



Ideas and Information for Human Resources Professionals



The HR Elements is brought to you  
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**Health Care Reform****Agencies Punch Out Proposed Rules on Communications, Affordability, HRAs**

New proposed rules springing from the Patient Protection and Affordable Care Act (PPACA) would drastically change how companies communicate information about their employer-sponsored benefits.

The new guidance would require fully insured and self-insured plans to supply a summary of benefits and coverage (SBC) to employees no later than March 23, 2012, according to a report by CCH. The SBC would have to include easy-to-understand language, a comparison tool that would use three real-life examples (having a baby, treating breast cancer, managing diabetes) and a glossary of commonly used health care terms, such as "deductible" and "copay."

The rules call for the SBC to be distributed with enrollment materials and upon request within seven days. In addition, any updates to the SBC would have to be distributed 60 days prior to the change, according to the law firm Ogletree Deakins. Employers who do not meet these requirements could face a fine of up to \$1,000 per failure.

"Employers and administrators that already provide summary plan descriptions [SPDs] are understandably concerned about the duplications and additional costs associated with elements of the new SBC requirement," the CCH report said.

The Employee Benefits Security Administration, the IRS and the Department of Health and Human Services (HHS) are accepting comments through Oct. 21, 2011, on how this new communication should



be coordinated with SPDs and other enrollment materials.

### **Plan 'Affordability'**

Prior to the release of the proposed SBC rules, the IRS announced it would create new rules to make it easier for employers to determine if their health plans meet the affordability requirements under PPACA, according to a Workforce Management report. Under current rules, plans with single-coverage premium contributions that top 9.5 percent of a worker's family income would be subject to an annual \$3,000 penalty in 2014. The new rules would allow employers to base their calculations on wages instead of income, ensuring a more accurate picture of affordability, the IRS stated.

### **HRA Update**

Meanwhile, the HHS loosened some of the PPACA rules on annual dollar limits as they apply to stand-alone health reimbursement accounts (HRAs). HHS announced that sponsors of stand-alone HRAs are exempt from the annual limit requirements on coverage of essential benefits (\$750,000 in 2011, \$1.25 million in 2012 and \$2 million in 2013). However, the exemption disappears after 2014, according to Buck Consultants.

## **CDHPs**

### **Despite Slower Growth, CDHPs Still Hold Promise**

While new research points to a slowdown in the growth of consumer-driven health care plans (CDHPs), some experts say the high-deductible options still have a lot of life left in them.

CDHPs in the U.S. experienced continued growth in 2011, but at a slower rate than in 2009 and 2010, according to preliminary results released by United Benefit Advisors (UBA) from its 2011 UBA Health Plan Survey.

CDHPs grew at a rate of 13.9 percent this year (about two-thirds of the 2010 rate) to 22.9 percent of plans offered and covered more employees (17.3 percent) than HMOs (11.9 percent), according to Bill Stafford, UBA's vice president, member services.

The Northeast region of the country had the largest concentration of CDHPs (31.3 percent), followed by the Southeast region (27.4 percent). The average cost increase for all CDHPs at 8.0 percent was slightly lower than that of the average of all plan types, which increased 8.2 percent this year.

"For the first time in more than seven years of reporting, first-year CDHPs nationally did not create a savings over the clients' in-force plan prior to renewal. This year, first-year CDHPs experienced an increase (2.1 percent), albeit less than the average 8.2 percent increase of all plans," Stafford said. "As these plans become more prevalent, the percentage of savings has continually declined."

Despite this slowdown in growth and savings, some experts predict the continuing rise in overall costs and the pressures created by health care reform will make CDHPs an attractive choice for many employers well into the future.

"Unless there's a significant change in any of the legislation, CDHPs will remain a viable option post-health care reform," said Nick Calabrese of CIGNA Corp. in a recent Business Insurance article. "If you rewind the clock back to before health care reform, there was concern on our end whether they would be eliminated. But, by and large, they were left untouched."

Most CDHPs will meet the minimum coverage and affordability requirements under health care reform, according to the Business Insurance report. By dodging those bullets, CDHPs likely will remain a good



option for many employers who are looking for a "double-duty" plan that both reduces costs and improves employee engagement, Calabrese said.

## Wellness

### Good Wellness Starts with Hard Facts

When kicking off a wellness program, employers often rely on big events -- health fairs, walk-a-thons and gym membership promotions, to name a few.

To ensure long-term success, however, employers also need to sweat the details of their plan. That means gathering lots of data with a health risk assessment, experts say.

Research shows that health risk assessments are crucial to wellness programs because they can gather a wealth of accurate and unique information about the participants, according to a recent report on the Society for Human Resource Management's website. This information allows employers to specifically tailor programs that are best suited for individual workers and turns an assessment into a "teachable moment that is highly conducive to engaging individuals in health improvement programs," the SHRM report's authors noted.



While a volume of research demonstrates the value of assessments, recent regulations from a number of federal laws have dampened the excitement for these wellness tools. Specifically, the Genetic Information and Nondiscrimination Act (GINA) prohibits employers from gathering genetic data, including family medical history, via health risk assessments unless the information is given voluntarily. Employers can offer incentives to encourage employees to take an assessment, but only if the assessment does not require data on family medical history or other genetic information. Also, employers must make it clear the incentive is not tied to answering those questions, according to the law firm of McGuire Woods LLP.

Luckily for employers, the Equal Employment Opportunity Commission (EEOC) recently clarified some rules on GINA and assessments, giving employers a little more wiggle room. In a recent news release posted on HR Morning, the EEOC said employers "may use the genetic information voluntarily provided by an individual to guide that individual into an appropriate disease management program." This guidance allows employers to use assessment data to steer individuals into specific types of wellness initiatives. Employers should note, however, that participation in these assessments must remain voluntary, according to the HR Morning report.

