EMPLOYEE BENEFITS

Willis HRH

HRFocus

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LEGAL & COMPLIANCE

HEALTH CARE REFORM: WHERE ARE WE NOW?

Willis HRH is carefully monitoring the discourse now underway in Washington, because its outcome will affect us all. To keep you informed, we have issued health care reform status updates in several of our publications, and our National Legal & Research Group has hosted well attended webcasts to give employers practical in-depth information.

While keeping abreast of the ever-changing flood of legislative details is challenging, our goal is to provide you with the latest information on a regular basis. The following summary reflects the status of this critical topic as of the start of the Congressional summer recess.

SUMMARY OF CURRENT HEALTH CARE REFORM PROPOSALS

The Senate HELP Committee proposal includes:

- Insurance market reforms to promote access to individual coverage
- A national insurance exchange in which a variety of insurers must offer coverage to qualifying individuals who have no access to other coverage sources
- Mandates that will require employers and individuals to have insurance or pay penalties to provide a base level of health coverage to employees or pay an excise tax; employees will have to maintain health coverage or pay a tax
- Subsidies available to employees who cannot afford the coverage
- A government-run plan that has yet to be defined
- Comparisons of effectiveness and other efficiency requirements for all plans

The House Committees proposals include:

- Individual insurance market reforms
- Erosion of ERISA protections
- Mandates that will require employers and individuals to have insurance or pay penalties: employers that do not provide a base level of coverage incur an excise tax of 8% of payroll; an individual who does not obtain coverage incurs an excise tax of 2.5% of modified adjusted gross income

- A government-run plan
- Comparisons of research and administrative protocols

Neither proposal includes funding details. Various options have been floated, including, in one way or another, taxation of the value of the benefits that an employer offers. One option currently being considered in the Senate Finance Committee is a tax on any plans that are more valuable than $20,000 to $25,000 per year. Although the president has repeatedly indicated he would only accept a budget-neutral proposal, none of the current proposals are actually budget-neutral (according to the CBO) and the drive to find opportunities to raise taxes to offset the costs is one reason there has been no bill yet proposed from the Senate Finance Committee.

A common theme represented in all the bills centers on federally prescribed mandates and the so-called "public option." A review of the bills demonstrates that the intention is that employer plans comply with a narrow set of mandates (which have not yet been defined but which will be designed and implemented by a government commission) and that individual insurance would also have to conform to similar government directives.

Despite presidential assurances that people who like their current health benefits program will be able to keep it – that is NOT actually true under the terms of the proposals, except in only the most literal sense. This is because the proposals are structured to require that individual policies that change in any way, even in cost, will not be permitted to be maintained. Such policies must switch to the government-mandated design at the moment they are changed. Employer plans will receive even less leeway – they will enjoy a five-year transition window and then be forced to change to the government mandate. Therefore, genuine health care choices will dry up and before long the public option will likely emerge as the only cost-effective vehicle available to employers. Opponents of the current health reform proposals seem to most strenuously object to the idea that the government's public option is downplayed during the current debate, even though a quick five years down the road the natural erosion of other available programs will almost certainly leave the public option as the dominant source for health coverage.

Mid-sized employers are likely to be the most negatively affected by current health reform proposals. We say this because small employers are already subject to extremely onerous mandates included in the state insurance laws, and large employers are expected to sufficiently influence the final version of proposed legislation so as to secure rules that comparatively reflect their input. By contrast, many mid-sized employers will likely find themselves squeezed into the difficult situation of having to make a determination between very restrictive plan designs that do not work well for their company cultures or just turning the entire process over to the federal government – and very likely paying higher taxes to help fund the government plan.

Though generally opposed to the health reform proposals now before Congress, some employer groups favor reforms that would more precisely target delivering actual health coverage to the large number of uninsured Americans. Specifically, tax incentives and credits, access to association health plans, and incremental reforms modeled on 1996 HIPAA legislation, would go a long way towards providing meaningful relief in reducing the number of uninsured Americans. HIPAA in particular, has already changed how preexisting condition exclusions may be applied and introduced numerous helpful safeguards governing the individual health coverage market. New HIPAA-style reforms seem to offer promise of further improvement. The Patient's Choice Act and other alternative reform proposals offer additional ideas that build upon the best aspects of employer-based coverage, without uprooting a system that, though admittedly suffering from problems, serves scores of millions of Americans very well.

