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Large Employer Health Plans: Managing Change to Consumer-Driven Health Care

BY MARK J. KINNEY

Most large employers in the United States have been providing health care benefits to their employees since at least World War II. What began as a way to get around federal wage controls quickly became part of the standard compensation package. Advances in medical science combined with increased demand for services have pushed up the real cost of health care relative to income. And inefficient markets, poor management, and waste have added fuel to the fire.

Now we have seen a decade where health care costs have soared at more than twice the rate of inflation. While large employers are not likely to eliminate health care coverage, the coverage itself has been evolving rapidly. Managed care demonstrated that little can be accomplished by adding another layer of bureaucracy to the health care delivery system. The direction now is to push health care decisions down to employees, and have them share responsibility for the cost.

This means that deductibles, coinsurance and co-pays are rising. To help employees meet out-of-pocket expenses, employers are providing them with tax-advantaged health accounts. To help them reduce the need for acute care, employers are providing wellness programs. The largest employers have mostly watched from the sidelines as consumer-driven health care gained traction among their smaller competitors.

Kinney is a partner in the Benefits and Compensation group at Dorsey & Whitney LLP, Minneapolis. Kinney's practice centers on health and welfare benefit issues, with particular focus on consumer-driven health care. He can be reached at (612) 492-6096 or at kinney.mark@dorsey.com.

But that is changing.

This article provide tips on how to manage that change—how to accomplish a paradigm shift that affects every employee with a minimum amount of disruption. Done properly, the transition will yield health care savings while boosting productivity in the work force.

Manage People, Not Plans. The primary goal of consumer-driven health care is to change behavior, not to shift costs. Simply increasing deductibles, co-pays and coinsurance is counter-productive: employees are more likely to forgo required medical care, leading to catastrophic expenses down the road. Instead, it is necessary to engage individuals in the health care purchasing decision. This means giving them money to work with.

Employers should take the savings realized from moving to high deductible health plans and plow them back into health savings accounts (HSAs) or health reimbursement arrangements (HRAs). Most employees can manage a budget, and they are much more careful with their own money.[1] The goal is to encourage plan participants to self-regulate their expenditures, and to utilize their experience as consumers to comparison shop and even negotiate for better deals. This approach harnesses the collective brainpower of health plan par-

[1] Although an HRA is typically just an unfunded notional account, unused amounts roll over from year to year and are available to the employee for medical expenses in future years.

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ticipants to seek the best value for their health care dollars.

Encourage Independence. Large employers tend to be somewhat paternalistic when it comes to employee benefit plans. But the days of blanket indemnity coverage have passed. Employees need to take responsibility for their health care purchasing decisions, just as they need to take responsibility for their health. Employers that offer HRAs should allow them to be used for any medical expense that is deductible under Section 213(d) of the Internal Revenue Code. Some employees might make poor decisions, and spend their accounts on unnecessary care. They will learn the hard way and improve their decision-making skills in the long run.

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Employers that make HSA arrangements available have little choice but to remain somewhat detached. HSAs are intended to be individual trust or custodial arrangements, and employers have no more right to control HSAs than they do the checking accounts of their employees. Employers are permitted to select an HSA vendor, however, and to facilitate contributions through the payroll system. Too much involvement will cause the arrangements to become subject to the Employee Benefits Retirement Income Security Act of 1974 (ERISA).[2] Most employee benefits lawyers agree that the application of ERISA to an HSA arrangement would be problematic, and would subject employers to an untenable amount of risk.

The problem with taking a ''hands off'' approach to HSA arrangements is that they are, or can be, extraordinarily complex. What began as a simple idea is now the subject of no less than 14 IRS Notices (the longest of which has 80 questions and answers), along with a number of IRS regulations, Revenue Rulings, Revenue Procedures, and Publications. Aside from providing some basic educational materials with good disclaimers, employers should refer questions or comments on HSAs to the trustee or custodian. Human Resource departments that attempt to do more quickly become deluged with individual questions and concerns.

Employers that make HSAs available to employees remain responsible for coordinating other benefits so that they do not disqualify the employees from eligibility for HSAs. Beyond that, employees are on their own. Large employers may be uncomfortable with this approach at first, but the vast majority of employees have no problems, and the creation of a separate health account outside of the workplace helps to drive home the point that employees share responsibility for health care costs, and that they will benefit from being prudent stewards of health care resources.

