Employee Benefits Report

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New Options Emerge for "Plan D" Integration

Many plan sponsors assumed they could ignore Part D if they did not offer retiree prescription drug coverage. But that's not true—here's what you need to know about Medicare Part D and how it works with employer health plans.

In 2006, 59 percent of employers with retiree drug coverage applied for the retiree drug subsidy (RDS) under Medicare Part D. However, a survey that same year found that only 37 percent of plan sponsors planned to do the same for 2007. Some analysts expect this trend to continue into 2008 and beyond.

Here's what we've learned about Medicare Part D so far, according to Troy Filipek, a consulting actuary with Milliman Actuarial in Milwaukee:

✹ **All plan sponsors must do something.** Many plan sponsors assumed they could ignore Part D if they did not offer retiree prescription drug coverage. However, if any Medicare-eligible individuals, spouses or dependents are covered under the active employee plan, the plan sponsor must issue a creditable coverage certification to help them avoid late-enrollment penalties in the future.

✹ **All options require some effort from plan sponsors.** Many plan sponsors initially viewed the RDS as the path of least resistance based on guidance from the Centers for Medicare and Medicaid Services (CMS). However, this option requires detailed eligibility reporting, actuarial equivalence testing and claim cost submission for eligible expenses. In the end, some plan sponsors found the process costly, cumbersome and not always worth the effort, even with the cost relief provided by the RDS. This was often the case for plan sponsors with a small number of retirees, because the administrative overhead cost and effort necessary for the RDS option does not vary much with group size.

✹ **There is not a one-size-fits-all solution.** To make an educated decision on the optimal approach, it's important to consider all Part D options. Many plan sponsors opted for the RDS because it seemed the easiest course of action, but doing so may have left money on the table. For example, while the RDS is attractive to many for-profit organizations (because the subsidy is tax-free), it is less so to tax-exempt organizations.

✹ **Communication is crucial.** When plan sponsors had to make plan design changes to qualify for a particular option,

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This Just In

A couple retiring this year will need about $225,000 in savings to cover medical costs in retirement, according to a study released by Fidelity Investments. The figure, calculated for a couple age 65, is up 4.7 percent from the $215,000 estimate for 2007, the Boston-based financial services company said. And it is similar to other projections for healthcare costs in retirement — daunting figures, given that longer life spans are also requiring workers to increase their retirement nest eggs.

A separate study released recently by the Center for Retirement Research at Boston College estimated that an individual needs to go into retirement with some $102,000 earmarked just for health care, while a couple needs about $206,000.

Family Leave Act Expands for Military Claims; More Changes Proposed

The National Defense Authorization Act recently expanded for the first time since its enactment in 1993. These changes take effect immediately, so you'll need to adjust your organization's FMLA policies and procedures if you haven't done so already.

The FMLA always provided for up to 12 weeks of unpaid leave per year for an employee to care for a family member's serious medical condition. These new amendments now provide up to 12 weeks of unpaid leave for a "qualifying exigency" when any eligible employee has a spouse, son, daughter or parent who has been called to or has been informed of a pending call to active duty in the Armed forces.

A serious health condition does not appear to be necessary to trigger eligibility for such leave because, by the amended terms of the FMLA, such leave must be granted in the case of a "qualifying exigency." The statute does not clearly define what this phrase means, so the Department of Labor will have some work to do to come up with a definition for "qualifying exigency." This much is certain: When faced with a leave request, your organization can ask for documents to verify the family member's call to active status.

Injured service members

In addition, this new legislation also dramatically increases the amount of leave available for eligible employees whose family members have suffered an injury or illness while serving in the armed forces. Effective immediately, an eligible employee who is the spouse, child, parent or next of kin of a recovering service member is entitled to up to 26 weeks during a 12-month period to care for that service member.

This new provision is significant because it expands the definition of an eligible employee to include "next of kin," which is de-

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More to Come?

In February, the Department of Labor published proposed additional regulations to the Family and Medical Leave Act (FMLA). The proposals leave many aspects of the 1995 regulations in place, while changing and clarifying numerous other parts.

