Subject: Parental Leave

Presented by: Gerald E. Harmon, MD, Chair

INTRODUCTION

At the 2016 Interim Meeting of the House of Delegates (HOD), Policy H-405.954, “Parental Leave,” was adopted. The policy states the American Medical Association (AMA) will: (1) encourage the study of the health implications among patients if the United States were to modify one or more of the following aspects of the Family and Medical Leave Act (FMLA) (a) a reduction in the number of employees from 50 employees; (b) an increase in the number of covered weeks from 12 weeks; (c) creating a new benefit of paid parental leave; and (2) study the effects of FMLA expansion on physicians in varied practice environments. This report serves as a summary of the FMLA, proposed expansion of the law and potential for study of the effects of future expansion, with a focus on the effects on physicians.

BACKGROUND

The FMLA provides certain employees with up to 12 weeks of unpaid, job-protected leave per year. Eligible beneficiaries of FMLA include employees who have been employed by their employer at least 12 months, worked at least 1,250 hours over the past 12 months, and work at a location where the company employs 50 or more employees within 75 miles. Private employers with at least 50 employees (employed for at least 20 weeks in the preceding or current calendar year) and public employers with any number of employees are covered by the FMLA. Several proposals for expansion of the FMLA at the federal level have been considered. Expansion of employee eligibility, covered leave time or employer requirements would undoubtedly result in various impacts on employees and employers, including physicians who are employed or employ others. Another proposed form of expansion, the creation of a required paid parental leave benefit, would also have significant implications for employers, employees, and new parents and infants.

AMA POLICY

AMA policy supports voluntary employer policies that provide employees with reasonable job security and continued availability of health plan benefits in the event leave becomes necessary due to documented medical conditions (Policy H-420.979). The AMA recognizes the public health benefits of paid sick leave and other paid time off, although mandatory paid sick leave is not specifically endorsed by the AMA. Council on Medical Service Report (CMS) 3-A-16 provided a comprehensive review of sick leave and paid leave policies. The HOD adopted the recommendations in the report that established policy supporting employer policies that provide employees with unpaid sick days to care for themselves or a family member (Policy H-440.823). The AMA recognizes that physicians, as employees and employers, are impacted by the FMLA and other medical leave regulations. AMA Policies for Parental, Family and Medical Necessity
Leave (Policy H-405.960) established guidelines that encourage medical group practices to incorporate and/or encourage development of leave policies, including parental, family, and medical leave policies, as part of the physician’s standard benefit agreement. This policy also encourages staff scheduling to allow for coverage during a physician’s leave without creating intolerable increases in other physicians’ workloads, particularly in residency programs, and that physicians should be able to return to their practices or training programs after taking parental leave without the loss of status.

DISCUSSION

Expansion of the FMLA

Proposals to expand the FMLA have been presented by legislators and advocacy organizations who assert that the U.S. lags behind other industrialized nations in its existing laws related to employee leave. On the federal level, proposals for expansion have attempted to:

1. expand employee eligibility by removing the 1,250 hour requirement, eliminating the requirement that an employee work for the employer for at least 12 months, or lowering the employer threshold of 50 employees within 75 miles;
2. cover more employers by including those with 15 or 25 employees;
3. increase the number of covered weeks; and
4. establish a mandated paid leave benefit.

One proposed federal expansion law is the Family and Medical Insurance Leave Act (the FAMILY Act) S. 337/H.R. 947, which would, among other things:

- create a national program to provide all workers, regardless of company size, with up to 12 weeks of partially paid leave; and
- enable workers to receive up to 66 percent of their monthly wages, up to a capped amount, during their time of leave.

Many states have already enacted laws that provide benefits in excess of those provided under the FMLA. Currently, three states—California, New Jersey and Rhode Island—have required paid family leave. New York will be the fourth in 2018 when its Paid Family Leave Benefits Law will be effective. Additionally, five states and several cities have implemented paid sick leave laws. The laws in these cities and states go beyond the required unpaid leave of the FMLA to provide employees with guaranteed pay during various types of approved medical leave. Benefits to both employees and employers have been reported in the states providing paid family leave.

