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Health Care Costs

End of Summer Brings Start of New Search for Health Care Savings

With summer winding down, many employers are starting their annual migration to the land of open enrollment. This year, experts say workers' lifestyle and prescription drug habits will move into the crosshairs as companies hunt for new ways to keep health care costs grounded.

Recent research shows that more employers plan to penalize employees that do not participate in wellness programs or who exhibit unhealthy habits, such as smoking. A new study by Hewitt Associates finds that nearly half of large employers use or plan to use financial penalties to encourage workers to change their ways, according to a report in *MarketWatch*.

Often, these penalties are outcome-based. For instance, a company might charge a smoker more if he or she fails to participate in a smoking cessation program, or it might shift an employee to a high-deductible plan if they fail to reduce their cholesterol level. Some companies are beginning to enact penalties for simply refusing to participate in health screenings, experts say.

While some grumblings from the workforce about such moves might be expected, research shows that many employees aren't necessarily turned off by the idea of penalties. A new study by Rutgers University finds that nearly half (47 percent) of workers say employers should be allowed to charge unhealthy workers who smoke.

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In This Edition

In Brief

NURSING RULES
The Department of Labor has released new guidance about an amendment to the Fair Labor Standards Act that calls for employers to provide "reasonable" time and a place for employees who are nursing

However, those polled were more forgiving of overweight workers, with only 26 percent saying obese employees should be charged more.

Prescription for savings

While smoking and obesity serve as easy targets for cost-cutting strategies, shifts in employees' shopping habits for prescription drugs also can bag big savings without increasing premiums or eliminating coverage, according to Brian Solow, a vice president at Prescription Solutions, a pharmacy benefit manager.

In a recent article for *Employee Benefit News*, Solow highlights a few steps that can generate savings for both employers and workers. They include:

- **Generics:** Off-brand drugs can cost 50 percent to 70 percent less than their brand-name versions. While acceptance of generics is increasing, more can be done, Solow said, pointing to a recent analysis that found that generics account for 69 percent of all prescriptions but only 16 percent of total drug spending. Solow encourages a "step-therapy" approach in which a patient starts with a generic version and only moves to a brand-name medicine if the generic treatment is not effective or if the patient suffers a bad reaction.
- **Mail-order drugs:** These services can generate savings and are effective in monitoring drug interactions, Solow said. A study by the Lewin Group finds that mail-order prescriptions can cost up to 10 percent less than drugs purchased at brick-and-mortar pharmacies.
- **Disease therapy management:** These programs, which can contain features of both disease management programs and medication therapy management, are designed to improve drug compliance. One such study, featured in the *American Journal of Managed Care*, reduced relapses by 34 percent and significantly cut medical costs for multiple-sclerosis patients, Solow said.

Dependent audits

Although wellness initiatives and education have moved to the forefront of cost-cutting efforts for many employers, some companies are looking inward with dependent audits, according to CNNMoney. Several national audit companies have reported significant increases recently in inquiries by employers about the process, which can weed out ineligible participants in a plan.

Michael Smith, CEO of ConSova, said audits typically find that 10 percent to 13 percent of dependents are

mothers to express milk for their newborns, according to Fisher & Phillips LLP. The place, which cannot be a bathroom, must be functional, shielded from view and protected from any intrusion by co-workers or the public. Employers generally do not have to pay employees during nursing breaks. However, if the employee is not "completely relieved from duty," or if the employer already allows paid breaks, then the time taken during nursing sessions must be compensated, Fisher & Phillips states.

PAY FOR PERFORMANCE

A new survey by WorldatWork reveals that U.S. employers are reporting an average salary increase of 2.5 percent for workers in 2010. However, performance plays a major role in the actual size of raises, according to the research. The study projects that high performers will land an average increase of 3.7 percent this year, while middle performers will receive an average raise of 2.4 percent. Low performers should expect a slim 0.7 percent increase or less, the research states.

