



Ideas and Information for Human Resources Professionals

## Health Care Reform

### No Matter What, PPACA Ruling Likely Will Significantly Change Benefits Game

The legal fate of the Patient Protection and Affordable Care Act (PPACA) is poised to take center stage at the nation's highest court in the next few months.

The Supreme Court recently agreed to consider a number of lawsuits pertaining to PPACA and likely will start hearing arguments in March, with a final ruling expected in June, according to a report in *Employee Benefit News*.



The full impact of a ruling against PPACA will depend on whether the court strikes down the entire law or only sections of it. In fact, a partial ruling might create some big problems, according to Diane Boyle of the National Association of Insurance and Financial Advisors.

"If the court strikes down the individual mandate while leaving the law's other provisions intact, it could create havoc in the health insurance marketplace," Boyle told *EBN*. "[The] lack of a mandate would mean individuals would have no incentive to seek health insurance until after they become injured or sick. If only sick and injured people are buying insurance, clearly that's not



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## In Brief

### SBC DELAY

The Department of Labor (DOL) has suspended a deadline for

sustainable."

As long as the law's future remains unclear, employers are stuck in limbo regarding the main provisions of the legislation that are set to start in 2014.

One provision of the law that was initially welcomed by employers -- and that is effective now -- is a special tax credit for small businesses. However, the government's effort to tout this benefit is falling short of expectations, according to a report by CCH. The government reported that about 228,000 small employers claimed more than \$278 million in tax credits in the law's first year. That's far short of the estimated 4.4 million taxpayers who could possibly qualify for the credit.

William Dennis, a research fellow at the National Federation of Independent Business Research Foundation, told *Bloomberg BusinessWeek* that the low numbers are not surprising, arguing that the idea of the tax credit was simply "a talking point for political reasons; it wasn't a serious thing."

White House officials deny that charge and counter that few businesses accessed the credit because most companies weren't able to adjust employee coverage in time to take advantage of it yet.

Still, others complain that the rules regarding the credit and eligibility are so confusing that most employers don't understand it and don't have the time or resources to sort it out, according to the *BusinessWeek* report.

Although the federal government has pledged to increase education efforts, it might all become moot if the right-leaning court throws out the law. However, the tax credit might survive the court's moves, even if other provisions are tossed.

No matter which way the court rules, it will create some level of burden on employers, Keith R. McMurdy of N.Y.-based Fox Rothschild told *EBN*. "It will cause a significant rippling throughout what we've done the last two years either way," he said.

## Pharmacy Benefits

### Employers Target Prescription Plans to Save Costs

employers to comply with new rules regarding the Summary of Benefits and Coverage (SBC). The new rule, part of the health care reform law, would require employers to supply a variety of information in their benefit communications, including a glossary of common health terms and examples of how certain medical conditions would be handled. The DOL announced that employers will not be required to comply until further notice. Previously, the deadline was set at March 23, 2012. The DOL indicated that it would announce a new compliance date after final regulations are set.

### MEWA RULES

The Department of Labor (DOL) has proposed new guidelines governing multiple-employer welfare arrangements (MEWAs) designed to protect small employers. Under the proposed rules, MEWAs would be required to register with the DOL. Also, the DOL would be able to issue cease-and-desist orders on MEWAs without prior notice and would be able to quickly seize assets from MEWAs if they fall into financial trouble.

### PROTECTING WHISTLEBLOWERS

The Occupational Safety and Health Administration (OSHA) is beefing up its whistleblower protections. The agency recently revised its manual on whistleblower investigations and has budgeted \$6.1 million to hire 45 new investigators. OSHA also has posted final rules on whistleblower provisions under the Sarbanes-Oxley Act, as amended by the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act.

### NOT IN THE KNOW

Fewer Americans are actively seeking health information, according to an analysis by the Center for Studying Health

Soaring health costs from hospital stays, emergency room charges and doctor's appointments -- costs that often are out of employers' control -- all give sponsors of benefit plans plenty to worry about these days.

Fortunately, many employers are making a real impact in one area that is increasingly important when figuring total health costs: prescription drugs.



A new report by the Pharmacy Benefit Management Institute notes that employers are actively taking measures to shore up and control their prescription drug benefits with some success, according to *Human Resource Executive Online*.

Specialty drugs -- high-cost medicines that can reach hundreds of thousands of dollars annually for a single patient -- have become a main target, the report notes. While copays for generics and traditional drugs have remained stable, specialty copays increased 37 percent between 2010 and 2011 and are expected to jump more in the future.

Although only about 3 percent of employees take these types of drugs, the prescriptions account for as much as 15 percent of overall drug costs, Doug Ghertner, president of Change Healthcare, told *HREO*.

Some other emerging strategies include:

#### **More Cost-Sharing**

Making employees aware of the real cost of prescriptions can influence behavior and persuade workers to use cheaper generics, Ghertner said. Cost-sharing drives home the value of the benefit for employees and can lead to better decisions at the pharmacy counter, he said.

#### **Drug Adherence**

Patients who don't take their medicines properly can create more health problems down the road, experts say. Joshua Brenner, a doctor of pharmacy, noted at a recent industry summit in Washington, D.C., that guidance directly from a pharmacist or health professional can significantly boost drug adherence. In a report by *Drug Topics* magazine, Brenner said personalized communications and targeting high-risk patients for nonadherence also is key.

#### **Integration**

System Change. The recent study found that 50 percent of American adults looked for personal health information in 2010, a decrease from 56 percent in 2007. Americans' rate of searching the Internet or asking friends about health information remained stable, but the use of hard-copy books, magazines and newspapers dropped by almost half to 18 percent, the study found.