In California, for example, the Paid Family Leave program provides employees with up to six weeks of paid leave to care for a new child or ill family member. The program is funded by employee payroll contributions, so while employers do not face financial burden as a result of the law, they are faced with ensuring the employees’ workload is covered and that gaps in staffing are filled. The program in California, however, does not assure job protection during leave, provides wage replacement at only 55 percent, and does not cover care for grandparents, grandchildren, parents-in-law, or siblings. A 10-year review of California’s expansion demonstrated that the Paid Family Leave benefit promoted family well-being, improved family economic security, equalized access to leave across occupations and income levels, and bolstered businesses by reducing workforce turnover. It was also noted that overall awareness of the program among those most likely to utilize it was low, implying that utilization rates could be higher if education and outreach were improved upon. Similar outcomes have been reported for other cities and states.
Existing Research

There is an abundance of literature about the benefits of employee access to medical leave provided under existing law, much of which was summarized in CMS Report 3-A-16. For example, studies show that children recover faster from illness when cared for by a parent, and the presence of a parent has been shown to reduce hospital stay duration by 31 percent. A national health impact assessment demonstrated that paid sick leave policy would result in more workers taking needed leave to recover from illness, receive preventive care, and care for ill children. These actions would reduce transmission of influenza, foodborne disease, and gastrointestinal infections in health care facilities. Some proponents of paid sick leave policies claim companies can experience cost savings, increased productivity, and disease and illness prevention when employees are able to take time off when they or a family member are ill.

In addition to evidence showing the benefits of leave policies, lack of paid sick leave can have significant and adverse effects on public health. Workers without paid sick leave are more likely to work while ill and delay medical care, which can lead to prolonged illness and likeliness of worsening otherwise minor health issues. One study revealed that lack of workplace policies, such as paid sick leave, was correlated with a higher incidence of influenza-like illness. A 2007 study estimated that the annual flu season results in over 3 million hospitalized days and costs employers $10.4 billion in direct medical costs for hospitalizations and outpatient visits.

Also outlined in CMS Report 3-A-16 are the concerns employers and employer groups have expressed with the prospect of expanding medical leave benefits. Some employer groups oppose expanding FMLA benefits due to the potential for increased costs. Others claim paid leave policies or policies that provide coverage for more employees may burden and negatively impact employer operations, with hospitals and physician practices being no exception.

Although it is limited, research does exist that demonstrates projected effects of various types of expansion upon family leave policies. An analysis published by IMPAQ International, Inc. and the Institute for Women’s Policy Research summarizes a simulation of five paid family and medical leave model programs based on working programs in three states and a federal proposal, all applied to the national workforce. The findings suggest that upon expansion of FMLA laws, through covering more eligible workers, replacing a larger percentage of usual earnings, and offering more weeks of paid leave increase the estimated costs. If based on any of the five models in the simulation, the cost for benefits would range from $31 billion to $43 billion. This report also projects that a national paid family and medical leave policy, depending on the type of expansion, would increase the amount of leave taken by 6 to 11 percent annually.

Another report by the Institute for Women’s Policy Research estimates costs for a series of policy scenarios for employers in New Hampshire. Using a simulation model, the authors estimated the total program costs for the Family Medical Leave Insurance (FMLI) policy proposal if the law was changed to require all employers to provide benefits, only firms with 25 or more employees, and only firms with 50 or more (current policy). The total costs were estimated at $163.5 million when all employees are covered, $133.8 million when only firms with 25 or more employees are covered, and $124.1 million when only firms with 50 or more employees are covered. In addition to the cost implications of covering more employees, the authors projected an increase in the number of leaves taken and a decrease in the average weekly benefit. Similar research has been reported for the District of Columbia.
Implications for Physicians

Expansion of FMLA benefits to include more employers or employees would undoubtedly affect physicians who employ others or are employed. Upon any form of expansion of FMLA, physicians who employ others and physicians in small practices would be expected to experience some changes in the operations of their practices. In 2016, 37.9 percent of U.S. physicians worked in practices with less than five physicians, 19.9 percent in practices with five to 10 physicians, and 13.3 percent with 11 to 24 physicians.²²