Take It Beyond Consumerism. Realigning purchasing incentives at the individual level will reduce waste, and may even help reform inefficient markets for medical care. But finding the best deal on insulin is no substitute for avoiding diabetes in the first place. More than 75 percent of health care expenditures are currently used to treat chronic diseases, most of which are preventable.[3] And productivity losses associated with workers who have chronic diseases are as much as 400 percent more than the cost of treating those diseases.[4]

What used to be none of an employer's business is now at the center of the employer's business. Health care costs cut directly into profits. The connection between lifestyle, health, and worker productivity has never been more clear. Management has an obligation to its shareholders to do what it can, within the boundaries of the law, to protect and improve the health of each employee.

Aggressive new wellness programs are filling this need. These are not the soft-pedaled programs of the 1980s and 90s. Modern wellness programs use financial incentives and solid academic research from the behavioral sciences to encourage employees to adopt healthier lifestyles and better manage existing disease. It may be that these programs will produce the next great breakthrough in productivity for the American worker. At a minimum, they hold significant promise for reducing avoidable health care costs in the near term.

Keep It Voluntary. Firing smokers or charging them more for health care premiums may violate state and federal laws, including nondiscrimination rules under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).[5] Penalizing employees who refuse to take health risk assessments or other medical exams that are not job-related may also violate the Americans with Disabilities Act (ADA). The ADA contains an important exemption, however, for ''voluntary'' medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that work site.[6]

Although incentives and penalties may be flip sides of the same coin, employers should offer incentives for voluntary participation in wellness programs, rather than penalties for nonparticipation.

If incentives are linked to premiums, co-pays, coinsurance or deductibles, the wellness program may be subject to the HIPAA nondiscrimination rules.[7] These

[2] A helpful discussion of employer ''dos and don'ts'' is set forth in a United States Department of Labor Field Assistance Bulletins 2004-01 and 2006-02.

[3] Centers for Disease Control and Prevention, Chronic Disease Overview, *http://www.cdc.gov/nccdphp/overview.htm*, accessed November 30, 2008.

[4] *Working Towards Wellness: The Business Rationale*, World Economic Forum, in cooperation with PricewaterhouseCoopers (2008).

[5] The preamble to the HIPAA nondiscrimination rules makes clear that the government views addiction to nicotine as a protected ''health factor.'' *See Nondiscrimination and Wellness Programs in Health Coverage in the Group Market*, 71 Feed. Reg. 75,014, 75015 § I (Preamble) (Dec. 13, 2006).

[6] *See* Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (ADA), Q&A 22 (Jan. 27, 2000).

[7] In a nutshell, if incentives are linked to a health plan and are contingent upon attaining standards related to a health fac-

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rules are not terribly complex, but they are best avoided. One way to avoid the HIPAA nondiscrimination rules is to offer incentives such as cash or prizes rather than incentives such as premium reductions. But employers need to keep in mind that other state and federal laws will continue to apply, including the ADA. For example, it may be necessary to provide reasonable accommodations to disabled employees who cannot otherwise attain incentives because of disability. And if incentives in any amount are paid in the form of cash, including gift or debit cards, they will constitute taxable income to the employee.[8]

It may seem a little disconcerting that people who would not participate in a smoking cessation program to save their own lives would gladly participate for $50. Regardless of the motivation, well-designed programs provide education, encouragement and support for better lifestyles. They make a difference to every participant at some level.

Manage Health Coverage Beyond the Next Quarter. The Big Three automakers traded short-term wage concessions for long-term health care liabilities that proved disastrous. As they learned, health care is a complex problem with a long-term horizon. Managers that reduce health care costs solely by raising deductibles or increasing employee contributions may generate savings that look good to analysts and investors in the short term. But chronic diseases are not measured by the financial quarter. They manifest after many years of unhealthy behavior left unchecked.

A company's health and wellness programs should be designed to have an impact in the long term. Accounting rules notwithstanding, investments in workforce health and wellness initiatives should be viewed, conceptually at least, as equivalent to an investment in long-term capital. As our country continues to move to a knowledge-based economy, it is easy to forget that the means of production are flesh and blood. But we are reliant, perhaps more so than at any time in the past century, on people rather than machines.

A growing number of large employers are making these investments. They are introducing high deductible health plans with tax-advantaged health accounts. They are offering incentives for employees to participate in wellness initiatives such as biometric testing, health risk assessments, disease management, and lifestyle coaching. New ideas and advances, from personal health records to genomics-based medicine, are allowing individuals to alter the course of disease and their lives by becoming informed and engaged. The benefits are more than personal—they drop straight to the bottom line.

tor, the total incentive may not exceed 20% of the premium for single coverage, and reasonable alternative standards must be provided to individuals who cannot attain the standard because of a health condition. *See* 29 C.F.R. § 2590.702 et. seq.

[8] 26 C.F.R. § 1.132-6(c)