BUSINESS GROUPS URGE SUPREME COURT OVERTURN OF SF HEALTH CARE ORDINANCE

Several important business organizations (the American Benefits Council, the ERISA Industry Committee (ERIC) and the National Business Group on Health (NBGH), among others), have submitted written briefs asking the U.S. Supreme Court to agree to accept an appeal of the Ninth Circuit Court of Appeals decision upholding the San Francisco Health Care Ordinance. (The case is *Golden Gate Restaurant Association v. City and County of San Francisco*.) In that case, the Ninth Circuit Court of Appeals ruled that the city's ordinance mandating specific employer responsibilities in providing health care coverage was not preempted by ERISA. For additional information about the controversial San Francisco Ordinance, please see ***Willis HRH EB Alerts #112*** and ***#125***.

The ERISA Industry Committee has also published a **news release** offering additional details. ERIC's press release notes that the Ninth Circuit decision undermines ERISA's statutory requirement barring state regulation of employers' uniform employee benefits (however, states are permitted to enact laws governing insurance, and employers choosing to buy such insurance thereby agree to "indirect" regulation). ERIC and NBGH argue that the Ninth Circuit's ruling – that ERISA does not preempt local laws requiring employers to make expenditures for employee health care, or equivalent payments to a local government, at a specified level or higher – "opens the door to a patchwork quilt of local ordinances that will prevent employers that operate and provide health care benefits in more than one state or municipality from providing uniform nationwide health care coverage for their employees." The brief also points out that affected employers are not limited to large corporations with nationwide operations. Very small regional and local enterprises frequently operate in multiple municipal, county and state jurisdictions. A business based in San Francisco may employ workers in Oakland or San Jose. An organization in St. Louis, Missouri may employ workers at sites nearby in Illinois; one based in Boston may operate workplaces in New Hampshire and other nearby states. Although, theoretically, large employers have the resources to juggle multiple jurisdictional compliance burdens, smaller employers will not. Without such resources, small employers may have no choice but to scale back operations at a time when restoring the country's economic vitality is often linked to the strength of small businesses.

If the Supreme Court allows the San Francisco ordinance to stand, it validates the current administrative headache many Bay Area employers already face, as large multi-jurisdictional employers have no choice but to create separate accounting, administration and other systems for the various jurisdictions in which their employees work. Allowing the law to stand would likely also entice other jurisdictions to enact similar requirements. Employees would suffer as well, according to the brief, since every time they were transferred to another jurisdiction, their benefits and coverage would change and in many cases similarly situated workers would have different health benefits depending on where they worked and lived.

Finally, the industry groups assert that the cost of complying with the resulting hodgepodge of state and local health care laws would be borne by both employers and employees. The higher administrative costs imposed on multi-jurisdictional plans will inevitably reduce the health care benefits that such plans provide or increase the costs borne by employees. Consumers will also bear much of the added cost, as evidenced by the "health coverage" surcharge some restaurants began adding to checks following enactment of the ordinance.

The Supreme Court could announce as early as October 5 (the first day of its 2009-2010 term) whether it will review the Ninth Circuit appeals court ruling upholding the ordinance. The Golden Gate Restaurant Association's request for a Supreme Court hearing has also won support from other major business organizations, including the U.S. Chamber of Commerce and the National Association of Manufacturers.

In 2006 the Fourth Circuit overturned a Maryland law that would have required employers of a prescribed size to spend a certain amount on health care. The Fourth Circuit ruled that ERISA preempted the state law. (For additional information about the Maryland case, please see ***Willis HRH EB Alert #74***.) Many benefits experts believe that the San Francisco Ordinance similarly conflicts with ERISA and that the apparent inconsistency between decisions of the Fourth and Ninth Circuits should prompt the Supreme Court to agree to hear the case. Stay tuned!

