Employee Benefits Report

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How Medicare Works with Your Medical Benefits

Due to longer life spans, higher medical costs and recession-impacted savings, the percentage of Americans staying in the workforce past age 65 is increasing. How does this affect your medical benefit plans?

According to U.S. Census Bureau projections, the percentage of Americans age 65 and older will increase by more than 67 percent between 2015 and 2040. Seniors will represent 21.0 percent of the total population by 2040. If you don't have active employees who are eligible for Medicare yet, chances are good you will in the near future.

Traditional Medicare has two main parts: Part A provides hospital coverage, and Part B provides medical services.

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This Just In

The percentage of people who lacked health insurance coverage declined between 2014 and 2013, according to a Census Bureau report released late in 2015. This happened although there was no statistically significant change from 2013 in either real median household income or the official poverty rate during that time.

The percentage of people without health insurance coverage for the entire 2014 calendar year was 10.4 percent, down from 13.3 percent in 2013. The number of people without health insurance declined to 33.0 million from 41.8 million over the period.

Increasing the percentage of people who have health insurance can reduce cost-shifting. Cost-shifting occurs when healthcare provid-

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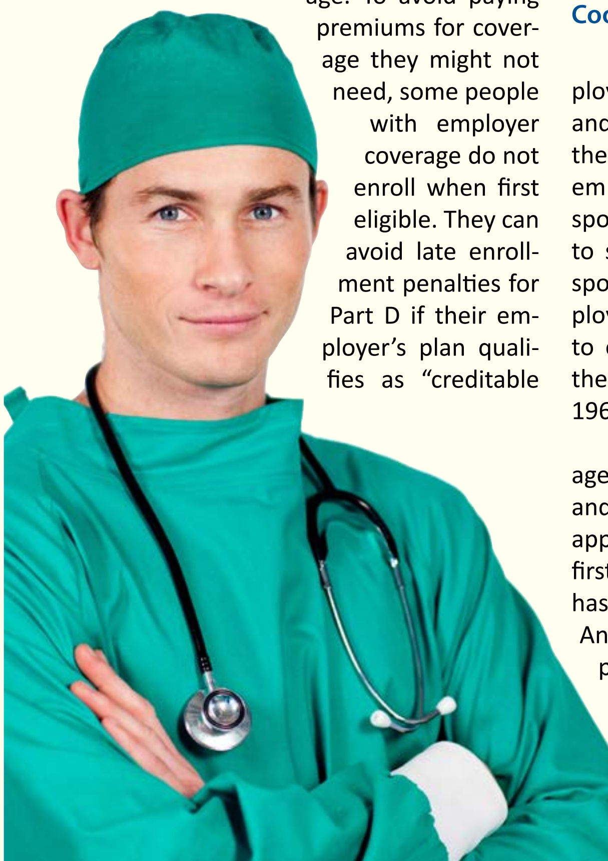
Part D pays the cost of prescription drugs.

For most beneficiaries, Medicare Part A (hospital insurance) is free. Beneficiaries who enroll in Part B and/or D pay premiums. To avoid late enrollment penalties, individuals must enroll during their initial enrollment period, which lasts for the three months before their 65th birthday, their birthday month, and the three months after it.

Employees can enroll in Medicare Parts B and D even if they have employer coverage. To avoid paying premiums for coverage they might not need, some people with employer coverage do not enroll when first eligible. They can avoid late enrollment penalties for Part D if their employer's plan qualifies as "creditable coverage." This means the plan has an actuarial value that's at least as good as Medicare Part D. In other words, the plan must provide benefits at least as good as Medicare's.



Employers that provide prescription drug coverage must give Medicare-eligible employees a notice each year that tells them whether their drug coverage is creditable. Employees should keep these notices, as they might need them if deciding to join a Medicare drug plan later.

Coordination of Benefits

Generally, employers with 20 or more employees must offer current employees age 65 and older the same health benefits, under the same conditions, that they offer younger employees. If employers offer coverage to spouses, they must offer the same coverage to spouses 65 and older that they offer to spouses under 65. Failure to offer older employees the same benefits, or requiring them to enroll in Medicare, would violate ADEA, the Age Discrimination in Employment Act of 1967.

For employees who opt to have coverage under both the employer medical plan and Medicare, coordination of benefits rules apply. These determine which plan will pay first if the employee or a covered member has a health expense covered by both plans. An employer's size determines which payer pays first.

If you need information or assistance regarding employee benefits for your older employees, please contact us.

ers build the cost of treating uninsured individuals into their overhead. This effectively passes these costs on to the insured, making their rates go up even higher.

