Employee Benefits Report

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# HDHPs and HSAs: Pros and Cons

**Premium increases for employer-sponsored family coverage are expected to remain modest in 2016, ranging from 6.8 percent for a health management organization (HMO) to 7.8 percent for a preferred provider organization (PPO), according to the 2016 Segal Health Plan Cost Trend Survey released in September 2015.**

Still, these percentages are outpacing inflation, while prescription drug coverage is expected to hit double-digit rates.

One reason cited for the relatively modest increase is that employers are finding alternatives to traditional coverage. One example: employers who are looking for a way to lower health insurance premiums for their employees often look to high-deductible health plans (HDHPs). On the upside, these

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## This Just In

Employees value perks above high pay, according to a survey by Glassdoor, a jobs recruiting site. Their survey, published in Glassdoor's Feb. 13, 2016 newsletter, outlined the most creative, most appreciated benefits at 20 well-known companies. Here's a peek at seven of them:

- Access to executive and life coaching services outside of the company (Asana)
- $4,000 cash to employees who have a newborn (Facebook)
- $2,000 annually to travel and stay in an Airbnb listing (Airbnb)
- Surviving spouse or partner paid 50 percent of the deceased employee's salary for 10 years (Google)

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plans offer lower premiums; on the downside, higher deductibles than are found in traditional health insurance plans. However, an HDHP combined with a tax-advantaged Health Savings Account (HSA) can be an effective way to pay for medical expenses.

## HDHP

An HDHP has a higher annual deductible and out-of-pocket maximum limit than other types of insurance plans. For instance, in 2016 the HDHP minimum deductible level for an individual is $1,300 and for a family it's $2,600. Out-of-pocket limits go as high as $6,850 for an individual and $13,000 for a family. Out-of-pocket limits include co-payments and other expenses, but not premiums.

These higher deductible amounts can be difficult for some employees to cover. However, after the insured pays the deductible amount, the plan might pay covered benefits at 100 percent for the plan year. This serves as a great catastrophic plan when medical expenses soar.

These plans also cover preventive services at 100 percent, which include:

- Annual physicals
- Routine prenatal and well-child care
- Immunizations for children and adults
- Stop-smoking programs
- Obesity weight-loss programs
- Screening services for cancer, heart conditions, mental health, pediatrics, vision, etc.

## HSA

An HSA allows employees to save for qualified medical expenses on a pre-tax basis and use those savings to pay for health expenses not covered by a deductible. The money deposited into an HSA is not taxed and it can grow over time. The balance in the HSA grows tax-free, and that amount is available tax-free when withdrawn to pay medical costs. The HSA is portable — meaning that employees can take the HSA with them to another job.

In addition, anyone 65 or older may withdraw money from their HSA for services other than qualified medical expenses, but these will be subject to income tax. Anyone under 65 years old who withdraws money for expenses other than for medical reasons will be charged an additional 20 percent penalty.

An employee must be eligible to participate in a HSA. Those qualifications include:

- Being enrolled in an HDHP and not covered by another health plan (including a spouse's health plan, although this does not include specific injury insurance and accident, disability, dental care, vision care, or long-term care coverage)
- Not enrolled in Medicare
- Not in receipt of VA or Indian Health Service (IHS) benefits within the last three months
- Not covered by spouse's flexible spending account (FSA), unless it is a special "limited" FSA that only pays for non-major medical benefits such as dental and vision expenses.
- Not claimed as a dependent on someone else's tax return.

Employees who are not eligible for an HSA may use a Health Reimbursement Arrangement (HRA). An HRA differs from an HSA in that an HRA does not earn interest and cannot be transferred to another job. The employee also cannot make contributions to an HRA: only the employer can contribute.

For more information on how non-traditional benefits can help your organization save money, please contact us.

- Entire company shuts down for a week each in December and in the summer (Adobe)
- Employees take every other Friday off (World Wildlife fund)
- Employees receive six paid days off for volunteer work, plus $1,000 for a charity if they use the days (Salesforce).

However, of the traditional benefits employers offer, these five still rank high:

- Health insurance (40 percent)
- Vacation/time off (37 percent)
- Performance bonus (35 percent)
- Paid sick days (32 percent)
- 401(k) plan (31 percent)

What do longtime employees want? Glassdoor reports that traditional benefits like career opportunities and senior management positions go a long way toward job satisfaction.

