

**PPACA
Amendments on
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*Health Care Reform for
Cafeteria, HRA and
Wrap plans*



9/28/2010

Agenda

- Intro items
 - HIPAA Portability
 - Grandfathering
- PPACA provisions for HRA and Cafeteria plans
 - Adoption Assistance (2010)
 - Age 26 (2010)
 - OTC (2011)
 - Simple Cafe Plans (2011)
 - No annual/lifetime limits (2011)
 - Preventative care (2011)
 - Appeals (2011)
 - \$2.5 k limit, qualified benefits for Cafeteria plans (2013)
 - Other not applicable provisions/future provisions
- PPACA provisions for Wrap plans
- Batch PPACA Amendment Software Demo

Plans with Small/Minor Changes

- POP plans – no changes!
- Cafeteria plans with no employer contributions (with HCRA):
 - Adoption amt increased (2011)
 - OTC (2011)
 - \$2.5k limit (2013)
 - Optional (simple cafe, age 26)

Plans with More Extensive Changes

- Plans that are subject to HIPAA Portability
 - HRA plans (unless employer contribution under \$500 and major medical policy)
 - Cafeteria plans with HCRA and employer contributions over \$500
 - Most wrap plans
- Biggest change: external appeals

HIPAA-Port reqs do not apply:

- Plans < 2 participants who are current employees as of the first day of the plan year; or
- Coverage (reimbursements) limited to dental, vision and long-term care benefits that are not an integral part of a group health plan; or
- The plan meets all of the following:
 - Employer offers other group health plan coverage (not just dental, vision or long term care coverage), and
 - Maximum benefit payable to a participant under the plan is less or equal to the greater of:
 - *\$500 (plus any participant contribution, if applicable) or*
 - *two times the participant's salary reduction election for the year.*

Subject to HIPAA-Port?

Scenario 1

Employer A wants to provide employees (10) with health coverage but doesn't have time/energy to search for insurance plan.

Employer A provides each employee with \$400 per year through HRA (any eligible expense can be submitted).

Scenario 1 -Subject to HIPAA-Port?

Yes.

Employer A's HRA plan is subject to HIPAA-
portability.

Maximum benefit payable under \$500, but
Employer A does not offer other group
health plan coverage beyond the HRA.

HRA Subject to HIPAA-Port?

Scenario 2

Employer B has major medical policy that dropped vision and dental coverage so B adds a HRA plan for its employees with each employee eligible for up to \$550 per year in vision and dental expenses.

Scenario 2 - HRA Subject to HIPAA-Port?

No.

Employer B's HRA plan is limited to dental and vision coverage

Cafe Plan Subject to HIPAA-Port?

Scenario 3

Employer C has major medical policy (HDHP) and cafeteria plan that includes a health FSA.

Employees (50) can defer up to \$5,000 per year into the HFSA and employer will match every dollar contributed.

Scenario 3 - Subject to HIPAA-Port?

No.

Employer C offers other group health plan coverage and

Maximum benefit payable to a participant under the Cafeteria plan is equal to two times the participant's salary reduction election for the year.

Subject to HIPAA-Port?

Scenario 4

Employer D has major medical policy and a cafeteria plan that includes a health FSA.

Employer D makes an employer contribution to the Cafeteria plan \$550 per year to each employee (150)

Scenario 4 -Subject to HIPAA-Port?

Yes.

Subject to HIPAA-Port?

Scenario 5

Employer E is sick and tired of the Cafeteria plan non-discrimination rules and decides to become a 'Simple Cafeteria plan' (per health care reform requirements).

Employer E makes the smallest required contribution of 2% of compensation (plan includes a health FSA).

Scenario 5 -Subject to HIPAA-Port?

Yes.

Assuming at least one of Employer E's employees make over \$25,000 per year, Employer E's Cafeteria plan will be subject to HIPAA-Portability.

In Sum

Cafeteria plan with health FSA/HRA with employer contribution of \$501 or more is generally subject to HIPAA portability and health care reform requirements

Grandfathering

- Only applicable to HIPAA Port plans
- Why GF? External appeals for Cafe/HRA; maybe preventative care for HRA
- Requirements:
 - Plan must have been in existence on March 23, 2010; continue to cover at least one person
 - Disclosure of grandfathering status in "any plan materials provided to a participant or beneficiary describing the benefits provided under the plan."
 - Maintain records of the plan on March 23,
 - Extremely limited changes to benefits allowed
- Why not? Penalties if wrong: \$100/day/affected indiv

PPACA PROVISIONS

HRA & CAFETERIA PLANS

Cafeteria plans w/ Adoption Assistance – 1/1/10

- Adoption assistance increased to \$13,170 for 2010 (increased by \$1,000)
- No amendment necessary
- SPDs modified; SMM will include if plans has adoption assistance

Age 26 Coverage – 3/30/2010

- All HRA/Cafeteria plans (HCRA) will cover children up to 26th birthday
 - Living situation, etc. all irrelevant – relationship status only
 - HIPAA Port covered plans requirement;
 - Optional for others
- Administrative option (J.25/26) to extend coverage to end of calendar year in which child turns 26
 - Tax code permits coverage beyond the PPACA requirement
 - default “Yes”
 - response is used in SMM/SPD
- Cafeteria plans have option to provide new election opportunity for 2010 plan year (J.25)

New Option to Remove Children from Coverage

- HRA/Cafeteria plan HCRA can now restrict eligible expenses to:
 - participants only;
 - persons covered under company medical plan;
 - participants, spouse and dependents or
 - other

- Cafe: C.5a; HRA C.2a (not part of PPACA amendment)

No OTC Coverage – 1/1/2011

- All HRA and Cafeteria plans with an HCRA
- Coverage allowed for prescribed drugs (w/o regard to whether such drug is OTC) or is insulin

No OTC Coverage Cont.