- **Joint Employment.** The DOL is proposing clarification of the joint employment rules that apply to professional employee organizations (PEOs). Under the proposal, PEOs that contract with client employers merely to perform administrative functions are not joint employers with their clients, provided they do not exercise control over the activities of the client's employees and do not have the right to hire, fire or supervise them.
- **Breaks in Service.** Among other things, to be eligible for FMLA leave, an employee must have been employed by the employer for 12 months. Under current regulations, the 12 months need not be consecutive. The DOL is proposing that employment prior to a break in service of five years or more need not be counted.
- **Definition of Serious Health Condition.** The current regulations define "continuing treatment" for purposes of establishing a serious health condition as a period of incapacity of more than three consecutive calendar days and treatment two or more times by a health care provider. One of the proposed clarifications specifies that the two visits must take place within a 30 calendar-day period.
- **Paid Leave.** The proposed regulations require employees taking FMLA leave who wish to receive paid leave to comply with their employer's paid leave policies.
- **Awards and Bonuses.** The DOL proposes to allow an employer to disqualify an employee from a bonus or award when the employee fails to qualify as result of an FMLA absence.
- **Certifications.** The DOL is proposing that when an employer determines that a medical certification is incomplete or insufficient, the employer must state in writing what additional information is necessary and provide the employee with seven calendar days to cure the deficiency. ■

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they often scrambled to handle the necessary implementation and reporting challenges. Communication with retirees was often the most neglected of these tasks, leaving many retirees frustrated and confused.

Part D strategies in the near future will be affected by several developments. The first is greater interest in and availability of options other than the RDS. There is significantly more interest in pursuing non-RDS options, particularly the employee group waiver plan (EGWP) option, as plan sponsors have begun comparing other options qualitatively and quantitatively with the RDS.

Under an EGWP, employers (or their plans) apply to the Centers for Medicare & Medicaid Services (CMS) to directly contract with Medicare to become Medicare Prescription Drug Plans (PDPs) and Medicare Advantage plans that include prescription drugs (MA-PDs), as well as to contract with existing PDPs and MA-PDs to provide enhanced Medicare prescription drug coverage to their retirees. CMS has authority to waive or modify requirements that hinder the design, offering of or enrollment in Part D arrangements sponsored by employers or unions for their retirees.

In 2007, 13 percent of plan sponsors nationally decided on the EGWP option, compared with 5 percent in 2006. However, the movement toward the EGWP option may be dampened somewhat based on the decrease in the EGWP subsidy in subsequent years.

Additional Medicare private fee-for-services (PFFS) are garnering more interest from national plan sponsors because Medicare-eligible retirees can receive medical services from any physician or hospital willing to accept Medicare payment terms from the carrier. In addition, current payment rates make PFFS an attractive option. PFFS plans can be easily paired with prescription drug benefits from EGWPs, thereby simplifying benefits administration for nationwide plan sponsors.

Plan sponsors are just beginning to understand the variety of alternatives to reduce costs associated with the prescription drug coverage they offer retirees beyond the RDS option.

To select the option best suited to your needs:

- review your current retiree coverage offerings;
- analyze all Part D options from a financial and administrative standpoint;
- assess Part D options in light of present and future company goals; and
- develop a plan to implement any changes and to communicate these to eligible individuals.

Determining which option is most financially advantageous for your organization will depend on your tax–paying status and the plan design, as well as on the party responsible for paying the Part D premium.

Understanding the administrative burden of the RDS and the alternatives available gives plan sponsors more complete information when they evaluate the best way to integrate Medicare Part D into existing benefit programs. For assistance in evaluating your retiree benefits programs, please contact us. ■

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fined as the service member's nearest blood relative. The statute also defines a recovering service member as a member of the armed forces, including the National Guard or Reserves, who has suffered an injury or illness while on active duty that may render him or her unable to perform the duties of his/her office, grade, rank or rating.

