



Employee Benefits Compliance for 2012



Agenda

Today's Agenda

- COBRA administration after the subsidy
- Section 105(h) and fully insured health plan non-discrimination rules
- Taxation of health coverage provided to adult children
- Summary of benefits and coverage
- An update on recent health care reform developments
 - Clinical effectiveness research fee
 - W-2 reporting requirements
 - Employer penalty update
 - Health FSA limit
 - Financial impact of dropping coverage



COBRA

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Plans Subject to COBRA

Plans Subject to COBRA

- Medical Plans, including Health Reimbursement Accounts (HRAs)
- Dental, Vision, Rx
- On-site Health Care and EAPs
- Health Flexible Spending Accounts

Plans not subject to COBRA

- Life Insurance, Disability, Long Term Care, HSAs



Plans Subject to COBRA

Employee Assistance Plans (EAP)

- If the EAP pays for or provides medical services it is a health plan (e.g. counseling visits with a health care professional)
 - If EAP provides only referrals – then likely not a health plan

Onsite health clinic

- Would include a medical provider offering a discount to employees who receive services on-site
 - Applies only if providing medical services other than just work related injury and illness
- COBRA premium based on cost to provide service or discount

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Plans Subject to COBRA

Health Reimbursement Accounts

- Coverage available at time of event
 - Equals the balance available in the account to the individual at time of event
 - In most cases COBRA Q.B. can continue coverage and receive employer funding for future plan years as long as they are eligible for COBRA
- Spouses and Dependents could elect HRA independently
 - A spouse or dependent electing HRA coverage independently must receive full benefit of HRA
 - Active employee may still receive their full benefit
- Premium
 - Must be determined “actuarially” or on past costs
 - May not be based on 1/12 of total annual benefit



Plans Subject to COBRA

Health Reimbursement Accounts Continued

- HRA COBRA premium example
 - Employer offers HDHP with \$1500 single deductible/ \$3000 family deductible
 - Single premium = \$400, Family premium = \$1000
 - Employer provided integrated HRA reimburses up to \$1000 for employees with single coverage and \$2000 for family coverage
 - Employer actual prior year HRA costs = \$10,000
 - Employer's total HRA claim reimbursements = \$9,000
 - Administration Expenses = \$1000
 - Assume this \$10,000 equals \$50 per member per month based on enrollment in plan
 - COBRA premium for single coverage = \$459/mo



Qualifying Events

Definition

- Must be one of the events listed in the law and cause the loss of coverage now or at some time in the future

18 Month Events for Employee, Spouse or child

- Termination
- Reduction in Hours

36 Month Events for Spouses and Children Only

- Death of Employee
- Loss of Dependent Child Status
- Employee's Entitlement to Medicare
- Divorce or Legal Separation from Employee



Qualifying Events

Not all examples of loss of coverage are a COBRA qualifying event

- Employee voluntary dropping coverage during open enrollment
- Loss of coverage due to spouse carve-out eligibility rule change
- Employer dropping benefits for all employees
- Domestic partner separations

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Initial General Notice

Sending the General Notice

- "The Department will consider...that an employer has made a good faith effort at compliance...if this notice is furnished to each covered employee **and his or her spouse** (if any) by first class mail to the covered employees last known address."
- Notice to the spouse
 - Initial notice to the home
 - Spouses added to plan after employees initial enrollment
 - Notice directly to minor children not required unless they live at different address from employee
 - In-hand to employee allowed, but if Spouse is covered notice must be sent to home
 - Failure to notify spouse with initial notice is a leading cause of COBRA liability



Employee/Beneficiary Notice Rules

Employee Notification to Employer

- Employee or Beneficiary must Notify Employer of Certain Events within 60 days
 - Divorce/Separation & Loss of Dependent Status
 - Second Events
 - Disability Extension

Reasonable Procedures Rule

- Employer must establish "reasonable procedures"
- Employer may require written notice
 - Requirement must be communicated to employees (handbook?) and included in COBRA notices
 - If employer fails to implement procedures Employee or Beneficiary can notify verbally