CHECKLIST: NOTICES TO INCLUDE IN HEALTH PLAN ANNUAL ENROLLMENT MATERIALS

It's that time of year again. Days are getting shorter, school has started, and benefits enrollment packets are being constructed. You can save time and money by including some legally required notices in your enrollment packets. In a recent Employee Benefits Alert, Willis HRH's National Legal & Research Group reviews the notices that you might want to include in your enrollment packet.

IS DEATH FROM A BEE STING AN ACCIDENT OR THE RESULT OF A PRE-EXISTING CONDITION?

Tommie Hall was stung by a bee on the bridge of his nose. Within minutes, his tongue swelled, he stopped breathing and lost consciousness. Emergency personnel were unable to revive him, and he was pronounced dead little more than an hour after he was stung (*Hall v. MetLife, Inc.*, 259 Fed. Appx. 589; 2007 U.S. App. LEXIS 29842; 42 Employee Benefits Case (BNA) 2350).

The death certificate listed anaphylactic shock from a bee sting. Hall's physician agreed that he died from anaphylactic shock from a bee sting, but noted no prior history of bee sting allergies. An independent consulting physician retained by MetLife reviewed the medical records and opined that Hall likely had an allergy to bees that was not reflected in the medical records, and that this allergy caused the anaphylactic reaction resulting in his death.

Prior to his death, Hall had been employed by the General Electric Company and was covered under the GE Life, Disability and Medical Plan. The Plan provided accidental death and dismemberment and personal accident insurance benefits. After receiving a claim from Hall's widow, MetLife denied the claim on the "basis of...the Plan's exclusions for accidental losses contributed to or caused by disease and/or physical impairments."

Hall's widow brought suit against MetLife claiming that there was no evidence that an allergy was a contributing cause of Hall's death and that even if he had a pre-existing allergy to bee stings, this condition was not a "disease" or "impairment." Hall's widow further argued that when an injury activates a dormant disease, the injury should be held to be the direct and exclusive legal cause of death.

DOES THE BEE STING QUALIFY AS AN ACCIDENT UNDER THE AD&D INSURANCE?

No. The Court analyzed the accident versus pre-existing disease issue using a two-pronged test long-established in the Fourth Circuit. To determine if the cause of death is the result of a pre-existing condition or an accident, a court must decide (1) whether there is a pre-existing disease, pre-disposition or susceptibility to injury, and if so, (2) whether the pre-existing disease, predisposition, or susceptibility to injury substantially contributed to the disability or loss. Because in Hall's case, the evidence established that he suffered from an allergy to bee stings, and because that allergy resulted in his death, the Court found that his widow was not entitled to AD&D benefits.

The Court did acknowledge, however, the tug-of-war between insurance companies and the courts, because "insurance companies can be characterized as preferring an interpretation of policy provisions in which 'accidental death' coverage applies only on facts 'which are the equivalent of a truck dropping from the skies, striking squarely and killing instantly a perfectly fit human specimen clutching a just-issued physician's clean bill of health,' but beneficiaries of a "particularly fragile decedent might claim coverage even when an insignificant trauma had disproportionately debilitating consequences."

NEWS

NEW YORK ENACTS INSURANCE LEGISLATION

New York Governor David A. Paterson (D) recently signed two pieces of insurance legislation that will affect group health insurance policies. *Note: As these are insurance laws, they are not applicable to self-insured plans.*

Senate Bill 6030 expands the dependent age for unmarried children through age 29 regardless of the child's financial dependence or student status. The law provides two ways for unmarried children to have access to coverage to age 30.

For purposes of eligibility under both options, the child must live or work in New York State (or, if applicable, in the service area of the insurer) and must not be covered or eligible for coverage as an employee under an employer-sponsored health plan. First, carriers must provide employers with the choice of purchasing coverage that extends coverage through age 29 to an unmarried child. Under this option, the employer makes the decision on whether the coverage will be offered or not.