#### **WHEN AGE COUNTS**

New poll results suggest that employers would be well served by tailoring their retirement plan communications to specific age groups. However, most employers don't follow through, according to the survey by Northern Trust. The study found that only 4 percent of retirement plans had created "specific goals for engaging younger workers in their defined contribution plans." Only 24 percent targeted specific age groups.

#### **DOUGHNUT UPDATE**

The Medicare "doughnut hole" -- the prescription coverage gap that exists under Part D -- is shrinking, according to a new government analysis. Medicare's Office of the Actuary estimates that the average American who falls into the coverage gap would have paid about \$900 on prescriptions this year, down from the original estimate of \$1,504. A bulk of the drop can be attributed to a 50 percent discount from drug companies on brand-name drugs, which generated an average savings of \$581.

#### **MATERNITY MATURITY**

More first-time mothers have access to paid maternity leave than ever before, according to a report by the U.S. Census Bureau. A report by the agency in November found that more than half of women who gave birth for the first time between 2006 and 2008 received some sort of paid leave, up from 42

More employers are exploring the idea of merging the prescription portions of their group health and worker's compensation programs to better manage drug safety and costs, according to a report in *Business Insurance*.

Although this strategy offers a number of challenges -- such as the disconnect between federal and state laws -- the savings can be worth the work because pharmacy benefit management integration can offer a comprehensive view of a workforce's prescription drug use, Rich Leonardo of Express Scripts told the magazine. This information leads to better management of the benefit, especially on the workers' comp side, Leonardo said.

## Wellness Compliance

### EEOC Move Adds New Compliance Wrinkle to Wellness Programs

The idea of a wellness program seems clear-cut on the surface: Improve your employees' health and lifestyles, and they'll spend less on health care. That can translate into savings for employers on benefits.

Simple, right? Unfortunately for employers, setting up a wellness program is anything but a simple endeavor. A number of federal laws dictate how a program must be managed, and agencies review and revise the laws frequently.



Take the latest compliance hurdle for wellness programs: A regional office within the Equal Employment Opportunity Commission (EEOC) has ruled that incentives offered to employees' spouses to complete a health risk assessment are a violation of the Genetic Information and Nondiscrimination Act (GINA). No one, however, seems to be able to get details about this decision, according to a report by *Human Resource Executive Online*.

GINA bars discrimination based on a program participant's information -- a broad definition that includes the medical history of employees and of their spouses, experts say. GINA allows incentives for wellness programs only if participants are not required to supply family medical information to get them. The EEOC

percent in 1996-2000. Not all women received similar benefits, however. Lower-educated mothers are nearly four times as likely as college graduates to be refused paid maternity leave by their employers -- the widest gap in the past 50 years.

### DESK VACATIONS

The average American receives 14 days of paid vacation but generally uses only 12 of them, according to a survey by Expedia. Add up the time and labor costs associated with those extra two days, and it equals about \$34.3 billion, based on figures from the U.S. Bureau of Labor Statistics. Workers said the top reason for skipping vacation is that they don't have enough money to travel, according to the Expedia report.

### DATA BREACHES

The number of reported health information data breaches climbed 32 percent since 2010, according to a report by the Ponemon Institute. The report found that 41 percent of those breaches could be attributed to employee mistakes, while 49 percent resulted from theft of computers or devices.

## Webinar

### Mastering the New Retirement Plan Fee Disclosure Rules

**Tuesday, Jan. 17**  
**2 p.m. EST / 11 a.m. PST**

Deadlines for the new 401(k) and 403(b) plan fee disclosure requirements are upon us. After months of delays, employers now must comply with these rules or risk violating their fiduciary duties, thereby exposing themselves to personal liability. What are

decision means spouses can't be required to supply such information when enrolling in a wellness program.

Summer Conley, an attorney with Drinker Biddle & Reath, noted in *HREO* that the decision "doesn't necessarily jibe with the purpose of [the law] because there's not really genetic information involved when you're talking about your spouse."

The final outcome of this decision, however, remains murky. EEOC's national office has yet to make a formal announcement. Still, experts suggest employers play it safe and take out any incentive-based requests for family medical history information through a health risk assessment for both workers and their spouses.

GINA is just the tip of the iceberg for employers who want to sponsor a wellness program. According to Amy Gallagher, vice president of major accounts with Cornerstone Group in West Warwick, R.I., HIPAA has the greatest impact on wellness programs because it is broad and covers issues related to health, privacy and benefits. Although HIPAA prohibits employers from discriminating against workers based on their health, companies have some wiggle room, Gallagher noted in an article on GoLocal.com.

For example, while employers generally are barred from charging different rates for workers based on their health, they can award premium discounts for workers who exhibit healthy behaviors or participate in wellness programs.

Ultimately, how HIPAA impacts an employer's wellness initiative depends on the type of plan, Gallagher wrote. Participation-based programs can reward workers for simply participating in a wellness initiative. Standards-based programs, however, grant incentives based on workers achieving a specific goal, such as weight loss or quitting smoking. The standards-based program is subject to much more regulation under HIPAA, according to Gallagher.

"Your prescription for success? Proceed with caution when developing wellness programs," Gallagher writes. "And be sure to seek advice from benefit advisors or wellness consultants experienced in designing and executing successful -- and compliant -- plans."

businesses doing to evaluate their practices and maintain compliance with these new regulations? Who is responsible for preparing and distributing these disclosures? Attend a 90-minute webinar in which attorneys from Spencer Fane Britt & Browne LLP will address these and other questions. Please contact us to register or learn more.

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