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## Contributing the Right Way

Employers do not have to contribute to their employees' Health Savings Accounts (HSAs), but many do so to help ease the transition from traditional health coverage to high-deductible health plans (HDHPs).

There are two main ways employers can contribute — with a Section 125 plan or without. A Section 125 plan is commonly known as a cafeteria plan. Depending on the level chosen, a Section 125 plan allows employees to deduct insurance premiums pretax and avoid tax on income used to pay for medical and child care expenses. Employers also benefit from these plans because of decreased company payroll and tax liabilities for Social Security, Medicare and unemployment.

There are three basic forms of Section 125 plans:

- **Premium Only Plans (POP)**

  A POP is the most basic and most popular. It allows employees to pay their insurance premiums with pre-tax dollars.

- **Flexible Spending Account (FSA)**

  With an FSA, employees may make pre-tax contributions to the account. They can then be reimbursed from that account for child care, deductibles and eligible medical expenses not covered under their health insurance plan.

- **Full Cafeteria Plan**

  An employee who contributes to this account can do so tax free. This account can be used to pay for insurance premiums, medical or dependent care expenses.

HSAs also can be set up without a Section 125 plan as long as the employer keeps the contributions "comparable" for all employees. This means that contributions should be the same dollar amount or the same percentage of the employee's deductible within the self-only category or family category. However, in order for HSA contributions to be made on a pre-tax salary reduction basis, the employer would have to set up a Section 125 Plan.

Keep in mind that there are limits to how much an employer can contribute. If an HSA is funded by an employee or by contributions from both the employer and the employee, total contributions must remain within the annual IRS limits. For 2016, the limit for self-only HDHP coverage is $3,350 per employee and for family HDHP coverage the limit is $6,750.

Employers can contribute the money at the beginning of the plan year or periodically throughout the year.

# Updated FMLA Forms Limit Collection of Genetic Information

**The U.S. Department of Labor revised a number of Family and Medical Leave Act (FMLA) forms. The forms now include wording that protects employees by limiting information gathered about family members needing the employee's care.**

The FMLA entitles eligible employees to take unpaid leave while keeping their job and group health insurance coverage. One approved reason is to care for the employee's spouse, child or parent who has a serious health condition.

The new forms replace those that expired in February 2016. The main FMLA forms used by employers — doctors' certifications of serious health conditions, notices of rights and responsibilities and designation notices — now carry an expiration date of May 31, 2018. In addition, the new forms also address the Genetic Information Nondiscrimination Act, which limits collection of data on hereditary health conditions that could be used to discriminate against employees.

An employer may require an employee who is seeking FMLA protections to care for a covered family member to submit a medical certi-

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fication issued by the covered family member's medical provider. The employee is not required to fill out the forms — response is voluntary — and the employer cannot ask the employee to provide more information than allowed under the FMLA regulations. Employers must maintain records and documents relating to medical certifications, recertifications or medical histories of employees' family members. This requirement limits collection of data on hereditary health conditions that could be used to discriminate against employees.

The updated forms include:

- WH-380-E Certification of Health Care Provider for Employee's Serious Health Condition
- WH-380-F Certification of Health Care Provider for Family Member's Serious Health Condition
- WH-381 Notice of Eligibility and Rights & Responsibilities
- WH-382 Designation Notice
- WH-384 Certification of Qualifying Exigency For Military Family Leave
- WH-385 Certification for Serious Injury or Illness of Covered Service member — for Military Family Leave
- WH-385-V Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave

# A New Way to Offer Employer-Sponsored Healthcare

**Private health exchanges may offer lower health insurance costs for employers and more benefit choices for employees. This makes them an enticing option for many companies.**

For years, it was common practice for an employer to work with an insurance carrier to offer a standard set of health benefits to the company's employees. The employer would cover the major portion of the health insurance premiums and employees would pay the rest.

In contrast, a private exchange gives an employer the opportunity to choose a variety of health insurance plans and related products from competing insurers and offer them to the company's employees. The employer makes a defined contribution to a savings account employees can use to purchase the insurance coverage of their choice. The employee pays the difference between the company contribution and the total premium cost. The employer's contribution does not vary based on the plan selected.