The law also requires insurers to offer a coverage continuation option under the group policy by allowing unmarried children who have aged out of their parents' group health insurance policy to elect to continue to be covered under such policy through age 29. In addition to the eligibility discussed above, the child must not be covered by Medicare. The law does not require employers to pay the premiums for the child to continue coverage. A child whose coverage terminated prior to the law's effective date will have 12 months (to September 1, 2010) to elect the continuation coverage. The law applies to contracts issued or renewed on or after September 1, 2009.

For more information about state insurance laws extending benefits to over-age dependents, please see *HR Focus, Issue #12*, **Over-Age and Under-Insured: Extending Benefits for Dependents**.

Senate Bill 5471 expands state health insurance coverage continuation requirements from 18 months to 36 months. In addition, group health insurance policies must offer individuals who have exhausted federal COBRA the right to continue coverage for up to 36 months from the date the continuation coverage began if the individual is eligible for less than 36 months of federal COBRA. This is similar to continuation coverage requirements in California. The law applies to contracts issued or renewed on or after July 1, 2009.

NEW FEDERAL MINIMUM WAGE

As of July 24, 2009, the federal minimum wage rate for covered non-exempt employees increased from $6.55 per hour to $7.25 per hour. This hike in the minimum wage represents the final increase required by the 2007 Fair Minimum Wage Act, which amended the federal Fair Labor Standards Act (FLSA).

A number of states enforce a minimum wage rate that is higher than the federal rate. Covered employers must comply with both state and federal laws.

WELLNESS WORKS

DIVIDE AND CONQUER! MAXIMIZE YOUR WORKSITE WELLNESS INITIATIVE WITH AN EFFECTIVE WELLNESS TEAM

Often the responsibility for a worksite wellness program rests with human resources or the benefits team. It can be challenging to make time for planning and implementing a strategic wellness initiative in the midst of standard duties. A worksite wellness team can provide relief while engaging the workforce at the same time.

There are a few key questions that should be asked when creating a wellness team. They include:

- Who should be on the team?
- What are the roles and responsibilities of team members?
- How many members should the team have?
- What are the characteristics of other successful work teams?

WHO SHOULD BE ON THE TEAM?

Wellness team members should represent a cross-functional snapshot of your organization. Consider including a variety of job functions, departments and levels of seniority. Envision how various skill sets can contribute to your program. Finance expertise can assist in establishing a budget and measuring outcomes and return on investment. New employees may bring fresh ideas from outside the company, while long-tenured associates may lend valuable historical perspective. Marketing and communications skills are essential in setting the right tone when the program is launched. If your organization has one or more unions, including a union representative on the team can be a key to winning union support and participation.

WHAT ARE THE ROLES & RESPONSIBILITIES OF TEAM MEMBERS?

A primary decision that needs to be made at the outset of the process is whether the wellness team will have decision-making authority. Generally wellness teams serve only in an advisory capacity to the individual responsible for the wellness program. However, this varies from group to group and will depend to some extent on company culture. Beyond their advisory roles, team members frequently assist in planning events, promoting the program and even helping to run events such as onsite health fairs or community fun walks/runs. It can be useful to outline expectations for the role and have team members sign an informal contract to understand and agree to the duties outlined.

HOW MANY MEMBERS SHOULD THE TEAM HAVE?

This depends on the size of your organization, but most wellness teams average 8-10 members. A good rule to follow would be one wellness committee member for every 50-100 employees, or at least one committee member per location. Committees with more than 12 members can find it difficult to get things done unless there are working subcommittees which report back to the larger group.

WHAT ARE THE CHARACTERISTICS OF OTHER SUCCESSFUL WORK TEAMS?