- Debit/credit cards need to follow Notice 2010-59
 - Drugs must be substantiated before reimbursement may be made (receipt + prescription)
 - PPACA SMM will include the above if plan has debit cards plus any restrictions entered in J.14. You may want to enter other explanatory language.

Simple Cafeteria Plans

- Checklist item A.15
- Optional to avoid nondiscrimination testing
- Requirements:
 - eligible employer (100 employees or less)
 - minimum employer contributions
 - *at least 2% of compensation*
 - *the lesser of 6% of Compensation or 200% of a Participant's salary reduction contribution*
 - minimum eligibility requirements (age 21 and one year of service).
- Cafeteria plans that wish to become 'simple cafeteria plans' should be restated

No annual or lifetime limits

1st PY after 9/23/10

- General rule: all plans subject to HIPAA Port are subject to this rule (no exception for GF plans)
- Interim final regs exclude FSAs (Code section 106(c)(2)):
 - exclude coverage LTC
 - Limit max reimbursements to 5 times value of coverage
 - All Cafeteria plans meet this exemption
- Preamble to regs indicate HRA that are ‘integrated’ with group health plan exempt
 - What does it take to be integrated?

HRAs and Annual/Lifetime Limits

- New HRA checklist item: C.3c ‘FSA Failsafe’
- We recommend that HRAs that are not integrated with group health plan become FSAs (assume all HRAs are subject to HIPAA Port)
- Included in PACA Amendment
- Plans that select (shows in SMM and/or SPD):
 - no LTC coverage
 - Maximum reimbursement limited to 5 times value of coverage

5 Times Value of Coverage?

- Meaning is unclear – limited guidance
- If there is no carryover of balances:
 - value of coverage = max reimb. amt
- If there is carryover
 - We suggest using COBRA rules (Code section 4980B(f)(4)(B))
 - *Actuarial determination*
 - *value of coverage = amt of reimbursements in prior year (past cost method)*

FSA Valuation Example using COBRA past cost valuation

■ Year 1:

- 10 employees, each has \$600 employer contribution (\$6,000 for plan total)
- Plan allows carryover but has FSA failsafe selected
- Employees use \$90 each on average in year 1
 - *used \$900 of max amt in total*
 - *Value of coverage \$900*
 - *5 times value of coverage = \$4,500*
- Potential carryover = \$5,100

■ Year 2:

- Carryover should be limited to \$4,500
- To meet FSA rules, employer cannot make any employer contribution in year 2

No Cost-sharing for Prevent. Care 1st PY after 9/23/10

- Not of concern for HCRA Cafeteria plans
(assume Cafe plans have no deductibles/coinsurance)
- HRA plans with deductible/coinsurance need to pay attention (C.4/5). Options:
 - Remove deductibles/coinsurance (restatement)
 - Ensure the HRA coordinates with a non-grandfathered health plan (health plan req'd to cover)
 - Grandfather the HRA plan

Internal/External Appeals

1st PY after 9/23/10

- Applicable to non-grandfathered HIPAA-Port covered plans
- Non-ERISA plans now subject to ERISA internal appeals (if subject to HIPAA port)
- Clarifications added to internal appeals
- New external appeals process added (enforcement grace period ending 7/1/11)

External Appeals Safe Harbor

- Contract with at least 3 IROs (URAC certified or similar)
 - TPA can contract for plans
 - compliance determined on a case-by-case basis... failure to contract with at least three IROs does not mean that the plan has automatically violated external appeals rqmt
- Timelines (different for expedited review):
 - 4 months to file for external review
 - preliminary review (eligible for external review) w/in 5 biz days
 - IRO has 45 days to make decision
- Alternative: state review process

\$2,500 limit on Employee Contributions to HCRA – 1/1/13

- Cafeteria plans with HCRA only
- PPACA Amendment includes language creating the limit effective January 1, 2013.
- If you want earlier eff date:
 - Modify Amendment/SMM once generated
 - Update C.2a to “max permitted under 125(i)”

Cafeteria plan Qualified Benefits – 1/1/14

Health plans offered through an exchange are not a qualified benefit in a cafeteria plan unless the Employee's Employer is a qualified employer offering the opportunity to enroll through such exchange in a qualified health plan in a group market.

Provisions Not of Concern to Account-based plans

- Prohibition on pre-existing conditions
- Prohibition of discrimination based on health status, providers used
- Patient protections regarding choice of doctor, emergency services, etc. (notices required if the plan requires participants to choose a primary care doctor).
- Requirement to meet non-discrimination rules of Code section 105(h) (HRA and Cafeteria plans with an HCRA feature subject to HIPAA Portability are already required to meet this rule).

Future Provisions Awaiting Guidance

- Uniform Summary of Benefits and Coverage (regulations to be released by March 30, 2011; summaries to be provided by plans by March 30, 2012)
- Annual reporting requirements (regulations to be provided by March 30, 2012)
- Cost-sharing limits (plan years beginning on or after December 31, 2013)
- Waiting periods over 90 days not permitted (plan years beginning on or after January 1, 2014)
- Automatic enrollment for large employers (effective date unclear)

PPACA PROVISIONS

WRAP PLANS

Wrap Plans

- Extent of changes to subsidiary contracts depends on contracts
- Amendment/SMM details appeals process changes if plan is subject to HIPAA Portability
- All other changes incorporated by reference to extent subsidiary contracts are subject to HIPAA Portability
- Other notices req'd by PPACA have not been added (provider choice, OBGYN choice)

BATCH PPACA AMENDMENT

SOFTWARE DEMO