Employee Benefits Report

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Healthcare Reform: What Employers Need to Know Now

On March 23, 2010, President Obama signed into law H.R. 3590, the Patient Protection and Affordable Care Act (Public Law 111-148), the largest healthcare reform bill in decades. Many provisions of the bill will not go into effect for a few years (generally, 2014). Until then, here are some of the provisions that might affect your organization's health plan during 2010.

Effective January 1, 2010:

Tax credits for small businesses: Small businesses can receive a tax credit to cover up to 35 percent of employee healthcare premiums the employer pays, retroactive to January 1, 2010. Businesses that initiate coverage this year will also get a credit. Qualifying firms must have fewer than the equivalent of 25 full-time workers (e.g., a firm with fewer than 50 half-time workers would be eligible), pay average annual wages below $50,000, and cover at least 50 percent of the cost of health coverage for their workers.

The credit phases out for firms with average wages between $25,000 and $50,000 and for firms with the equivalent of between 10 and 25 full-time workers. To avoid giving employers an incentive to choose a high-cost plan, an employer's eligible contribution is limited to the average cost of health insurance in that state. In 2014, the credit will increase to 50 percent.

Tax-exempt organizations that meet the criteria of a "small employer" (as above) can receive a 25 percent tax credit in 2010. In 2014, this rate increases to 35 percent.

Effective after June 23, 2010

Early retiree reinsurance: The law requires the U.S. Department of Health and Human Services (HSS) to develop an early retiree reinsurance program by June 23. The program will provide $5 billion to help employers subsidize coverage for early retirees—those age 55

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This Just In…

Wellness benefits make a difference to employees at small to mid-sized companies, found a recent survey by Principal Financial. Among employees at small to mid-sized companies who responded to the survey, 47 percent said they would participate in employer wellness programs, if available, to improve their health. Forty-five percent said employer-sponsored wellness benefits would encourage them to stay at their job longer. Forty percent said wellness programs helped them work harder and perform better, while 26 percent said they missed fewer days of work by participating.

The Bureau of Labor Statistics' National Compensation Survey for 2008 found that 42 percent of private sector workers at employers of all sizes had access to an employer-sponsored wellness program, such as:

- Smoking cessation clinics
- Exercise/physical fitness programs
- Weight control programs
- Nutrition education
- Hypertension tests
- Periodic physical examinations
- Stress management courses
- Back care courses

Other surveys report higher levels of program availability; however, many only consider one offering—such as a weight loss program or biometric screening—to be a "wellness program." The NCS considers a program to be two or more offerings. For more information on wellness programs, please see P. 4.

How to Handle "Leave Stacking" Under FMLA

The Family and Medical Leave Act of 1993 (FMLA) provides an eligible employee with a total of 12 administrative workweeks of unpaid leave during any 12-month period for specified reasons. Employees can also "stack" their FMLA leave with other available leave programs. Here's how to handle leave stacking.

Substitution of Paid Leave

If an employer provides it, employees can use annual and sick leave in addition to the 12 workweeks of unpaid leave under the FMLA. Communication between supervisors and employees can help you better manage this "leave stacking." If an employee requests leave for any of the four FMLA-qualifying purposes, the supervisor may ask whether the employee intends to use FMLA leave. Employees entitled to FMLA leave may choose to substitute annual paid leave or sick leave or donated leave for leave without pay under the FMLA if the employee elects it, has the time or leave available, and notifies the supervisor of his or her intent to substitute paid leave before the date the paid leave begins.

The following rules apply:

- An employee's election to substitute paid leave must be made prior to the date FMLA leave is to begin and may only be made by completion of a leave request.
- An employee may not retroactively substitute paid leave for leave without pay previously taken as FMLA leave.
- The employer may neither deny nor coerce employees into substituting paid leave for unpaid leave.
- Employees may only substitute sick leave to care for a family member who is not a "spouse, son, daughter or parent" for unpaid leave under FMLA in the amounts and conditions normally available to care for a family member or for bereavement (i.e., 104 hours for a full-time employee).
- Employees may only substitute sick leave to care for a spouse, son, daughter or parent under the FMLA in the amounts and conditions available to care for a family member with a serious health condition (i.e., for a full-time employee, 480 hours). Any sick leave used to provide general care of a family member or for bereavement in a year must be deducted from the 480-hour entitlement.
- Employees cannot substitute donated leave for unpaid leave under FMLA unless they meet the conditions for eligibility for use of donated leave.
- While the employee has the right to take accrued annual leave, the supervisor has the responsibility to approve the scheduling of annual leave. Although a supervisor generally cannot deny sick leave if the employee provides medical certification, he or she can deny annual leave or leave without pay if there is a need for the employee to be at work.
- When an employee substitutes paid leave for unpaid leave under the FMLA, the employee will be considered on paid leave for the period during which substitution is being made, and leave without pay for the remainder of FMLA leave. Substituted leave will be subtracted on an hour-by-hour basis from an employee's total entitlement under FMLA. Substitution of paid leave does not extend the employee's 12-week entitlement under FMLA; it simply allows the employee to invoke entitlement under the Act and be paid.