Unfortunately many of us have probably served on committees that were not effective or useful. Think about why they were a waste of time. Conversely, think about the composition, characteristics, structure, assignments and resources of groups that you've been part of that have been successful. Often, the secret to effective team projects lies in each member taking on well-defined tasks, clearly understanding their role and how their assignment fits into accomplishing the overall goals of the group. Some general guidelines include:

- **Plan and run efficient meetings.** Have a prepared agenda, keep minutes, ensure that everyone has a chance to contribute.
- **Delegate and capitalize on individual team members strengths.** Some people are better at getting the word out while others are best suited for tracking and data collection. Let each team member shine with their personal strengths.
- **Solicit supervisory support for wellness team participation.** Invite team members to regularly update their supervisor about their contributions to the wellness team. This can even be part of the annual performance review process.
- **Share the credit.** Be sure to recognize team member contributions and let them know regularly that their efforts are appreciated. A public pat on the back or company recognition as wellness team members can go a long way to facilitating a stronger work team.
- **Educate your team.** Ramp up worksite wellness knowledge and share the resources available through the wellness program. Give them the tools they need to share important information with their respective departments. Invite guest speakers and share case studies, articles and resources to help them contribute in valuable ways.

Wellness teams can provide essential insight into the planning of your program and also serve to extend the reach of the wellness program into the employee population. Don't go it alone – investing in a strong worksite wellness team can help your program flourish. If you would like more information, please contact your account service team and request the Willis HRH Wellness Committee Toolkit.

HR CORNER

PRODUCTIVITY RISES AT FASTEST CLIP IN SIX YEARS AS HOURS WORKED SHRINK

The Department of Labor's Bureau of Labor Statistics reported that productivity rose by an annual rate of 6.4 percent in the second quarter, the largest increase since the third quarter of 2003.

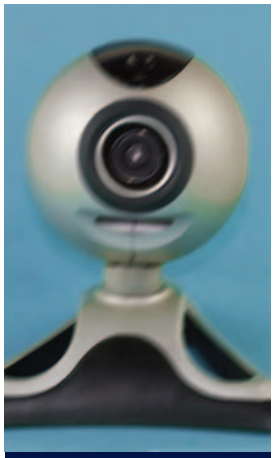
The bureau measures productivity by output per hour of all persons. The second-quarter increase was a result of hours worked declining faster than output. In the second quarter, output decreased by 1.7 percent, and hours worked fell 7.6 percent seasonally adjusted annual rates).

In the third quarter of 2003, productivity grew at a 9.7 percent annual rate. Over the last four quarters hours worked have fallen 7.3 percent and output has declined 5.6 percent, yielding an increase of 1.8 percent in output per hour. Productivity increased at an annual rate of 2.5 percent from 2000 through 2008.

Meanwhile, hourly compensation increased 0.2 percent in the second quarter of 2009, compared to a decrease of 2.4 percent in the previous quarter. When the 1.3 percent rise in consumer prices was taken into account, real hourly compensation fell 1.1 percent in the second quarter of 2009 (seasonally adjusted annual rates).

Unit labor costs fell 5.8 percent in the second quarter of 2009 due entirely to productivity improvement; hourly compensation increased slightly. These costs declined 0.6 percent over the last four quarters, as a 1.8 percent increase in output per hour was partially offset by a 1.3 percent increase in compensation per hour.

This article provided BLR.



WEBCASTS & EVENTS

PITFALLS IN PLAN ADMINISTRATION

SEPTEMBER 22, 2009
2:00 PM EASTERN TIME

Presented by Frances Horn, Co-Practice Leader of the National Legal and Research Group

The scope of an ERISA plan is defined by the official plan documents and the summary plan description. ERISA benefit plans must be administered strictly in accordance with the documents and instruments governing the plan. Furthermore, it is known that failure to act in accordance with the documents governing the plan is presumptively a breach of a fiduciary duty. This session will discuss some of the common administrative errors that plague plan administrators. The following topics will be covered during this webcast:

- Identifying whether a plan subject to ERISA exists
- Conflicts in plan and summary language
- Business relationships with service providers
- Document interpretation versus administering outside the terms of the plan

Participant Access:
Advance RSVP is required to participate in this call, **click here** to register.

HELPING EMPLOYEES UNDERSTAND CONSUMERISM AND CREATING EMPLOYEE COMMUNICATION CAMPAIGNS THAT WON'T FALL ON DEAF EARS

OCTOBER 13, 2009
2:00 PM EASTERN TIME

Presented by Ame McClune, Director, Marketing & Client Communicationss

Some companies take the all-or-nothing approach, quickly switching from one plan design to another in a year, while others prefer a more gradual approach, either because they are seeking employee buy-in or due to fears of disapproval of the newly charted direction of the company's benefits plan. Whatever your company's approach, it is generally agreed that there are varying levels of consumerism and each company is at a slightly different stage in terms of implementing consumer-based benefits.

