



OMAHA (402) 963-0866  
KANSAS CITY (913) 633-1661

Specializing in: Medical, Life, Long-term Disability, Short-term Disability, Long Term Care, Voluntary Benefits, Financing Techniques and Compliance Issues

## NEWSLETTER FOR AUGUST 2006

### **How to catch 2 innocent errors that can lead to big legal trouble**

Benefits pros always try to do right by top management and employees.

That's why it's maddening that most lawsuits and government audits arise from inadvertent disconnects between what's written in company policies and benefits plan documents.

Here are two areas where costly errors can lurk, and the administrative steps legal experts recommend to catch and correct the mistakes earlier.

1. Policy/coverage discrepancies. Many firms forget to make sure all current benefits policies are also written into formal plan documents, says benefits attorney William Wright.

Example: Suppose senior management passes a rule that employees must work 30 hours a week to be eligible for the health plan.

Benefits and HR then write the coverage policy into employees' benefits handbooks and verbally remind people.

Now suppose an employee drops to part-time status. Are you legally protected if the employee challenges the loss of benefits?

Not necessarily, says Wright. For the policy in the handbook to stand up in court, the plan documents must also have a 30-hour-a-week eligibility requirement.

Same thing goes for disputes over run-out coverage. Suppose it's your firm's policy to cover a terminated employee for the rest of the current month, since the premium has already been paid.

A few days later, the employee has a major health claim. The TPA denies it, saying the person was ineligible for coverage.

Reason: The plan document says "active employees" are covered and doesn't specify the insurer pay claims until the end of the month.

The likely result: The ex-employee sues you under ERISA, saying the company, as plan sponsor, is liable for the mistake. In such cases, employers often wind up on the hook.

2. Coordination of benefits. To stay protected in cases where an employee's claim may be covered under two or more policies (e.g., the primary health plan and a short-term disability policy), make sure there's a clear-cut coordination-of-benefits policy in all of your plan documents.

Usually, if a plan contains no provision for coordination of benefits, it's expected to pay first. Two key areas to check:

Make sure there's a statement that says only the amount actually paid by each plan, will be charged against the maximum benefit, and the order of benefits determination spells out which plan pays first for a covered child if the employee is divorced from his or her spouse.

Likewise, if your firm offers domestic partner coverage, make sure there's a coordination-of-benefits statement for dependent and non-dependent partners.

These and other potential problem areas can be avoided if you:

1. Gather all materials related to specific plans into a binder, including renewal letters from various vendors and materials distributed to employees,
2. Do an annual self-audit, checking the plan document against company policies, and
3. Pay special attention to keeping benefits descriptions up to date.

Reminder: If you don't have a formal plan document, your contract with the vendor legally serves as the "control document" for the plan.

And, by law, you must offer all employees access to the current plan document and notify them in writing of any minor alterations, via a summary description.

~~~~~

## **Smoking cessation: Even oldest workers receptive**

Medical research has long shown quitting smoking at any age can improve a person's health.

Now comes a new study from Duke University showing retirement age workers may actually have the best odds for quitting through a smoking cessation program.

Researchers tracked 573 older patients over 10 years. They found that just 6% of those who joined the smoking cessation program later returned to smoking.

Previous research has found young smokers who try to quit have a 35% to 45% relapse rate within two years.

Given the aging employee population and the cost of retiree health care, you may want to keep trying with smoking cessation programs, even for post-retirement plan members.

Info: <http://snipurl.com/quit><http://snipurl.com/quit279>

~~~~~

## **Health savings accounts: Will more small firms be able to offer them?**

Health savings accounts (HSAs) have been around for two years, and most plan sponsors to date have been jumbo-sized employers.

In response, President Bush, in a State of the Union address, pledged to make HSAs more accessible and attractive to employees and firms of all sizes.

As of now, just 13% of firms with 10 to 499 employees plan to offer HSAs by 2007, finds a new Mercer study. A mere 2% already have them.

By contrast, 22% of the largest employers already offer HSAs, and 31% will by 2007.

The big obstacles for small firms:

- ~ the exclusion of pharmacy benefits from first-dollar coverage
- ~ employees' objections to the high deductible, and
- ~ the expense of investing in and developing the support tools needed to make HSAs work.

Most firms with successful HSA plans had well-established wellness and/or disease management programs before they launched HSAs.

Another major hurdle: Under current tax law, many large companies can deduct health insurance costs. But small employers and individuals can't.

Under the Bush proposal, there'd be two major tax-law changes:

- ~ individuals and small employers would get a tax break for picking a high-deductible plan, and
- ~ people could contribute to the HSA tax-free for all out-of-pocket costs.

The second change is designed, in part, to overcome the problems of not being able to cover prescription drugs until the yearly deductible is satisfied.

The current maximum an employee can contribute tax-free to an HSA is \$2,700 for single coverage and \$5,400 for families, or the deductible amount (whichever is lower).

But experts doubt the proposals will get through Congress this year, because they'd worsen the budget deficit.

~~~~~

### **Disease management: We proved it's working**

Our firm started a disease management program last plan year.

Our CFO and CEO were already anxious to see the results. They asked us to compile hard data to track whether the firm's investment was paying off.

That put us in a tough spot.

We knew it'd take several years to get a true picture of the plan's impact on the bottom line.

Tracking chronic-condition health claims after one year wouldn't tell us much. In fact, it could even give a distorted picture, because many firms see claims increase in the early going.

So instead of measuring claims, we tracked whether the incentive we offered (lower copays for people who had a health risk assessment) had lured people to participate.

We found:

- ~ 92% of employees underwent a health risk assessment
- ~ 65% received for follow-up care after the initial assessment, and
- ~ about 10% of employees voluntarily entered smoking cessation and/or obesity-management programs through our plan.

In other words, so far so good.

The reduced-copay incentive got people in the door, and they took the results of their health risk assessments seriously.

We presented the results to upper management, explaining why we chose those measurements and what the data meant. They were thrilled.

(Grace Barker, benefits manager, Papagallo, Inc., Brookfield, WI)

~~~~~

The above articles were reprinted with permission from What's New in Benefits & Compensation, 370 Technology Drive, Malvern, PA 19355 1-800-220-5000

~~~~~

VISIT OUR WEBSITE AT [WWW.B-M-S.NET](http://WWW.B-M-S.NET)