For more information on handling FMLA leave, please contact us. ■

Reasons for FMLA leave:

(a) The birth of a son or daughter and care of the newborn;
(b) the placement of a child with the employee for adoption or foster care;
(c) the care of the employee's spouse, son, daughter or parent with a serious health condition; or
(d) a serious health condition of the employee that makes the employee unable to perform the essential functions of his or her position. ■

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and older who are not eligible for Medicare.

The program will reimburse employer-sponsored health plans up to 80 percent of their costs of covering early retirees (and eligible spouses, surviving spouses, and dependents). The program applies to health benefits between $15,000 and $90,000 and translates into a savings of up to $1,200 off the premium of every family plan offered by that employer. Plans must use the proceeds to lower health costs for enrollees (e.g., premium contributions, copayments, deductibles, etc.).

Payments are retroactive for a plan year, so employers and early retirees will be able to take advantage of them for costs incurred from the date the program is established. The program ends on January 1, 2014, when early retirees will be able to choose from coverage options in the health insurance exchanges.

Temporary high-risk pool: Section 1101 of the new law establishes a "temporary high risk health insurance pool program" to provide health insurance coverage to currently uninsured individuals with pre-existing conditions. The law directs HHS to carry out the program directly or through contracts with states or private, non-profit entities. Currently, most states have high-risk health insurance pools; the law would extend risk pool protection nationally, reduce the costs of risk pool coverage for many participants, and provide $5 billion dollars to subsidize the costs of coverage. However, the law creates fines for insurers and employers that encourage employees to drop coverage to enroll in high-risk pools. The pools will be dissolved in 2014, when the health insurance exchanges become operational.

Effective July 1, 2010

The law requires the Department of Health and Human Services to establish an Internet portal to provide information to small businesses about available health coverage options, including information on reinsurance for early retirees, small business tax credits, and other information specifically for small businesses regarding affordable health care options, by this date.

Effective September 23, 2010

(Calendar year plans must comply by January 1, 2011.)

Dependent coverage: All plans, insured and self-insured, must permit coverage for employees' children to age 26 unless they are eligible for employer coverage. Currently, most plans cut off coverage for adult children by age 23.

Correction: *In our May issue, we reported that this requirement would not go into effect until 2014. We regret the error.*

Until now, the IRS required the employer to report the value of coverage for an older, nondependent child on the employer's health plan as wages on the W-2. The new law removes that requirement effective with April payrolls.

Pre-existing condition exclusions: Plans must remove any pre-existing condition exclusions for children up to age 19.

Lifetime dollar limits: Insured and self-insured plans must eliminate lifetime dollar limits. Currently, most group plans cap lifetime benefits at $1 million to $2 million.

New and non-grandfathered plans will have to ensure the following provisions apply:

Claim appeals process: Plans must have a process that allows insureds to appeal coverage determinations and denied claims.

Non-discrimination: Insured group plans cannot discriminate in favor of highly compensated individuals.

Emergency services: Plans must cover emergency services without prior authorization.

Primary care providers: HMO and PPO plans must allow insureds to designate a pediatrician or ob/gyn as a primary care provider.

Effective date unknown:

Auto enrollment: Employers with more than 200 employees that offer coverage must automatically enroll new full-time employees in the healthcare plan with the lowest employee premium, with the opportunity to opt-out.

Break time for nursing mothers: Employers must provide "reasonable" unpaid break time and a private place, other than a bathroom, for mothers to express breast milk for one year after the child's birth.

Other provisions go into effect in 2011 and later; look for more information in upcoming issues. ■

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to make positive changes for the good of their health.

3 Provide low-cost opportunities for regular exercise. Nearly half of employees surveyed said they would use employer-provided programs to improve their fitness, but only 15 percent of workers surveyed had employer-provided access to fitness facilities in fourth quarter 2009. Twenty-seven percent of employees surveyed by Principal Financial said they would like in-office fitness facilities, 23 percent wanted fitness center discounts and 19 percent expressed interest in weight management programs.