At a certain point, health insurance becomes unaffordable for all but the sickest (and most likely to file a claim). When this happens, a "death spiral" occurs, leaving insurers at risk of not being able to pay claims. For more information on medical insurance for your employees, please contact us. As licensed brokers, we can help small businesses obtain coverage through a SHOP plan — and other plans — at no extra cost.

What Is a Flexible Spending Account?

As employers cut back on benefits or require employees to contribute more, establishing a flexible spending account (FSA) gives employees a valuable benefit at little cost to the employer.

A flexible spending account (FSA) is a tax-favored program offered by employers that allows their employees to pay for eligible out-of-pocket medical and dependent care expenses with pre-tax dollars. Typically at the beginning of each plan year, employees decide how much they want to contribute. They contribute pre-tax dollars via payroll contribution to their accounts. Maximum contribution amounts adjust yearly with inflation. For 2016, employees can contribute up to $2,550 (unchanged from 2015) toward a medical FSA, and up to $5,000 for dependent care.

Employers can offer two types of FSA:

1. **Medical FSAs** allow employees to spend their funds on eligible medical expenses that are not covered by their major medical plan. Eligible expenses can include dental work, vision care, chiropractic care, psychological care, and more.
2. **Dependent care FSAs** let employees pay for eligible day care expenses they and their spouses need in order to work, look for work or attend school full-time. Eligible expenses include care for children under age 13 or anyone you can claim on your federal tax return who is physically or mentally incapable of self-care.

For employees, an FSA gives an immediate discount on these expenses that equals the taxes they would otherwise pay on those earnings. FSAs appeal to many younger employees, who like the cost savings they represent for day care expenses.

FSAs also help employers. Because they reduce employees' taxable income, they'll reduce your payroll and FICA tax liability. You can also deduct any administrative costs as a business expense.

Caveats: Employees

FSA elections are only effective for one benefit period. Employees who miss the annual open enrollment season must wait until the next one. Experiencing a "qualifying life event," such as marriage, divorce, birth or adoption of a child, will allow them to contribute outside of open enrollment season.

FSAs have always operated on a "use it or lose it" basis, with employees forfeiting any funds left at the end of the plan year. That changed a bit with the Affordable Care Act, which allows plans to permit employees to roll over up to $500 into the following year.

Plans also have the option of adding a 2½ month grace period. The grace period allows employees to apply FSA funds from the prior year's contributions to expenses incurred within the grace period.

Plans can offer either a rollover or a grace period, but not both.

Caveats: Employers

Although FSAs won't cost you anything in premiums,

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just a bit in administration, they do have a couple of pitfalls.

First, rules governing these plans give employees immediate access to their entire election amount, which could leave employers responsible for the shortfall. For example, an employee could elect to contribute $100 per month, or $1,200 per year. In January, with only one month's contribution made, he has $1,200 of dental treatments. If he submitted it to the plan for reimbursement, the plan would have to pay the entire amount. The employer would pay the shortfall.

Employers also run the risk that employees will leave the company before their salary deduction contributions match the funds they've already withdrawn from their FSA.

On the positive side, a FSA adds another layer to your benefits program, allowing employees to select the type of FSA and contribution amount that best suits their situation. As employers trim their benefits due to increasing medical costs, funds from an FSA can help ease the sting. For more information on setting up and administering an FSA, please contact us.

Qualified vs. Non-Qualified Retirement Plans

When considering retirement plans, the many options — not to mention complicated tax rules — leave many employers uncertain about the best plan for their company. One of the basic decisions employers face is whether to offer qualified or non-qualified retirement plans, or some combination of both. Here's a closer look at the pros and cons of each.

Qualified retirement plans are employer-sponsored retirement plans that "qualify" participants for certain tax benefits by meeting requirements under federal law for coverage, participation, funding and vesting. There are two main types of qualified plans: defined benefit plans, which are funded by company contributions to meet a preset annual retirement payout, and defined contribution plans, such as profit-sharing plans, which give employers flexibility in choosing how much to contribute each year. Plans must cover at least 70 percent of non-highly compensated employees and employers must generally offer them to all full-time employees on the same terms.

Tax Advantages

The major attraction of qualified plans is tax breaks. Employers take a current tax deduction for all plan contributions, while employee accounts grow tax-free until the time of distribution. Some plans do not require the employer to make annual contributions. Employer contributions to qualified plans are held in trust until the employee is entitled

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to receive them, an arrangement that helps assure employees that the money will actually be there when they retire.