TIME TO TELECOMMUTE

Most companies are offering telecommuting to their employees, according to a survey by Business Legal Reports (BLR). The survey finds that 57 percent of employers support some sort of telecommuting option, and two-thirds of those have offered telecommuting for three years or more. More companies (88 percent) also are offering more flex time compared with responses from 2006 (64 ineligible.

Recent health care reform legislation is making audits even more attractive. Next year the law requires plans to cover the adult children of employees until age 26, so the desire to shed ineligible participants likely will continue to grow, experts say.

New Notices

New Laws Add to 2011 Enrollment Load

As enrollment season for calendar-year plans approaches, employers face a sea of new rules and procedures, thanks to recent health care reform.

Despite these compliance and cost challenges, most employers say they'll continue to offer health care coverage for the foreseeable future.

Regardless of a company's long-term strategy on health care coverage, employers should now turn their attention to more immediate matters - particularly new employee notices, a law firm advises.

In a recent online publication, Nelson Mullins Riley & Scarborough LLP advises that employers should re-evaluate the bundle of notices they hand out to employees each enrollment season and include new pieces that are required by the Patient Protection and Affordable Care Act (PPACA). Many of these new notices must be delivered "no later than the first day of the first plan year beginning on or after Sept. 23, 2010," which essentially means they must be distributed in employers' 2011 enrollment materials, or even prior to enrollment time, the firm states.

The law firm said the following notices are applicable to all 2011 employer-sponsored group health care plans:

- Special Enrollment Notice For Dependent Coverage of Children Up to Age 26
- Notice Regarding Plan's Grandfathered Status (if a plan seeks to be grandfathered)
- Special Enrollment Notice for Lifetime Limit

The law firm says plans that are not grandfathered also

percent). However, fewer companies (59 percent) offer a "relaxed" or "very relaxed" dress code compared with four years ago (65 percent), BLR reported.

FMLA SURVEY

The Department of Labor plans to conduct a survey to learn how employees are using leave time allowed by the Family and Medical Leave Act (FMLA). The most recent survey of FMLA, released in 2007, found that between 8 percent and 17 percent of U.S. employees took FMLA leave in 2005.

UNPLUGGED DRUGS

About 40 percent of private-practice doctors had electronic prescribing systems running in their offices in 2008, according to research released in July by the Center for Studying Health System Change. Of those, one-quarter used the technology infrequently or not at all, the survey finds. Checking for adverse drug interaction topped the list of tasks completed with electronic prescribing systems at 65 percent. Fifty-four percent of doctors that used the systems said they frequently transmitted scripts to pharmacies, while 34 percent said they used the systems to check if a drug was covered by a patient's health care plan. Only 23 percent of plugged-in doctors (less than 10 percent of all office-based physicians) frequently used electronic systems to tackle all three tasks.

LIVING WELL IN HAWAII

Hawaii earned the top spot in the national Well-Being Index, generated by Gallup and Healthways. Residents of the

should provide a notice about the new patient protections, including a patient's rights to choose a doctor and obtain obstetrical or gynecological care without prior permission. Links to model language of these notices can be found here:
http://www.nelsonmullins.com/newsletters/comp-and-benefits-brief-july-22

In addition to the above, employers might want to include a number of notices in their enrollment packets that are not related to PPACA, according to the law firm of Bricker & Eckler LLP. These include:

- Notices on HIPAA enrollment and privacy rights, including those affected by the Genetic Information and Nondiscrimination Act (GINA)
- Notice of special rights under the Children's Health Insurance Program Reauthorization Act (CHIPRA)
- Notice of rights under the Women's Health and Cancer Rights Act
- Minimum length of stay notice
- Notice of creditable/noncreditable prescription drug coverage
- COBRA notice to new enrollees

In a recent article for the Society for Human Resource Management, Bricker & Eckler's Peggy Bomberger noted that enrollment also serves as a good time to knock the dust off of summary plan descriptions (SPDs) and check for compliance changes. Bomberger said CHIPRA, GINA and other recent legislation will require SPD updates.