<table>
<thead>
<tr>
<th>Number of physicians in practice</th>
<th>Distribution of physicians by practice size²²</th>
<th>Estimated full-time employee count*</th>
<th>Affected by expansion in FMLA coverage from 50 to 25 minimum FTE</th>
<th>Affected by expansion in FMLA coverage to ALL employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-4</td>
<td>37.9%</td>
<td>5-20</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>5-10</td>
<td>19.9%</td>
<td>25-50</td>
<td>Yes</td>
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<tr>
<td>11-24</td>
<td>13.3%</td>
<td>55-120</td>
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<tr>
<td>25-49</td>
<td>7.4%</td>
<td>125-245</td>
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<td>No</td>
</tr>
<tr>
<td>50+</td>
<td>13.8%</td>
<td>250+</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

*Number of full-time staff members per physician varies according to specialty, practice setting and other factors. This full-time employee count assumes an average of four full-time staff members per full-time physician and includes the physicians.²³

As of 2016, most physicians (57.8 percent) work in practices with 10 or fewer physicians. Given there is an average of four full time support staff for every full-time practicing physician,²³ it would likely be the practices with 10 or fewer physicians that would be impacted by any reduction in the threshold to include more employees under FMLA. (Those with 11 or more physicians are already likely covered under current legislation.) For example, if FMLA coverage were expanded to include employers with 25 or more employees, or all employers regardless of size, these practices with 10 or fewer physicians may be required to make changes in scheduling, staffing processes or other aspects of practice operations. Reports on businesses’ experiences with FMLA compliance are limited and mixed, suggesting that these changes could be burdensome for some practices, but may pose no issues for others. One survey concluded employers report little negative impact of complying with FMLA,²⁴ but another report indicates a high number of complaints about the record keeping and coordination of state and federal leave policies.²⁵

A study conducted by the National Federation of Independent Business (NFIB) used a regulatory impact model to calculate the projected costs of an expanded FMLA leave program on small businesses. Their findings showed small businesses would be faced with an additional cost of approximately $30,000 to $50,000 in reduced sales, mandatory overtime payments, and diversion of management attention.²⁵ This study focused on manufacturing, construction, and various service industries and did not include data for health care employers; therefore, assuming correlations that suggest similar impacts in health care settings is cautioned against.

As outlined in the previously mentioned reports, the effects on employees, including physicians, would be dependent on many factors including practice size and whether expansion of the law would change the employer’s existing coverage. As more and more physicians move from solo or small practices to employment within health systems or hospitals, some may gain coverage under FMLA law. The personal effects of FMLA expansion on physicians would likely be similar to the
overall public health benefits described earlier in this report and in CMS Report 3-A-16. There is no research or literature to suggest that physicians employed by organizations subjected to expanded FMLA requirements would experience benefits that are significantly different than those experienced by employees in other professions.

CONCLUSION

Our review of existing research has demonstrated that expansion of FMLA laws could increase the cost of benefits to employers. Depending on the type of expansion, the costs could range from $31 billion to $43 billion. A national paid family and medical leave policy, depending on the type of expansion, would increase the amount of leave taken by 6 to 11 percent annually. Finally, any expansion of FMLA coverage would likely predominantly affect physician practices with 10 or fewer physicians.

The first directive in Policy H-405.954 states the AMA will encourage the study of the health implications among patients if the FMLA law was modified. The AMA recognizes the importance of effects changes in the law may have on patient outcomes. In addition to the federal law, states may have, or may enact in the future, any variety of family leave laws that provide benefits to more employees. Patient demographics and health care needs also vary across states and regions. It is for these reasons that the AMA will continue ongoing collaborations with state medical societies to observe and track the variety of local and state family leave laws and study the related health implications for patients.

The second directive of Policy H-405.954 states the AMA will study the effects of FMLA expansion on physicians. Upon enactment of federal laws that provide more expansive coverage or coverage to a larger number of people, there should be opportunities to study the effects on physicians and health care employers more expansively than the simulations discussed herein.

The AMA recognizes the importance and benefits of access to medical and family leave, and existing policies H-420.979 and H-405.960 are demonstrative of this cognizance. While the AMA does not endorse policies requiring paid leave, it does encourage medical group practices to incorporate leave policies, including parental, family, and medical leave policies, in their standard benefit structure.
REFERENCES

23. MGMA, Email communication: Staffing levels. 2017, Medical Group Management Association Data Drive: Medical Group Management Association.