HIPAA and the Americans with Disabilities Amendments Act (ADAAA) also can muddy assessment compliance, according to the law firm of Verrill Dana LLP. Both laws contain provisions that prohibit nondiscrimination, which could emerge if genetic data from assessments were mishandled. Each law, however, also offers safe harbors for "bona fide" wellness programs (initiatives that are available to all similarly situated employees) and do not impact plans that offer incentives based on participation, not results.

Verrill Dana noted in a recent publication that under HIPAA and ADAAA, employers can require employees to take an assessment as part of a wellness program, and they can provide premium discounts or other incentives if they participate. However, they can't make the assessment a condition of employment, and any incentive must be offered to all similarly situated participants (thus keeping the plan "bona fide"), the law firm states.

Assessments certainly require careful handling, but if done right, they can serve as a cornerstone to an effective wellness program, the SHRM report noted.

"Health assessments . . . have been proven effective in reducing health care cost trends and improving population health and productivity," the report's authors wrote. "It is important to recognize, however, that the role of the health assessment is not to change health outcomes but to make it possible to target and tailor proactive outreach and behavior change programs."

## COBRA

### **FEDERAL SUBSIDY ENDS -- FOR MOST**

The federal COBRA subsidy officially ended on Aug. 31, but some employees might continue to receive the subsidy, depending on when their COBRA benefits kicked in.

Kaiser Health News noted in a recent report that the 65 percent subsidy was extended by Congress on several occasions, with the last extension covering employees laid off through May 31, 2010. The Department of Labor, however, recently noted that some employees who were let go after that date could still qualify to receive the subsidy. For example, if a terminated employee was allowed to remain on the employer's plan for a period of time, their subsidy eligibility would start only after the employer-sponsored coverage ended. Therefore, a worker could be laid off after May 31 but still have a portion of the maximum 15 months available for the subsidy.

## In Brief

### **UNION NOTICES**

Employers without a unionized workforce must still post notices of their employees' collective bargaining rights, the National Labor Relations Board (NLRB) has ruled. Companies that use posters to inform workers of company policies must add information about employees' right to unionize by Nov. 14.

### **PIGSKIN PRODUCTIVITY**

As football season kicks off, many employers may be worried that employees' energies will shift to managing their fantasy football teams rather than completing their work. After all, nearly 21 million Americans participate in fantasy football leagues. But such activity actually can be a good thing for businesses, according to the consulting firm Challenger, Gray & Christmas Inc. The firm notes that encouraging company fantasy football leagues can boost morale and long-term productivity and can lead to better employee retention. A survey conducted last year by the firm found that most fantasy participants said their play didn't interfere with their work duties.

### **STICKING WITH TDFs**

Participants in 401(k) plans who invested in target-date funds (TDFs) tend to maintain those investments, according to the Employee Benefit Research Institute (EBRI). More than 90 percent of participants with TDFs in 2007 stuck with the funds through 2009, the research found. EBRI's study revealed younger workers with lower account balances are more likely to choose and keep TDFs.

### **HIRE TIME**

Small businesses are starting to see the better times ahead, with 35 percent expecting to add to their payrolls over the next six months, according to a poll by Capital One. That figure is an increase of 6 percent from the first quarter of 2011 and marks the highest percentage of businesses planning to hire since the beginning of 2010.

### **STATE OF OBESITY**

Southern and Midwestern states are straining under increased health costs fueled by high obesity rates, according to new research by the U.S. Agency for Healthcare Research and Quality. Obesity costs states up to \$15 billion per year, with 10 states in the South and Midwest seeing obesity eat up 10 percent of the states' medical costs, the agency reported.

### **UNHEALTHY HEALTH WORKERS?**

A new analysis finds that health care spending is 10 percent higher for hospital employees than for the general public. The study by Thompson Reuters found that hospital workers were more likely to be diagnosed with chronic medical conditions, such as asthma and diabetes.

#### **BEHAVING BETTER**

A new study finds that telecommuting workers break company rules and engage in misconduct less frequently than their office-bound counterparts. The survey by the Ethisphere Institute and Jones Lang LaSalle found that 11 percent of companies said telecommuting workers committed misconduct in the past two years, compared with 36 percent of companies that reported visible violations in workers who don't regularly work from home. Forty-three percent of companies noted "nonvisible" violations by office workers, such as expense account fraud and bribery.

#### **LAYOFF RESOURCES**

The Employee Benefits Security Administration (EBSA) has created a new webpage for employees who are laid off and for the employers who terminate them. The webpage includes videos and frequently asked questions about COBRA, HIPAA and health care reform for employees, as well as model notices and publications for employers. The page can be viewed at:

<http://www.dol.gov/ebsa/publications/joblosstoolkit.html>

### **Webinar**

#### **401(k) Best Practices**

**Tuesday, Oct. 11 -- 2 p.m. ET / 11 a.m. PT**

401(k) plan sponsors can sometimes feel beset on all sides. Government regulators can initiate random audits -- triggering weeks, months, or even years under the microscope of Uncle Sam's chief tax collector (the IRS) or his ERISA enforcer (the DOL). The smallest mistake uncovered during such an audit can cost the sponsor a small fortune.

But plan sponsors can avoid much of this risk -- and most of the aggravation -- if they implement simple procedures designed to prevent errors, mitigate the damage of any mistakes that do occur and properly insulate the sponsor from liability for the performance of plan investments. This upcoming employer webinar will arm 401(k) plan sponsors with strategies for preventing, identifying, and correcting problems before they become catastrophes.

For more information or to register for this webinar, contact us today.

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