This wave of new compliance requirements - and worry over rising health costs - has rattled many employers. However, a new study shows that most employers aim continue to provide health care benefits despite the challenges created by health care reform.

A national poll by Fidelity Investments finds that while 84 percent of employers expect to re-examine their benefit strategies for 2011, nearly two-thirds (64 percent) of respondents said their companies were not seriously considering dropping health care coverage. A larger proportion of small businesses (22 percent) are pondering an end to coverage compared with larger companies (14 percent), the survey finds.

Health Care Reform

Aloha State had the nation's best scores in three of six categories: Life Evaluation, Emotional Health and Physical Health. Residents of Vermont and Minnesota also earned high marks. West Virginia took the lowest spot in the index for the third year in a row. The lower rankings were dominated by Southern states, including Mississippi, Kentucky, Arkansas, Alabama and Tennessee.

DISABILITY IS TOPS

More than 41 percent of full-time employees say they would consider paying in full to obtain certain benefits not currently offered by their employer, according to a new survey by Guardian. When asked which benefits they would prefer to have, most employees chose disability (58 percent). Critical illness (56 percent), dental (55 percent), life (52 percent) and vision (48 percent) rounded out the top five in the survey.

GOING SOCIAL

More people around the world are hopping onto social-networking sites while at work, according to a new survey. A global survey by Trend Micro, an online content provider, finds that nearly a quarter of employees visit social-networking sites, such as Facebook and Twitter, through their company networks. Trend Micro polled 1,600 employees from the U.S., Germany, Japan and the U.K. In the U.S. and Germany, 24 percent of workers said they visit the sites while at work, while 33 percent of Brits said they log into the sites. Only 14 percent of Japanese employees said they view social-networking sites at work.

Agencies Issue Rules on Preventive Services, Claim Appeals

Federal agencies have published interim final regulations on two major aspects of recent health care reform: covered preventive services and the rights of patients to appeal denials of health care claims.

Preventive Services

Three federal departments -- Health and Human Services, Labor and Treasury -- published interim final regulations that outline a series of preventive medical services that must be provided without cost sharing by an employer's nongrandfathered group health plan. They include:

- Evidence-based services, which include screenings for breast and colon cancer, diabetes, high cholesterol, high blood pressure and vitamin deficiencies for pregnant women
- Routine vaccines, ranging from childhood immunizations to tetanus shots for adults
- Prevention for children, which includes regular pediatrician visits, developmental assessments and more
- Prevention for women (criteria is still being developed)

The regulations also explore in what scenarios cost sharing for preventive services is allowed, according to an Employee Benefit News report. For instance, cost sharing can be implemented if the employee uses an out-of-network provider. Also, plans may institute cost sharing on an office visit when a preventive service is billed as a separate charge, or if a treatment is not itself a recommended preventive service.

Grandfathered plans are exempt from these rules.

Claim appeals

The three agencies also announced interim final rules that create federal standards for health care claim appeals, according to the law firm Brucker Morra. The rules allow employees to appeal claim denials directly to insurers and then to external board reviews, if necessary.

Under the regulations, nongrandfathered group plans must:

- Allow workers to appeal when a plan denies a claim of a covered service
- Give employees detailed information about why the claim was denied

- Notify employees of their rights to appeal
- Ensure a process that allows denials to be properly reviewed
- Provide a process that can expedite a review in urgent cases

Most states already have laws that require an external review of claims. However, the details of those laws vary widely, and five states - North and South Dakota, Alabama, Nebraska and Mississippi - do not have such laws on the books. These new rules create a federal standard for appeals, trumping state law. The law takes effect for plans beginning on or after Sept. 23, 2010, but it won't apply to states that already have external-review laws until July 2011.

Those employers who are self-insured also will see a big change, according to a report by *Kaiser Health News*. Previously, external-review requirements did not apply to self-insured plans.

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(617) 244-3737 • Paul.Rooney@ebscapstone.com
One Gateway Center • Suite 650 • Newton • Massachusetts • 02458