Health Insurance Non-Discrimination Rules



Non-Discrimination Rules

Health Plan non-Discrimination Rules Background and Review

- Internal Revenue Code §105(h) prohibits health plans from discriminating in favor of highly compensated individuals
 - Generally, anything of value provided to employees must be considered taxable income unless there is a specific exclusion in the Code
 - Treatment of health insurance as non-taxable is one of biggest exclusions in Code
 - Original intent for non-taxable treatment of health insurance was to encourage companies to expand offering insurance to wide range of employees
 - §105(h) was designed to restrict employers from offering tax free benefits principally to highly compensated individuals
 - §105(h) currently only applies to self-funded plans
- Affordable Care Act non-discrimination rules
 - ACA requires IRS to develop non-discrimination rules "similar to §105(h)" which will apply to full insured health plans



Non-Discrimination Rules

Health Plan non-Discrimination Rules Background and Review

- ACA Non-discrimination requirement for fully insured plans
 - Rules do not apply to grandfathered plans
 - Effective beginning on first plan year after 9/23/2010
 - IRS has delayed enforcement (Notice 2011-1)
 - Will not be enforced until plan years beginning some time after regulations are issued
- Penalties for Violation
 - Self-funded plans
 - Value of excess benefit received by HCI is taxable income
 - Fully-insured plans
 - \$100 per day per individual "discriminated against"



Non-Discrimination Rules

Discriminatory or Not?

- Details as they apply to fully insured plans may change once IRS regulations are released – these are simply general guidelines
- Probably OK...
 - If an employer offers the same benefits to all employees with same eligibility and employer contributions, plan likely will not violate non-discrimination rules
- Probably not OK...
 - If an employer clearly provides better benefits, eligibility or contributions to a group principally made up of highly compensated individuals, the plan will likely violate non-discrimination rules
- Must review on a case by case basis...
 - If an employer offers different benefits, eligibility or contributions based on legitimate classes of employees (i.e. salary vs. hourly, locations, etc.) the plan may pass the non-discrimination rules but should be analyzed.



Non-Discrimination Rules

How to fix it

- Plans with discriminatory employer contributions
 - “Even out” employer contributions so they are the same for everyone and gross up the taxable compensation highly compensated individuals to make up for loss of contribution
 - HCIs may be able to pay increased contribution on a pre-tax basis through Section 125 plan (would not be available to partners and 2% S-corp owners)
- Plans with discriminatory eligibility (i.e. Management carve-outs - HCIs eligible for plans other full-time employees not eligible)
 - Possible Solutions
 - Open eligibility to all employees for both plans
 - It is possible the IRS rules may allow continuation of this plan design with the benefits provided to HCI treated as taxable income
 - This design will also be an issue in 2014 due to health reform requirement to cover all full-time employees (30+ hours) or pay a penalty



Non-Discrimination Rules

Executive Reimbursement Plans

- Executive only health plans will not be allowed under new rules
 - Grandfathered executive health plans can continue but no new policies can be written
 - Carriers have been introducing new types of “executive benefit plans” that are not considered health plans since they pay fixed amounts for certain things (i.e. \$X per hospital day, flat payment for specific disease)



Tax Treatment of Adult Children Coverage



Tax Treatment of Adult Children Coverage

Background

- Effective 3/30/2010 coverage for adult children is not taxable to the employee on a Federal basis
 - Applies to any child who has not reached age 27 by the end of a tax year

Rules apply to health plan coverage

- Health plans include medical ,dental and vision coverage
- Health reimbursement accounts (HRA)
- Section 125 health FSA
- Does not apply to health savings accounts (HSA)
 - Old IRS dependent rules still apply to HSAs



Dependent Coverage

State Tax Issues

- Health care reform rule only applies to federal tax law
 - States must amend state tax law to conform to the rule
- Minnesota
 - State legislature has amended state tax code to conform to Federal law.
- Wisconsin
 - State law not yet changed, state taxes should continue to be withheld for dependents that do not qualify as tax dependents under old rules
 - Example:
 - 25 year old married child covered on employee's plan - living independently and receiving no support from employee
 - Coverage tax free to employee for Federal tax purposes
 - Coverage treated as taxable income for state tax purposes



Summary of Benefits and Coverage (SBC)



Summary of Benefits & Coverage

Summary of Benefits and Coverage (SBC)