Regardless of where you are or where you're planning to go with your benefits, you'll need to help your employees understand consumerism before you can fully reach your goals. In this webcast, we'll offer guidance on the most effective way to communicate with employees, how to grab their attention and how to achieve buy-in from reluctant employees early on so they are a partner in the communication campaign. We will provide you with:

- Key tips for communicating with and educating your employees
- A discussion on ways employers can assist employees and their dependents in understanding their benefits
- Insight on new technology and where benefits communication is going
- Help in understanding and creating a communication timeline

Participant Access:
Advance RSVP is required to participate in this call; **click here** to register.

SKELETONS, BROOMS AND OLD BAGGAGE: CLEANING YOUR CLOSET WITH AN HR AUDIT

OCTOBER 27, 2009
2:00 PM EASTERN TIME

Presented by HR Partner National Practice Team

HR audits are a necessary evil. While you may believe that your company is complying with all laws and regulations, an audit often proves otherwise for many organizations. Conducting an effective audit ensures compliance, reduces costs and supports strategic planning.

Whether you are an HR professional, a manager or a business owner, this session will provide practical advice to assist you in evaluating your employment policies, practices and procedures from the application stage through termination with a goal of reducing and preventing costly lawsuits and governmental audits.

During this webcast we will explore:

- The importance of conducting an HR audit
- Understanding the key issues to focus on in an audit
- How to develop an audit action plan that addresses where to begin, what to include and how to communicate the results
- How to gain valuable insights as respects avoiding the most common mistakes employers make

Participant Access:
Advance RSVP is required to participate in this call; **click here** to register.

KEY CONTACTS

US BENEFITS OFFICE LOCATIONS

NEW ENGLAND

Auburn, ME
207 783 2211

Bangor, ME
207 942 4671

Boston, MA
617 557 7517

Hartford, CT
860 756 7365

Manchester, NH
603 627 9583

Portland, ME
207 553 2131

Shelton, CT
203 924 2994

NORTHEAST

Buffalo, NY
716 856 1100

Cranford, NJ
908 931 3005

Florham Park, NJ
973 410 4622

Morristown, NJ
973 829 6374
973 829 6465

New York, NY
212 915 8802

Norwalk, CT
203 523 0501

Philadelphia, PA
610 260 4351

Radnor, PA
610 254 7289

Wilmington, DE
302 397 0171

ATLANTIC

Baltimore, MD
410 584 7528

Bethesda, MD
301 581 4261

Knoxville, TN
865 588 8101

Memphis, TN
901 248 3103

Nashville, TN
615 872 3716

Norfolk, VA
757 628 2303

Reston, VA
703 435 7078

Richmond, VA
804 527 2343

Rockville, MD
301 692 3025

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404 224 5000

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205 871 3300

Charlotte, NC
704 344 4856

Gainesville, FL
352 378 2511

Greenville, SC
704 344 4856

Jacksonville, FL
904 355 4600

Marietta, GA
770 425 6700

Miami, FL
305 421 6208

Mobile, AL
251 544 0212

Orlando, FL
352 378 2511

Raleigh, NC
704 344 4856

Savannah, GA
912 239 9047

Tallahassee, FL
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813 289 7996

Vero Beach, FL
772 469 2842

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312 527 6482
312 621 4843
312 621 4704

Cleveland, OH
216 357 5921

Columbus, OH
614 326 4788

East Lansing, MI
517 349 3226

Grand Rapids, MI
248 735 7249

Green Bay, WI
414 259 8837

Milwaukee, WI
414 203 5248
414 259 8837

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763 302 7209

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303 773 1373

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281 584 1676
713 625 1017

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913 339 0800, ext. 108

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602 787 6078

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562 435 2259

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858 535 1800
858 678 2130

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415 291 1567

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408 436 7000

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800 456 1415