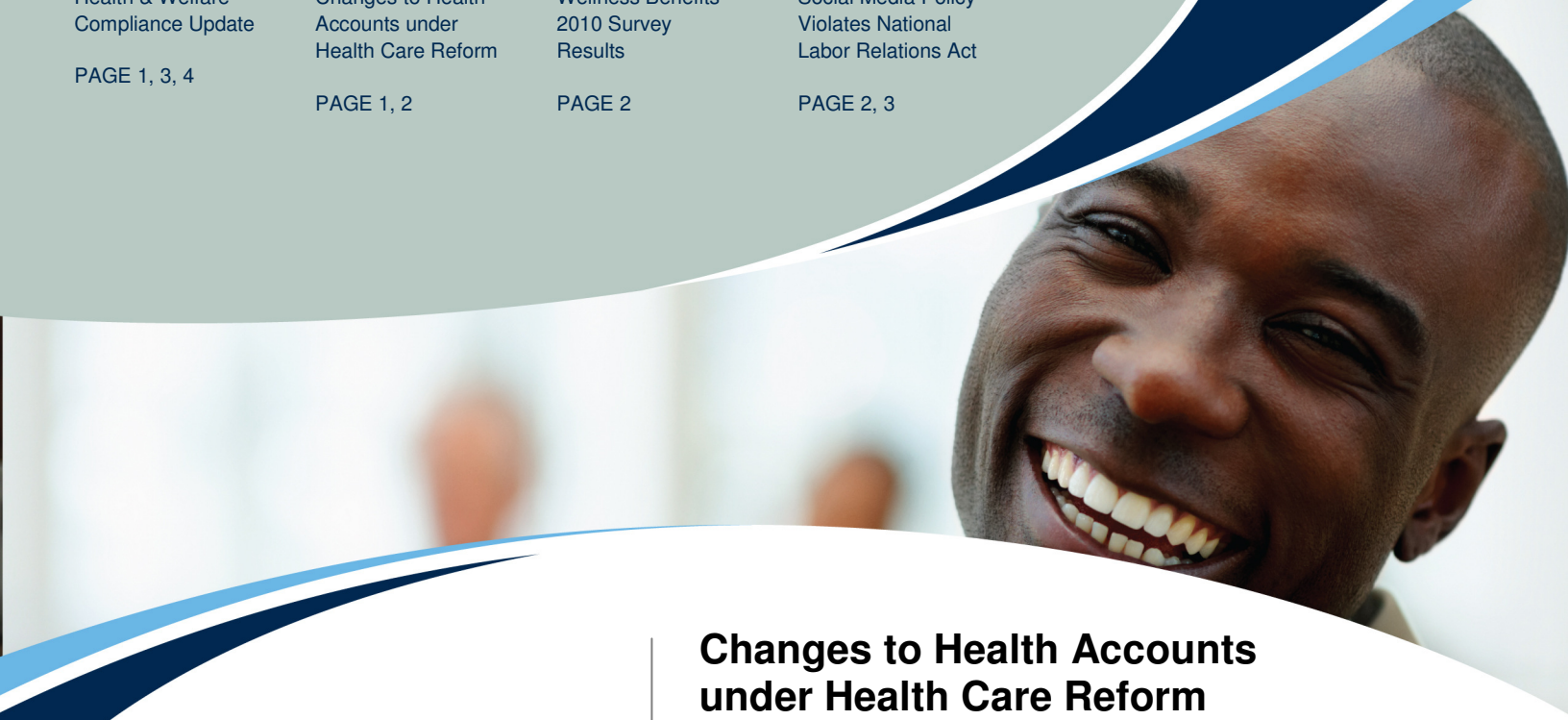
BenefitsBulletin

FIRST QUARTER
2011

IN THIS ISSUE



Health & Welfare Compliance Update

The last year brought many changes for health and welfare plans, but by far the most significant development was the passage of the health care reform law, the Patient Protection and Affordable Care Act (PPACA). The major items affecting employer-sponsored health plans in 2010 and 2011 include:

- Small business tax credit for qualified employers to purchase health insurance for employees
- Extension of dependent coverage for dependent children up to age 26
- Elimination of lifetime limits on the dollar value of essential benefits and elimination of unreasonable annual limits

CONTINUED ON PAGE 3

Changes to Health Accounts under Health Care Reform

The health care reform legislation makes significant changes to health accounts, including the following:

The definition of "qualified medical expenses" for purposes of reimbursement from health flexible spending accounts (FSAs), health reimbursement arrangements (HRAs), and distributions from Archer medical savings accounts (Archer MSAs) and health savings accounts (HSAs) has been changed. Under the new definition, qualified medical expenses include amounts paid for medication or drugs only if the medication or drug is a prescribed drug – regardless of whether the drug is available without a prescription. The one exception is insulin. These limits are effected for expenses incurred (for FSAs and HRAs) and amounts paid (for HSAs and Archer MSAs) with respect to taxable years beginning after Dec. 31, 2010.

Currently, there is no federal limit on contributions for health FSAs per year, but in 2013 a health FSA offered through a cafeteria plan will need to limit the amount of salary reduction contributions that employees can make to $2,500 per year, subject to cost-of-living expenses in future years.

CONTINUED ON PAGE 2

Brown & Brown Benefit Advisors™
Collective wisdom. To your benefit.

Brown & Brown Benefit Advisors
Collective wisdom. To your benefit.

Changes to Health Accounts under Health Care Reform, cont.

Participants in HSAs and Archer MSAs may withdraw funds from those accounts either to pay for qualified medical expenses or to use for other purposes. However, only withdrawals used to pay for qualified medical expenses are tax-free. Currently, if the funds are used for other purposes, the withdrawal is subject to a 10 percent tax for HSAs and a 15 percent tax for Archer MSAs. This tax will increase to 20 percent for non-qualified medical expenses made after Dec. 31, 2010.

