(1)(A)(i)-(iv), 124 Stat. at 155.

34. CDC, *Overweight and Obesity, U.S. Obesity Trends*, http://www.cdc.gov/obesity/data/trends.html (last visited Apr. 3, 2011).

counterparts.[35] In response, the state has invoked a controversial penalty in order to keep its health care costs down. Single state employee health insurance plans are free and family plans are $180 per month.[36] However, an obese state employee pays an extra $25 per month for health insurance.[37] Furthermore, employees who do not receive a free annual health screening will also have to pay the fee.[38] Any employee who is screened and diagnosed as obese will have one year to see a doctor at no charge, enroll in a wellness program, or maintain their own health without outside help.[39] This particular program has been implemented with respect to employees that smoke and has been somewhat effective.[40] However, we will have to wait and see how if this program also succeeds with respect to obese employees.

C. Incentivizing Individuals to Cultivate Healthy Habits

On the other end of the spectrum, rather than penalizing unhealthy individuals, a few states are offering one-time financial incentives to employees for cultivating healthy habits. For example, Ohio state employees receive $50 for having a health assessment and another $50 for following the proposed therapy.[41] Likewise, Arkansas and Missouri state employees receive monthly premium discounts for taking a health risk assessment and participating in wellness programs to reduce obesity.[42]

Similarly, the private sector has devised strategies in response to the obesity epidemic and the healthcare costs associated with this disease. Some companies incentivize employees for participating in wellness programs and participating in health risk assessments. For instance, employees at Crown Equipment Corporation in Ohio receive an insurance premium discount of up to $360 per year if they take a health risk

35. Jana Winter, *Alabama Plans to Tax Fat Employees to Recoup Insurance Costs*, FOX NEWS (Sept. 2, 2008), http://www.foxnews.com/story/0,2933,414861,00.html.

36. *Id.*

37. *Id.*

38. *Alabama Workers to Pay for Extra Pounds*, ASSOCIATED PRESS (Aug. 21, 2008, 7:36 PM), http://www.msnbc.msn.com/id/26337794/.

39. *Id.*

40. Press Release, Action on Smoking and Health, More Companies Penalizing Unhealthy Behaviors Like Smoking to Save $10,000/yr Per Worker, 2 (June 8, 2010), http://www.prlog.org/10724186-more-companies-penalizing-unhealthy-behaviors-like-smoking-to-save-10000yr-per-worker.pdf.

41. *Alabama Workers to Pay for Extra Pounds*, *supra* note 38.

42. *Id.*

assessment and meet with a health coach.[43] Dell Computer employs a program called "Well at Dell" where employees can earn $78 each year just for completing an online health assessment and up to $225 more if they join and achieve one of the company wellness program goals.[44] Incentivizing employees is further supported by studies showing that worksite health promotion programs aimed at improving nutrition, physical activity, or both, are effective in promoting weight management.[45]

Wellness programs have become so popular that they have caught the attention of the government at both the state and federal level. Some states have made changes to their insurance code to encourage participation in wellness programs. For example, the state of Michigan now offers premium rebates of up to 10% to participants who take advantage of wellness programs offered by their employers or insurers, while Vermont offers a rebate of up to 15%.[46] Similarly, the federal government has taken action under health care reform legislation to promote wellness programs. To help small businesses that do not have the same financial flexibility as large businesses,[47] the federal government will provide grants to help businesses with less than one hundred employees launch a workplace wellness program.[48]

D. The Future

Just in the past two decades, various programs have been launched to encourage individuals to take control of their health by controlling their weight. For example, the Centers for Disease Control and Prevention Division of Nutrition, Physical Activity, and Obesity, created in 1999, currently funds twenty-five states to prevent and control obesity and other chronic diseases.[49] Similarly, in 2000, the Office of Disease Prevention and Health Promotion and the U.S. Department of Health and Human Services implemented

43. Denise Reynolds, *Change Your Lifestyle to Make Health Insurance Affordable*, EMAXHEALTH (Aug. 21, 2010), http://www.emaxhealth.com/1506/change-your-lifestyle-make-health-insurance-affordable.

44. *Id.*

45. Task Force on Cmty. Preventive Serv., *A Recommendation to Improve Employee Weight Status Through Worksite Health Promotion Programs Targeting Nutrition, Physical Activity, or Both*, 37 AM. J. PREV. MED. 358, 358 (2009).

46. Michelle M. Mello & Meredith B. Rosenthal, *Wellness Programs and Lifestyle Discrimination*, 359 NEW ENG. J. MED. 192, 196 (July 2008).

47. Paul J. Carruth & Ann K. Carruth, *Cost Accounting Implications for Corporate Wellness Programs*, 7 J. BUS. & ECON. RES. 25, 27 (June 2009).

48. Pub. L. No. 111-148, § 10408(a), (b)(2)(A), 124 Stat. 119, 977 (2010).

49. CDC, *Overweight and Obesity, State-Based Programs*, http://www.cdc.gov/obesity/stateprograms/ (last visited Apr. 3, 2011).

the Healthy People 2010 program with a goal to reduce adult obesity by 15%.[50] However, neither program has come close to achieving its goal considering the rate of obesity has steadily increased since 1999, and continues to rise in 2010.[51] Perhaps the problem with these programs is that individuals are repeatedly told they need to eat better and exercise more, but they are not given the tools necessary to accomplish these goals.