However qualified plans have several drawbacks. Any time an employer makes a contribution, it must make contributions on behalf of all participants. Some plans require employers to make annual contributions whether or not the company is profitable. Benefits are not guaranteed in most plans (although federal law protects participants' rights), and participants face a substantial penalty for early withdrawals.

In recent years, qualified plans have become less attractive for two reasons: regulatory changes keep whittling down the maximum amount of money that employers can contribute to them and increasingly complex rules are burdening employers with higher administrative costs. This has led to reduced qualified plan benefits for many valuable employees and has limited employers' ability to adequately compensate these workers. In response, some companies have turned to non-qualified plans to replace the lost benefits.

Non-qualified plans are employer-sponsored plans designed to benefit a select group of executive or key employees. If the plan is properly structured, the employer can include only those employees it chooses — without having to abide by the anti-discrimination, participation or vesting rules that qualified plans must follow.

Although non-qualified plans are subject to fewer government regulations, they receive fewer tax benefits. Any earnings in the plan are taxable to the employer and taxable to the employee when distributed as benefits. However, the employer can take a tax deduction at the time of distribution. And since non-qualified plan contributions are not held in a separate trust, employees receive no guarantee that benefits will be there when they retire — and any assets set aside for future payouts are subject to claims by employers' creditors.

Retirement Plan Features	Qualified	Nonqualified
Employer contributions deductible as business expense	Yes	No
Investment earnings grow tax-free until withdrawal	Yes	No
Participants' rights protected by federal law	Yes	No
Can cover only a specific class of employees	No	Yes
Give employers flexibility to reward highly compensated employees	No	Yes

Irrevocable Trusts

One way to reduce the potential financial risk to non-qualified benefits is by setting up an IRS-approved irrevocable trust into which the employer contributes the plan assets, which are managed and distributed by the trustee. Although these trusts do not protect the assets against creditors' claims in case of company insolvency, they generally offer protection in the event of a corporate takeover, change in management or other event that could threaten the availability of benefits.

Without a requirement that non-qualified plan assets be held in trust, many companies pay non-qualified benefits out of general corporate assets as they become due. This approach assumes that future growth of the company will cover its benefit obligations. This arrangement might strain the coffers of smaller companies on payout day and leave executives wondering about the security of their benefits.

An alternative to the pay-as-you-go approach is to create an asset reserve for future plan obligations by using corporate-owned life insurance (COLI). Typically, the company buys a cash value life insurance policy — either whole life or universal life — on the life of the key employee and names itself as beneficiary. The employer owns the policy and pays all premiums. After the employee retires, the company can use the policy's cash value to pay the benefit. If the employee dies, the policy pays a tax-free death benefit to the company.

The advantage of funding with COLI is that the cash accumulation inside the policy grows tax-free. However, COLI offers no protection against any creditor's claims, so it won't provide an employee total peace of mind. A trust can hold the COLI; however, trusts have tax implications for both the employer and the participant.

We can work with your tax professional to help you set up a nonqualified plan that benefits both your company and your highly compensated employees. Please call us for more information. ■

Smart Phones and Overtime

A survey of employed email users finds:

- ✔ 22% are expected to respond to work email when they're not at work.
- ✔ 50% check work email on the weekends.
- ✔ 46% check work email on sick days.
- ✔ 34% check work email while on vacation.

Source: Mother Jones

In several cases, non-exempt employees have sued their employers for unpaid overtime compensation because the employer required them to check communications on their smart phone when not on duty. The cases revolve around the question of whether the act of checking communications constitutes compensable work.

The Fair Labor Standards Act (FLSA) governs minimum wage and overtime. It entitles employees to whom the law applies to receive overtime compensation for "time spent working" beyond the 40-hour workweek. Both the minimum wage and overtime provisions of FLSA generally do not apply to workers in executive, administrative or professional positions and outside sales employees who are paid on a salary basis. Requiring these exempt employees to check their smartphones would not subject employers to overtime claims.

As phone records are easily accessible, employees who use them off hours can provide solid evidence for their overtime claims. To avoid claims for unpaid overtime, employers can limit use of cell phones to exempt employees only, or limit their use by non-exempt employees during work hours only.

Both iPhone and Android smartphone users can download apps that let them track their work hours easily, right on their phones. Most allow users to make notes about their work hours, assign work time to specific projects, view a summary of hours worked and email reports. Some are available at no cost.

For more information on overtime and other compliance issues, please contact us. ■

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