- Proposed SBC regulations released August 18th
- Effective date still in question - currently March 23, 2012.
 - However, agencies recognized that a mid-plan year communication requirement may be problematic for employers, and is seeking comments on a phased in approach.
 - AHIP has also called for a delay in the effective date
- Samples and templates also released
 - Templates available on DOL site <http://www.dol.gov/ebsa/healthreform/>

Uniform Glossary

- Employers must also provide access to a uniform glossary of insurance terms
 - The agencies have provided a glossary of terms - employers can meet requirement by providing a link to an internet location of the glossary



Summary of Benefits & Coverage

Who is responsible to send the SBC?

- For fully insured plans, the insurance carrier is responsible to produce and provide employer with a valid SBC
 - However, the summary be provided to individuals "as part of any written application materials that are distributed by the plan...for enrollment. If the plan does not distribute written application materials for enrollment, the SBC must be distributed no later than the first date the participant is eligible to enroll..."
 - Employers will need to provide the summary for new employee enrollments and as part of their open enrollment process
- Employers who sponsor self-funded plans will be responsible for the production and distribution of the SBC
 - Claims administrators may provide some assistance to their employer clients in meeting these requirements.

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Summary of Benefits & Coverage

Distribution Rules

- Newly eligible employees - SBCs must be provided for each "benefit package" for which an individual is eligible
 - At renewal, SBC need only be provided for benefit package in which a participant is enrolled
- SBC must also be provided to participants upon request
- Individuals with HIPAA special enrollment must receive SBC

60 Day Advance Notice Requirement

- Employers must notify participants of "material" changes to the plan at least 60 days in advance!
 - 60 day advance notice requirement does not apply to changes made as part of the annual renewal of the plan



Health Reform Update

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Health Reform Update

Clinical Effectiveness Research Fee

- Effective plan years beginning November 1, 2011
- Fee on all health plans to fund clinical effectiveness research
 - \$1.00 per member per year for plan years beginning through October, 2012
 - \$2.00 per member per year for plan years beginning November 1, 2012
 - Fee no longer applies for plan years beginning November 1, 2018
- Regulations expected soon on calculation and payment of fee
 - Fee will be based on an “annualized member count” formula
 - Fully insured plans – carrier will pay fee
 - Self-funded plans
 - IRS developing payment regulations
 - TPA may be able to pay and add to administration fee

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Health Reform Update

W-2 Reporting Requirement

- IRS released Notice 2011-28 on 3/29/11
- Must report "aggregate cost" of "applicable employer-sponsored health coverage" on W-2s
- Delayed reporting requirement for smaller employers
 - Employers filing fewer than 250 W-2s for tax year 2011
 - Not required to report until 2013 tax year (i.e. W-2s that are provided early in 2014).
 - Employers who file 250 or more W-2s for tax year 2011
 - Required to report beginning with the 2012 tax year (W-2s provided early 2013)
- W-2 reporting requirement does not effect tax status of health benefits
 - Congressman Paul Ryan (R-WI) has proposed taxing health benefits as part of budget negotiations



Health Reform Update

W-2 Reporting (Cont.)

- Applicable Coverage - Employer sponsored health coverage
 - Does not include:
 - Accident-only, disability insurance, long-term care, coverage for a specified disease, or other fixed indemnity insurance
 - Stand-alone dental or vision coverage
 - Salary reduction contributions to a health FSA
 - Health reimbursement Arrangements (HRAs)
- Aggregate Cost
 - Inc. entire "premium", not just employer contribution
 - Self-funded plans calculate plan value in same way COBRA premiums are calculated (without 2% COBRA admin fee)



Health Reform Update

Premium Tax Credit and Employer Penalties

- August 17th - IRS released regulations on qualification for premium tax credit
- Review
 - Employees eligible for employer sponsored insurance may qualify to purchase subsidized individual insurance from an Exchange if two criteria are met:
 - The individual's household income is less than 400% of federal poverty level (FPL)
 - AND –
 - The employers health insurance is "unaffordable" - employee's required contribution for the employer coverage is more than 9.5% of the employee's household income
 - Employers will pay a penalty of \$250/mo for any employee who purchases subsidized coverage from an Exchange



