

Flex Plan News

Benefits News for Administrators

March 2009

Economic Stimulus Act Includes COBRA & HIPAA Updates

The recent economic stimulus act (“the American Recovery and Reinvestment Act”) includes two significant items affecting group health plans. Included below is a brief overview of the COBRA and HIPAA provisions. Since these items are of significant interest and importance, we have included additional information on our website – www.ProBenefits.com – in the “News & Updates” section on the front page.

COBRA: The Act mandates a 65 percent government COBRA subsidy to individuals who experience involuntary terminations between September 1, 2008 and December 31, 2009. The subsidy is intended to assist these individuals with COBRA premiums for up to 9 months of coverage. 65% of the applicable COBRA premium will be paid by the employer and refunded by the IRS as a payroll tax credit. The subsidy is effective immediately with new coverage beginning 3/1/09. The subsidy is also applicable to state continuation coverage.

HIPAA: The Act includes new rules that expand and broaden HIPAA's privacy and security requirements. The new HIPAA provisions include: an extension of privacy and security obligations to business associates of group health plans; new notification requirements for breaches of unsecured PHI; and stricter and clearer penalties for HIPAA violations. The majority of the new HIPAA rules are effective 2/17/10.

In addition to the info on the web, please feel free to contact Jason Cogdill, ProBenefits attorney, with questions.

New MSP Reporting Requirements for HRAs

New mandatory Medicare coordination reporting requirements (“MSP Reporting Rules”) for third-party administrators and group health insurers went into effect on January 1. These rules require quarterly reporting for all group health plans to verify health coverage of individuals and ensure compliance with the Medicare Secondary Payer rules. Health FSAs are exempt from the requirements, and it had been our hope and anticipation that HRA plans would be exempt, but as of today HRAs are not exempt and must comply. Under the new rules, data must be reported for all “active covered individuals” of group health plans, which means that HRA data must be gathered for covered spouses and dependents in addition to the participant-only data currently collected.

The initial deadline is that required reporting entities must register with the Center for Medicare/Medicaid Services (“CMS”) in April and submit reports by October 1, 2009 for the first 3 quarters of 2009. If the requirement is not withdrawn, ProBenefits will be contacting HRA plan sponsors soon to gather the necessary data and prepare reports in compliance with the new rules.

According to key industry lobbyists and attorneys (including a group in which we participate – ECFC - the top employer lobby in the industry), while CMS is doing its best to interpret fairly the regulations as issued by Congress, there remains a chance that HRAs will be excepted from the MSP Reporting Rules. Should the lobbying efforts of ECFC and others be successful and the reporting not required, we will let you know. At minimum, we are expecting a clarification on the type and size of HRA plans affected by the new rules. It is also possible that the requirements will be delayed until 2010. Any changes to the requirements should be announced by March 31.

For more information, visit: www.probenefits.com/News/News.html#HRA-CMS-MSP-Reporting.

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ProBenefits.com: New Compliance Info for Employers

We recently added a feature to our website providing updated compliance info and breaking benefit plan news for clients. The news items are located on the front page of ProBenefits.com under “*News & Updates.*” The most recent additions include information on the new COBRA premium subsidy and HIPAA provisions included in the economic stimulus act. Feel free to check this page periodically for updates.

Benefits of Flex Plans in Recession Economy

During the difficult economic circumstances of the last few months, we have had some excellent conversations with employers and employees about the value of flex plans. Now as much as ever, it is helpful to understand how these plans are helping your company and its employees by reducing taxes and increasing take-home pay.

Employees typically save 30% or more on all salary deductions for insurance premiums or FSA elections for out-of-pocket medical or childcare expenses. All employee flex contributions exempt from federal, state, and FICA taxes. Employers save 7.65% on all dollars contributed by employees (for premiums or FSAs) because IRS rules allow Employers an exemption from the FICA match on all employee pre-tax contributions. As a result, the financial savings for companies and individuals are significant.

As one basic example: an average 50-employee company with (1) pre-tax premiums for health coverage (employees covered at 80% for health premiums), (2) Health FSA, (3) and Dependent Care FSA generates approximately \$50,000 in total annual tax savings for employees and \$12,800 in annual tax savings for the employer. There is no other employee benefit that can provide such significant financial assistance for such a small employer cost. If you would like more info on tax savings for your plan, contact us.

Reminder of FSA Claim Deadlines for Calendar Plans

For calendar plans, the claim runout period for the 2008 plan year ends on Tuesday, March 31. Participants should submit claims no later than March 31 for reimbursement from 2008 plan year funds. Of course, expenses must have been incurred during the plan year (or, if applicable, 75-day grace period ending March 15) to be reimbursable.

Participants should not wait until the last minute, since in some cases additional documentation may be needed. Once ProBenefits has processed all 2008 claims for your plan, a final Account Balance Report will be provided.

Your Question Answered: “Is financial hardship a qualifying event allowing an Employee to make a mid-year election change?”

No. IRS Section 125 regulations do not permit changes in pre-tax salary reductions as a result of pay decreases or financial hardship. This applies to insurance premiums as well as FSA contributions. Unlike rules on 401(k) plans, the 125 regs are very rigid on this issue. As long as the employee remains eligible, the election may not be changed.

While the rule may seem harsh, the good news is that the participant is saving money. For the Health FSA, most medical expenses are non-elective and will happen anyway, so the plan helps the employee save tax money on those expenses. For premiums, while there are times that employees may prefer to forego insurance coverage in lieu of take-home pay, any change will have to wait until the next open enrollment (or a recognized qualifying event).

If you have any questions on this or any compliance topic, contact Jason Cogdill, in-house attorney at ProBenefits. Jason advises employers and plan advisors on a wide range of benefits topics and is available to you as a resource.

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