Reader Beware

Readers looking at the Aon Risk Solutions report, “2012 Long Term Care,” should take it with a grain – or perhaps more – of salt. The report - based on only 37 providers in seven states - asserts that nursing homes are facing increased liability costs at the same time their revenue is being strained by funding cuts, particularly from a Medicare reimbursement reduction that went into effect October 1, 2011. What is the answer to the nursing home industry’s supposed financial predicament according to Aon? Tort reform and pre-dispute arbitration agreements, which they claim have led to decreased healthcare costs.

Here’s what they do not tell you:

- This report is published with the American Health Care Association – the largest trade association representing the interests of many nursing homes.
- For the second time in FY 2012, publicly traded nursing home companies reported “profits that exceed expectations,” “surging operational income” and “performance that outran fairly aggressive projections.”
- Medicare reimbursement rates for skilled nursing facilities are 3.4% higher in FY 2012 than in FY 2010 – even with the reduction effective October 1st, 2011.
- Seven states were chosen by Aon for the report. Why were these states chosen and not others? Does the report only examine states with the results Aon wants? How can the report be a “national study” if the information comes from just 7 out of 50 states?
- The report says it distributed a request for data to for-profit and non-profit providers. It does not state that the request for data was sent to all providers in the country or even all
providers in the seven states highlighted in the publication. Did only certain providers receive the data request? Were those providers cherry-picked?

- The report fails to identify the providers from which claim data was collected and how many providers were included from each state. Consequently, data from a state could conceivably be drawn from a single provider with a poor history of care and therefore not be representative of the state as a whole.

- According to the report, approximately 19,500 non-zero claims were aggregated. However, the report’s definition of a claim is any demand. A demand is not always a formal lawsuit and claims of all kinds, including lawsuits, may be dropped. How many of the 19,500 claims were actual lawsuits that were settled or went to trial?

- The report’s own data contradicts the contention that tort reform has reduced costs.
  - West Virginia enacted tort reform in 2003. However, the loss rate has shown “a strong upward trend” (page 30).
  - Georgia enacted tort reform in 2005, yet both the frequency of claims and the loss rate has increased (page 18) since that year.

- According to the report, the data comes solely from 8 of the 10 largest providers in the country. However, the size of providers varies across the U.S., and the average size nursing home is only about 108 beds. How can the report claim to represent the “perspective of all long term care providers” when it does not include data from small and medium-sized providers?

- “Claims” include very serious harm and injury to residents, and even cases of resident death. Examples include pressure ulcers down to the bone, malnutrition, dehydration, sexual assault, broken bones, falls, and severe infections.

- Tort reform is touted as a way to reduce healthcare costs. However, medical malpractice litigation is not responsible for rising healthcare costs: between 2000 and 2011, the value of medical malpractice payments fell 11.9 percent while healthcare spending nearly doubled, increasing 96.7 percent. Furthermore, in Texas - the state the report cites as “the example for effective tort reform” - researchers have found that tort limitations have not saved money.

- Arbitration completely strips the resident or the resident’s family member of their constitutional right to a trial by jury. Arbitrators are private individuals who may be
chosen by the nursing home – not publicly elected or appointed officials like judges. Arbitration can be very costly and is usually far more expensive than court. Residents and families not only have to hire a lawyer, they generally have to pay a part of the arbitrator’s fee - which is like having to pay the judge. And once a decision is issued, consumers typically cannot appeal it like they can in the court system.

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i AdCare Conference Call (August 8, 2012)

ii Id.

iii Ensign Conference Call (August 2, 2012)