Health Reform Update

Premium Tax Credit and Employer Penalties

- Household income
 - Modified Adjusted Gross Income (MAGI) of household members required to file a tax return
- Unaffordable employer coverage
 - 9.5% of income is based on the cost of employee only coverage
 - Employers will not pay a penalty as long as employee only cost is less than 9.5% of employees income
 - Questions remain if employee only coverage is less than 9.5% of the employees income will family members be eligible for subsidized coverage on the Exchange
 - New employer safe harbor proposed
 - If cost of single coverage is less than 9.5% of employee's W-2 wages, employer will not pay a penalty regardless of employees household income



Health Reform Update

Premium Tax Credit and Employer Penalties

- Examples
 - Employee # 1 Single earner in household
 - W-2 income = \$26,000 and Household MAGI = \$17,000
 - Employee cost for single coverage = \$200 month (\$2400 year)
 - \$2400 = 14.1% of household income but only 9.2% of W-2 wages
 - **No employer penalty**
 - Employee #2 Two income family
 - W-2 income = \$24,000 and Household MAGI = \$45,000
 - Employee cost for single coverage = \$200 month (\$2400 year)
 - \$2400 = 10% of W-2 wages but only 5.3% of household income
 - **No employer penalty**



Health Reform Update

Section 125 Health Flexible Spending Account Limit

- Effective tax year 2013
 - \$2,500 limit on annual salary reductions to a Health FSA
- Employers with non-calendar year 125 plans
 - Need to begin to restrict elections in 2012, so that employees do not have too much deducted from pay during 2013
 - Example
 - Employee makes a \$4800 annual (\$400/mo) health FSA election in a 125 plan with a September 1, 2012 plan year
 - \$3200 (8 months) of pre-tax deductions will occur in 2013



Health Reform Update

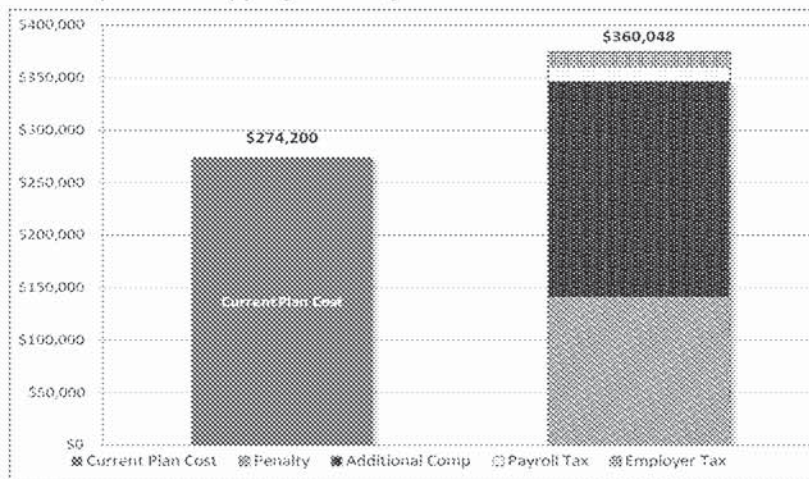
Financial Impact of Dropping Coverage

- Penalty = \$2,000/yr (\$166.67/mo) times total number of full time employees (not counting first 30 EEs)
 - Applies if at least 1 employee qualifies for subsidy and purchases coverage through an Exchange
 - Penalty not tax deductible to employer
- Example 100 employee company
 - Employer monthly penalty $70 \times \$166.67 = \$11,666.90$
 - Other consideration
 - Will employer provided some income to employees to replacement terminated benefits?
 - What is the employer additional payroll tax liability on additional income provided?
 - What is the cost of loss of employer tax deduction on employer penalty?



Health Reform Update

Financial Impact of Dropping Coverage





Additional Resources

Resources From RJF Agencies

- Email questions to HCRAnswers@rjfagencies.com
- Website: www.rjfagencies.com
 - Compliance updates on health care reform, human resources, employee benefits, construction/contractors and commercial insurance
- Receive updates: [Twitter.com/RJF_HCRUpdates](https://twitter.com/RJF_HCRUpdates)