



November 15, 2012

HEALTH CARE REFORM FOR FSA AND HRA SPONSORS - PART II

Access Part I [here](#)

This e-let is Part II in a series focusing on the impact of the Patient Protection & Affordable Care Act of 2010 (ACA) on health flexible spending accounts (FSAs) and health reimbursement arrangements (HRAs). This e-let focuses on requirements with W-2 reporting, preventative care, and research fees.

W-2 REPORTING

Beginning in 2012, all health plans subject to COBRA must report the value of coverage on employee W-2s. This is simply informational reporting of the cost of coverage and does not necessitate a tax collection. For 2012, W-2s are only required for employers who filed 250 or more W-2s for 2011. For 2013, informational W-2 data will be generally required for all plans subject to these requirements and sponsored by employers with 20 or more employees.

Two broad exemptions exclude (i) all HRAs and (ii) FSAs with no employer contributions or employer flex credits (IRS Notice 2012-9, Q&A-18). FSAs with employer contributions only report the employer contributions. Arrangements that allow employees to allocate flex credits to an FSA must use a more complicated assessment to determine what to report.

Though not entirely clear, we expect that failures to properly report the value of coverage will be subject to the same penalties applicable to general errors and omissions on W-2s.

COST-SHARING FOR PREVENTATIVE CARE

Effective plan years beginning on or after 9/23/10, non-grandfathered group health plans subject to HIPAA portability may not impose cost-sharing requirements on preventative care. This will mainly affect HRAs that require employees to satisfy a deductible before paying or reimbursing expenses. For example, if an employer has a grandfathered medical plan that requires employees to satisfy a \$5,000 deductible before covering claims for preventative or other care and the employer establishes an HRA that pays up to \$2,000 in claims, but only after employees meet \$3,000 of the \$5,000 deductible.

We recommend that employers with non-grandfathered HRAs with deductibles or copay requirements take one or more of the following precautions to avoid violating this ACA requirement: (i) confirm that an employer sponsored medical plan fully-covers preventative care; (ii) screen HRA claims for preventative care and pay those claims (revised documentation may be needed); or, (iii) remove deductibles and copays.

FEES: PATIENT-CENTERED RESEARCH

Sponsors of self-insured plans subject to HIPAA Portability must pay a fee to support research by the Patient-Centered Outcomes Research Institute. For plan years ending between 10/1/12 and 9/30/13, the fee is \$1 per covered life; for plan years ending between 10/1/13 and 9/30/14, the fee is \$2 per covered life. Beyond 2014, the fee will be published by the U.S. Treasury. Payment is due the following July 31 on

an IRS Form 720.

Self-insured plans that provide overlapping coverage can be treated as a single plan if they operate along the same plan year. For example, an employer sponsoring a self-insured medical plan and an HRA will normally need to pay separate fees on each plan unless they have the same plan year.

We hope the above highlights the care HRA and FSA sponsors should use in operating those arrangements, and recommend contacting your adviser, the author, or the GrayRobinson attorney you normally use if you have further questions.

In the next e-let, we will focus on benefit summaries.

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