4 Realize that incentives may actually reduce participation. A PricewaterhouseCoopers' Health Research Institute study released in early 2010 found that employee participation in biometric screenings increased to 32 percent from 30 percent when no incentives were offered, such as cash, gift cards or annual premium savings. The only exception was a $500 reduction in premium (rather than a lower reduction), which increased participation.

For suggestions on setting up a wellness program that meets the needs of your workforce, please contact us. ■

Clarification: *Our April issue contained an article, "Meet Your ERISA Bonding Requirements and Save Money," which discussed bonding requirements for "individuals exercising discretion in the administration of the plan." For most employers, requirements are most likely to apply to a retirement plan. If you're simply passing employee's premiums on to an insurer in a fully insured health plan, bonding requirements would not apply.*

Wellness Programs: Ten Good Reasons to Start One Now

Why you should start a wellness program, and how to design it to meet the specific needs of employer and employees.

Reason #1: Wellness programs help retention. Forty-five percent of Americans working at small to medium-sized companies said that they would stay at their jobs longer because of employer-sponsored wellness programs.*

Reason #2: Wellness programs help them work harder and perform better, said 40 percent of employees.*

Reason #3: Wellness programs reduce absenteeism. Twenty-six percent of respondents said they missed fewer work days by participating.*

Reason #4: The timing is right. Sixty-two percent of employees think their personal healthcare expenditures will increase "significantly" under healthcare reform. Another 20 percent think they'll increase slightly. *

Reason #5: Employees are motivated. Thirty percent of employees said they wanted to reduce their personal healthcare costs.

Reason #6: Employees will use these benefits. Nearly half (47 percent) use (or would use, if they were available) employer-paid wellness benefits to improve their fitness and health.*

Reason #7: Wellness confers benefits to employers, too. Healthier employees are more productive, miss fewer days of work and cost less to insure.

Reason #8: Wellness programs are a sound investment. The Wellness Council of America says that every $1 invested in employee wellness yields $3 in healthcare savings.

Reason #9: The cost of medical care continues to increase faster than the general rate of inflation. For the 12 months ending in March 2010, the Consumer Price Index for medical services grew 3.8 percent, vs. 2. 3 percent for all items.

Reason #10: You can start small and expand your program as savings grow.

**Source: Principal Financial Well-Being Index, fourth quarter 2009*

If you agree that it's time to start a wellness program, how can you design one that meets the goals of both employees and the employer?

1. Ask employees to undergo biometric screenings. A basic biometric screening includes blood pressure, body mass index (BMI) and cholesterol levels. Screenings can point out some of the most immediate and obvious health problems for an individual to work on.
2. Ask employees to complete individual health assessments (IHAs). When evaluated by a trained health professional in a one-on-one confidential session, the IHA can point out risky behaviors and areas where employees have room

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Non-Discrimination Laws That Affect Your Wellness Program

ERISA: The Employee Retirement Income Security Act generally forbids using health status to determine premiums or contributions to a group plan.

HIPAA: The Health Insurance Portability and Accountability Act prohibits group health plans from charging higher premiums based on health factors. Wellness programs must:

1) **Limit any financial reward to 20 percent of the employee's cost for employee-only coverage. Limit rewards for dependents to 20 percent of the cost of family coverage.**
2) **Be "reasonably designed" to promote good health or prevent disease.**
3) **Give eligible individuals the opportunity to qualify for the reward at least once a year.**
4) **Make rewards available to all similarly situated individuals, unless the program offers a reasonable alternative or waiver for individuals who have difficulty meeting the standard due to a medical condition.**
5) **Disclose waiver options to employees.**

HIPAA's nondiscrimination standards do not apply to:

- **Reimbursement for fitness center membership costs.**
- **Rewards for participation in a diagnostic program that do not depend on outcomes.**
- **Waiver of co-payments or deductibles for pre-natal care, well-baby visits or other preventive care.**
- **Programs that reimburse employees for smoking cessation programs regardless of whether the he/she quits smoking.**
- **Programs that reward employees for attending monthly education seminars.**

ADA: The Americans with Disabilities Act forbids inquiries likely to reveal an employee's disability. Make sure participation in wellness programs is purely voluntary.

GINA: The Genetic Information Nondiscrimination Act prohibits a plan from collecting genetic information (including family medical history) for enrollment or underwriting purposes. Plans and insurers cannot offer rewards in return for collection of genetic information, including family medical history information. Employers can still request this information in an individual health assessment; however, they cannot offer incentives for providing it. ■