The benefits of private exchanges for both employer and employees include:

- **Lower costs for employers**

  By setting a defined contribution, an employer can cap employee healthcare costs — controlling expenses and limiting future liabilities. There also is the possibility that as private exchanges become more popular, competition between insurance carriers will keep prices down and a larger pool of members will spread the financial burden for covering medical costs. Overall medical costs may drop if plan designs encourage employees to be more

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involved with their coverage choices and make more cost-effective care decisions.

- **More health insurance choices for employees**

Private exchanges are flexible, because the employer can choose plans and create benefit tiers targeted to the medical and financial needs of its employees. A private exchange also can offer related products that allow employees to create their own customized plans. These products can include a wide range of benefits including dental, vision, life, disability, critical illness, wellness, legal plans, pet insurance and telemedicine. Some large companies have been able to offer choices of up to 30 plans instead of only one or two.

- **Possibility of avoiding the Cadillac Tax**

The Cadillac Tax will take effect in 2020 and will be levied against "rich" health insurance plans that offer a lot of coverage. The hope is that this tax will discourage employers from offering too much tax-deferred employer-provided healthcare. By using a defined contribution, employers may be able to stay under the Cadillac Tax threshold and avoid fines.

Opinions vary as to whether interest in private exchanges will grow. Concerns about the future of private exchanges include:

- **Lack of employer education**

Many employers do not fully understand the cost benefits of private exchanges.

- **Tax implications**

Employer sponsorship of health insurance has two advantages. Employer contributions to premiums are not taxed as income to the employees and employers can deduct their contributions to employer-sponsored group insurance as a business expense. However, this might not apply to private health exchanges because the premiums are used to purchase individual insurance.

- **Regulations**

Growth of private exchanges may lead to new scrutiny and regulations. Plus, these new changes may cause challenges for the employer. On the flip side, current regulations may hinder market development.

- **Inflation**

Although there is no evidence of this trend, opponents are concerned that employers might not set fixed contributions to levels that keep up with medical cost inflation.

## The Future

While some employers are sold on the concept, private exchanges are growing slower than was projected, according to a report by Mark Hall of Wake Forest University in the October 2015 article "Private Health Insurance Exchanges for Employers: Issues for Regulators and Public Policy."

Concerns range from the potential imposition of more government regulations to employers using private exchanges as a way to train and guide employees to use the government marketplace instead of employer-sponsored coverage.

Still, the report indicates that a quarter to half of larger employers are considering using private exchanges or moving to a defined contribution program in the near future — a model similar to one used for years with 401(k) retirement plans.

The bottom line is that the lure of lower costs for employers and more choices for employees is making private exchanges an enticing option. ■

# Supreme Court Decision Makes Enforcing Liens More Difficult

An Employee Retirement Income Security Act (ERISA) plan has the right to be reimbursed for a member's medical expenses if that member is compensated through a third-party settlement. However, a U.S. Supreme Court decision in January 2016 means that an ERISA plan will need to act quickly to identify the appropriate funds for repayment.

The 8-1 decision was issued by the justices in *Montanile v. Board of Trustees of the National Elevator Industry Health Benefit Plan.*

Robert Montanile, who was covered by the company's ERISA plan, was injured in 2008 after a drunk driver crashed into his vehicle. The plan paid more than $120,000 for Montanile's medical expenses. Montanile sued the driver and was awarded a $500,000 settlement. Of that amount, $263,788.48 went to his attorney, and he spent some of the remaining amount without reimbursing the plan.

The plan's lien provisions, outlined in the summary plan description (SPD), required insureds to reimburse the plan if they later recover money from a third party for their injuries. The issue before the Supreme Court was whether the plan could recover these funds after the settlement money was gone.

The Court ruled that the administrator could not sue Montanile because the plan administrator would be going after the participant's assets, which were not part of the settlement. In short, the lawsuit was not seeking "appropriate equitable relief" under section 502(a)(3) of ERISA law because it was seeking repayment with funds that did not come from the settlement. The Court has remanded the case so a district court can determine how much of the original settlement proceeds are left and to what extent the plan can enforce its equitable lien.

The justices rejected the idea that the ruling would encourage participants to quickly spend settlement funds, which could harm an ERISA plan's ability to protect its assets. However, the Court did make it clear that a plan cannot sue a member once the settlement money has been spent — which puts an interesting challenge on ERISA plan administrators to be diligent about seeking reimbursement quickly after a settlement is made. ■

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