

"Chinese Water Torture"
Mandated Health & Welfare
Benefits

March 19, 2009

New Federal Health & Welfare Mandates

- ARRA – Federal COBRA Subsidy
- CHIP Reauthorization Act of 2009
- ARRA – Expansion of HIPAA Privacy & Security Rules
- Medicare Secondary Payer Reporting
- Proposed "Cafeteria Plan" Regulations

ARRA – Federal COBRA Subsidy

- Effective for periods after February 17, 2009
- Employers (or insurers) must subsidize 65% of COBRA premiums for up to 9 months
- Only for involuntarily terminated employees (and their dependents), if the termination occurred:
 - on or after September 1, 2008, and
 - before January 1, 2010

ARRA – Federal COBRA Subsidy

- Federal government pays the cost of subsidy
- The employer (or insurer) paying for the subsidy will be reimbursed
- By tax credits against its employment taxes, or by refund
- No subsidy for employer's payment of continuation premiums through severance package

ARRA – Federal COBRA Subsidy

- "Involuntary termination of employment" not defined
- Guidance might allow subsidy for employees accepting termination under "window" or "buyout" program
- Group health plans exempt from COBRA:
 - must also provide the subsidy
 - if allowing continuation coverage under another law.

ARRA – Federal COBRA Subsidy

- Second chance to elect COBRA coverage for balance of 18-month period
- If individual would be eligible for subsidy, but no COBRA coverage now in effect
- Coverage generally effective March 1, 2009
- No pre-existing condition exclusion for coverage gap

ARRA – Federal COBRA Subsidy

- Notice of "second chance " must be given by employer
- Within 60 days after February 17, 2009
- To all those eligible for COBRA after August 2008
- Including individuals not involuntarily terminated

ARRA – Federal COBRA Subsidy

- DOL provided 4 sample notice forms this week:
 - "Second chance" COBRA notice (due by mid-April)
 - Subsidy notice to covered COBRA beneficiaries
 - Subsidy notice to COBRA beneficiaries now in election period
 - Subsidy notice with future COBRA election notices

ARRA – Federal COBRA Subsidy

- Group health plan may be amended to allow switch to less expensive coverage option:
 - Within 90 days after receiving notice of this choice
 - If eligible for Federal subsidy
 - Outside open enrollment period

ARRA – Federal COBRA Subsidy

- Time limit for premium subsidy is earliest of:
 - 9 months after start of first month of person's subsidy
 - End of 18 months of continuation coverage available after the involuntary termination
 - Eligibility (not enrollment) for other group health coverage

- Covered person must pay penalty to Federal government if eligibility for other plan not reported

ARRA – Federal COBRA Subsidy

- Federal subsidy not taxable unless
- Former employee exceeds income limit
- Income tax increased by up to 100% of subsidy:
 - if modified adjusted gross income between:
 - \$125,000 and \$145,000 on a single tax return, or
 - \$250,000 and \$290,000 on a joint tax return

CHIP Reauthorization Act of 2009

- Effective April 1, 2009
- States may help an employee pay for employer health coverage, instead of providing coverage under Medicaid or Children's Health Insurance Program ("CHIP")
- Group health plans must provide more special enrollment rights
- When an eligible employee, spouse or dependent loses (or becomes eligible for a subsidy under) Medicaid or CHIP coverage

ARRA – Expansion of HIPAA Privacy & Security Rules

- State Attorneys General may now enforce rules
- New notice for persons whose protected health information ("PHI") is disclosed in a security breach (after regulations issued), unless HHS standards were followed
- Effective February 17, 2010:
 - Rules apply directly to "business associates"
 - Participants will have more rights to obtain and restrict access to PHI

Medicare Secondary Payer Reporting

- Effective January 1, 2009
- Group health plans must report electronic data to Centers for Medicare and Medicaid ("CMS") on certain participants and beneficiaries
- To determine whether plans are primary to Medicare
- Includes Social Security numbers of beneficiaries
- Will include health reimbursement account ("HRA") coverage for fourth quarter of 2010

Proposed "Cafeteria Plan" Regulations

- Proposed Regulation says it will be effective in 2009
- However, the effective date is likely to be delayed
- Why? Discrimination testing provision does not work