Accordingly, some companies have taken a step beyond penalizing or incentivizing their employees to regain control of their health care costs. These companies have resorted to vertical integration to increase efficiency and competitive strength and to improve quality of care.[52] By integrating upstream in their supply chain, the company controls various stages beyond their core competencies thus centralizing an entire process.[53] For example, Quad/Graphics, one of America's largest printing companies, was dissatisfied with the surging cost of health care and, therefore, decided to provide health care, in addition to ink and printing machinery.[54] In 1990, Quad/Graphics became self-insured and set-up its own primary care clinic and now has four medical centers, all of which focus on employee wellness.[55] This model has significantly decreased Quad/Graphics healthcare costs. The company now spends approximately $6,500 per employee on health care compared to neighboring companies who spend over $9,000 per employee on average.[56]

In 2005, the company implemented *Lean You*, an employee wellness incentive program designed to address obesity and other medical problems.[57] The program not only rewards employees for being physically fit, but also provides employees with incentives for managing their chronic health problems.[58] Quad/Graphics's incentive program, coupled with the fact that its doctors only see one patient every half hour, [59] allowing extra time to discuss health concerns and disease prevention, has greatly

50. Wang et al., *supra* note 3, at 2323.
51. *Id.*
52. CHRISTENSEN ET AL., *supra* note 5, at 212.
53. *Id.*
54. *Id.* at 209.
55. *Id.*
56. *Id.*
57. Raymond J. Zastrow & Len Quadracci, *Engaging Quad/Graphics Employees in the Improvement of Their Health and Healthcare*, 29 J. AMBULATORY CARE MGMT. 225, 228 (2005).
58. *Id.* at 228-29.
59. CHRISTENSEN ET AL., *supra* note 5, at 210.

contributed to the success of the company's program in reducing health care costs. In the first year, 22% of 10,500 eligible employees enrolled in the program.[60] Out of the 22% of employees who enrolled, 24% of them completed the program and were eligible for awards.[61] Although in the first year of operation *Lean You* cost Quad/Graphics $240,000 more than its usual healthcare costs, Quad/Graphics saved $550,000 from the detection of four cancers that were diagnosed in their early stages.[62] Accordingly, *Lean You* already demonstrated a net positive return of $1,959,100.[63] Once Quad/Graphics finds a cost-effective and competent supplier of health care coverage, it will most likely discontinue the business of managing its employees' health care.[64]

Quad/Graphics has taken matters into its own hands and created a successful health care model. However, there are legal obstacles that may impede other corporations from adopting the Quad/Graphics model of health care. For example, the model may not be feasible in states that have corporate practice of medicine laws which prohibit corporations from engaging in the practice of medicine and employing physicians.[65] Furthermore, if Quad/Graphics does choose to discontinue the management of its employees' health care, the company will have to consider how they will handle certain matters, such as patient medical records.[66]

IV. CONCLUSION

Multiple strategies have galvanized in response to the obesity epidemic. States and employers alike have engaged in both penalizing and incentivizing obese individuals. Others have decided to take control of the health care they offer. Regardless of the specific strategy used, these programs all focus on prevention and wellness. With recent legislation, the government too has decided to focus on preventative care and wellness.[67] The government recognizes that obesity is a complex problem with multiple causes, so its emphasis is now cultivating healthy habits and focusing resources on keeping people

60. Zastrow & Quadracci, *supra* note 57, at 229.
61. *Id.*
62. *Id.*
63. *Id.*
64. CHRISTENSEN ET AL., *supra* note 5, at 213-14.
65. *See generally* Jessica A. Axelrod, *The Future of the Corporate Practice of Medicine Doctrine Following Berlin v. Sarah Bush Lincoln Health Center*, 2 DEPAUL J. HEALTH CARE L. 103 (1997).
66. *See generally* Public Welfare: Security and Privacy, 45 C.F.R. §§ 164.500-.534 (2010).
67. *See e.g.* Pub. L. No. 111-148, 124 Stat. 119 (2010).

well. Furthermore, while the private sector is essential, it is ultimately the public sector that drives providers. Therefore, the focus needs to shift to the public sector and its role in preventative care.

Along with healthcare reform legislation, a new focus on preventative care has also emerged. The government is directing its efforts on outreach and education campaigns that focus on prevention and wellness to mitigate chronic disease and reduce obesity.[68] Furthermore, the government will provide all Medicare patients with an annual wellness visit coupled with a personalized prevention plan.[69] Additionally, states will be given incentives to help Medicaid recipients control and reduce their weight.[70] These efforts represent an important step in the right direction. Rather than create impractical programs that present a goal without providing the tools necessary for people to achieve that goal, the government is now putting the power in the people's hands.

Beginning in 2014, the Act allows employers to offer greater incentives to employees for participation in a wellness program or for reaching the target goals of the program.[71] Employers are permitted to vary insurance premiums by up to 30% for employee participation in certain wellness and disease prevention programs.[72] With both the private and public sectors focusing their efforts on preventative care and wellness rather than sickness, it is possible that 2048 will not see an entire population become obese.

68. Pub. L. No. 111-148, § 4004(a)(1), (c)(2)(A), 124 Stat. at 544.
69. Pub. L. No. 111-148, § 4103, 124 Stat. at 553-57.
70. Pub. L. No. 111-148, § 4108, 124 Stat. at 561-64.
71. Reynolds, *supra* note 43.
72. Pub. L. No. 111-148, § 2705(j)(3)(A), 124 Stat. at 157-58.