Wellness Benefits – 2010 Survey Results

Wellness programs continue to be a hot topic as employers look to improve employee health and productivity while reducing costs. Recently, Brown & Brown Benefit Advisors sponsored a wellness program survey on its client portal. Over 2,200 employers participated in this survey. Highlights include:

- Nearly 70 percent of respondents have either already moved toward a focus on improving employee health through wellness programs or are considering implementing a wellness program in the future. And for those employers who have already implemented a wellness program, 72 percent report that they have been successful in improving the overall health of employees.
- The top reasons for implementing a wellness program include improved employee health, a reduction in absenteeism and a decrease in health care costs.
- Fifty-five percent of respondents expect a reduction in overall health care costs due to their wellness program.
- Fifty-one percent of respondents are using incentives for participation in their wellness programs. Top incentives include gifts, gift cards, travel vouchers and a reduced share of the premium for employees who participate.

Social Media Policy Violates National Labor Relations Act

The National Labor Relations Board (NLRB) recently sued employer American Medical Response (AMR) alleging that the company unlawfully terminated an employee for comments she posted on her Facebook® page about a supervisor. NLRB alleged that the termination was illegal because the employee's comments were "protected concerted activity" under the National Labor Relations Act and that AMR's social media policy was overbroad, resulting in a violation of the employee's rights under the Act.

AMR terminated the employee for violating the company's social media policy, which prohibits employees from making criticizing remarks about the company and other employees on the Internet. The policy also prohibits employees from discussing the company in any way on the Internet without prior permission.

NLRB officials state that complaints about supervisors or working conditions made by employees on social media outlets will almost always constitute "protected concerted activity" if other employees have access to view the information. A hearing for the case is scheduled for early 2011.

As the case could set a precedent for social media policies nationwide, employers should consider reviewing their own social media and Internet usage policies to ensure that they are not overbroad, and use caution when terminating employees for their use of social media. When crafting your social media policy, consider the following:

- Mention that the company provides employees with Internet access to be used as a business tool, and it must be used properly.
- Inform employees that they must comply with the company's conduct standards and policies on all Internet outlets regarding workplace retaliation, harassment and discrimination.
- Inform employees that they must comply with company policy on all Internet outlets by not disseminating any confidential or proprietary information relating to the company, its employees or its clients.
- Inform employees that failure to comply with any of the company's policies, including the social media policy, may result in disciplinary action up to and including termination of employment.

Health & Welfare Compliance Update, cont.

- Elimination of pre-existing condition exclusions for those under age 19
- Restriction on rescissions to cases of fraud or intentional misrepresentation of material fact, and policyholders must be notified prior to cancellation
- Coverage of preventive services without cost-sharing requirements for non-grandfathered plans
- Patient protections for non-grandfathered plans
- Nondiscrimination rules stating that fully-insured, non-grandfathered plans may not discriminate in favor of highly compensated individuals for plan eligibility or benefits
- New appeals process for non-grandfathered plans
- Coverage for early retirees under the early retiree reinsurance program
- Limits on over-the-counter reimbursements without a prescription under FSAs, HRAs, HSAs and Archer MSAs, along with an increased penalty tax for HSAs and Archer MSAs
- W-2 reporting requirement to disclose the value of health coverage provided by the employer

COBRA premium subsidy: The COBRA premium subsidy has been extended several times, with the final extension period through May 31, 2010. Although employers no longer have to provide the premium subsidy to individuals terminated after May 31, 2010, they will still have to administer COBRA coverage in accordance with the subsidy requirements for those individuals who are still eligible for reduced payments.

CHIPRA notice requirements: CHIPRA imposed a new notice obligation on employers that maintain group health plans in states that provide premium assistance subsidies for Medicaid or CHIP plans. These employers must notify their employees of potential opportunities for premium assistance.

GINA rules for employers and health plans: Employers may not discriminate against an individual on the basis of the individual's genetic information for hiring, discharge, compensation or the terms, conditions or privileges of employment.

Group health plans and insurance issuers may not adjust group premium or contribution amounts on the basis of genetic information, request or require individuals or their family members to undergo a genetic test, request, require or purchase genetic information prior to or in connection with enrollment or for underwriting purposes, or provide a reward or incentive for completing a health risk assessment or request genetic information as a part of a health risk assessment.

Mental health parity: The Mental Health Parity and Addiction Equity Act of 2008 expanded the existing parity requirements to prohibit plans from imposing higher copayments, deductibles or out-of-pocket limits on substance abuse treatment benefits other than on

medical and surgical benefits. Also prohibited is excluding out-of-network treatment for mental health and substance abuse treatment benefits if out-of-network benefits are provided for medical and surgical benefits, and placing more restrictive limits on the number of covered office visits, days of inpatient coverage or the duration or scope of treatments available for mental health and substance abuse treatment benefits than those available for other types of medical treatment.

FMLA rights for non-traditional families: FMLA rights were expanded for non-traditional families to include leave for employees who have a parental relationship with a child, regardless of the legal or biological relationship, to care for the sick child.

HITECH requirements: Under the HITECH Act, HIPAA has been expanded to impose additional obligations on business associates that required revisions to business associate agreements regarding notifications to individuals when their unsecured protected health information is breached.

Safe harbor for small plan contributions: The Department of Labor issued a safe harbor regarding the timing of employee contributions to small welfare plans.

Coordination with TRICARE benefits: New regulations under TRICARE prohibit employers from offering TRICARE beneficiaries financial or other benefits as incentives not to enroll in, or to terminate enrollment in, a group health plan that is primary to TRICARE.

Please contact your Brown & Brown Benefit Advisors representative for more information.