Current State & Local Mandates

- Insured group benefits in all states
- Hawaii Prepaid Health Care Act
- Employers “Pay or Play:”
 - Massachusetts Health Care Reform Act
 - San Francisco Health Care Security Ordinance
- San Francisco Commuter Benefits Ordinance
- Minnesota Reporting on "Cafeteria" Plans

Insured Group Benefits in All States

- All states mandate group insurance plan benefits
- Not pre-empted by ERISA
- Includes continuation rights like COBRA for small plans
- Enforceable only against insurers
- Not enforceable against self-insured plans

Hawaii Prepaid Health Care Act

- Employer must provide health benefits for employees
- Including part-timers (at least 20 hours/week)
- Not pre-empted by ERISA (special exception)
- Enforceable against insurers & self-insured plans
- Limit on individual employee contributions (1.5% of pay)

Massachusetts Health Care Reform Act

- An employer of more than 50 Massachusetts employees must pay the state up to \$295 per employee, unless:
 - At least 25% of full-timers participate in a group health plan, AND (was "OR" in 2008)
 - The employer offers to contribute at least 33% of the cost for individual health coverage of full-timers
- For smaller employers, the "AND" is still an "OR"

Massachusetts Health Care Reform Act

- In addition, an employer of more than 10 Massachusetts employees must offer a "cafeteria plan" to all employees
- Part-time employees must be included
- The "cafeteria plan" may be a "premium-only" plan
- A "premium only plan" allows pre-tax contributions for health coverage offered by the employer or an insurer
- This includes coverage offered through the Massachusetts "Connector"

San Francisco Health Care Security Ordinance

➤ Covered Employers:

- If at least 20 employees anywhere
- 50 employees if a non-profit employer
- No controlled group rule

➤ Covered San Francisco employees:

- Work at least 8 hours/week in the City
- City work can be transient, such as delivery

San Francisco Health Care Security Ordinance

- Coverage begins: 1st day of month after 90 days of employment by employer (anywhere)

- Exempt San Francisco employees:
 - Supervisors with base salary of \$80,397
 - Employees waiving coverage (if covered elsewhere)
 - Employees covered by Medicare

San Francisco Health Care Security Ordinance

- Minimum employer expenditure for health care
- Due quarterly for each covered employee:
 - \$1.85 per hour worked in San Francisco, or
 - \$1.23 per hour, if less than 100 employees anywhere

San Francisco Health Care Security Ordinance

- Minimum expenditure options for employer:
 - Pay as employer's share of health premium
 - Credit minimum expenditure to an HRA
 - Pay minimum expenditure to the City (for City-provided health benefits)

- Choose different options for each class of employees:
 - Pay premiums for full-timers
 - Credits to HRA for part-timers

San Francisco Commuter Benefits Ordinance

- Effective January 19, 2009
- Covered Employers:
 - If at least 20 employees anywhere
 - No controlled group rule
- Covered San Francisco employees:
 - Worked at least 10 hours/week in the City in the last month
 - City work can be transient, such as delivery

San Francisco Commuter Benefits Ordinance

- Covered employers must offer covered employees:
- A "qualified transportation fringe" benefit plan under Code Section 132(f)
- Allows employees to use pre-tax contributions for the monthly cost of :
 - transit passes, or
 - commuter van pool fees.
- Alternate: Free shuttle service paid by employer

Minnesota Reporting on "Cafeteria" Plans

- Effective as of January 1, 2009 (Minn. Stat. 290.678)

- Covered employers:
 - All employers with employees in Minnesota,
 - If allowing them to pay health coverage premiums through Code Section 125 "cafeteria" plan

- Covered employees: All Minnesota employees paying health coverage premiums through that plan

Minnesota Reporting on "Cafeteria" Plans

➤ Reporting Rules:

- Covered employees must provide covered employees with
 - Annual statement of health insurance premiums paid through the "cafeteria" plan
 - At the same time as Treasury form W-2
 - First report due in January 2010 (2009 premiums)
- Issue: Payroll systems may not be collecting that data for each employee

Minnesota Reporting on "Cafeteria" Plans

➤ Purpose of reported data:

- Track premiums for new Minnesota employee tax credit (20% of eligible premiums)

➤ Limited eligibility for tax credit:

- Only if paying premiums after no coverage for a year
- Only for first 12 months of premiums
- Only if employee's income is:
 - between 200% and 275% of federal poverty guidelines (if no dependents), or
 - between 275% and 300% (if dependents)