This definition includes, among other things, service members undergoing medical treatment, receiving therapy or in outpatient treatment. Finally, be aware that existing provisions of the FMLA relating to employer coverage, employee eligibility requirements, continuation of health insurance coverage and job reinstatement apply to these new types of leave for family members of armed forces personnel.

Bottom line: If you haven't done so yet, modify your FMLA policies to notify employees of these important changes. ■

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program as well as the application process. Create an application form so all applicants must supply the same information.

- Allow receipt of paid leave only when the requesting employee has exhausted all of his own accrued paid or sick leave. Require a written request that includes the specific reasons why the donee employee is requesting additional paid leave from the leave bank.
- Respect donee employees' privacy. For example, you can't say, "Jane Smith has breast cancer and has used up all of her paid leave. She needs to borrow from the leave bank because she is taking intermittent leave as a reasonable accommodation."
- Make sure the donor employee doesn't specify the individual who gets the leave. Place reasonable time limits on the amount of paid leave employees may donate so they have some leave available for their own use.
- Create a provision so that if the donated leave has not been used within a reasonable time set by the employer, it is automatically returned to the donor employee.

Also be aware that when giving paid leave, the leave must be paid at the recipient's normal compensation rate. And make sure the recipient doesn't convert the donated leave into a cash payout. In such a case the donor and donee will both be treated as having received taxable wages.

And don't forget to consider the impact that donated leave may have on other wage-based benefits, such as life and disability insurance. Finally, you'll also want to consider the costs and staff time necessary to implement the leave-sharing program and how multiple applications will be processed. While leave is donated by the employee, you are actually paying the leave, so consider the impact of leave-sharing programs upon costs and operations.

A leave-sharing program is a great way to boost morale and provide your employees with a way to help their co-workers. ■

Is an Employee Leave-Sharing Program For You?

More than half of all U.S. workers have access to paid sick days. But sick days are limited—what happens when an employee needs more time than he/she has available?

Although most state legislatures have yet to tackle the issue of sick pay, there is a middle ground for companies that want to help their employees cope with unforeseen circumstances — a leave-sharing program.

An employer-sponsored leave-sharing program allows an employee to donate accrued hours of paid vacation, personal or sick leave for the benefit of other employees who need to take more sick days than they have available. In a typical leave-sharing plan, an employee who has accrued more paid leave than she expects or wishes to take donates hours of paid leave to an employer-managed "leave bank."

There are several reasons why employees might choose to donate. Most importantly, they get the opportunity to help coworkers recover from family or personal medical emergencies in a manner that doesn't require a cash donation.

Employers, of course, benefit from the program by providing an additional benefit to workers, enhancing morale, and qualifying for special tax treatment by the IRS — if the program complies with medical emergencies and major disasters leave programs as outlined by the tax agency.

Caveat Emptor

A leave-sharing program may seem like a no-brainer, but be aware that such programs can create a variety of problems, including administrative complexity, potential cash flow implications, privacy questions and discrimination claims from disgruntled employees.

Don't fall into the trap of creating a leave-sharing program on an ad hoc basis only when an individual has a medical emergency or when a natural disaster occurs. The IRS's limited guidance suggests that medical programs should not be for the benefit of a single employee. This helps avoid accusations of discrimination by creating and maintaining an independent policy.

Also be aware that the type of leave that can be donated may vary from state to state. For example, different states have different rules regarding an employee's right to various kinds of leave, whether accrued, earned or unearned, or whether vacation pay, sick pay or generic "paid time off."

Further, in states that allow "use it or lose it" policies, benefits that your company may not otherwise have paid may end up as a liability to the company. You can mitigate some of the impact of these potential issues by capping donations. As you're considering a plan, you may also want to determine if alternative options, such as establishing a short-term disability program or a cash account for emergencies, would better fit your company's and employees' needs.

Tips for Developing a Leave-Sharing Plan

- Start by drafting a written outline that covers all aspects of the leave-sharing

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For the first time this year, the IRS is allowing the direct rollover of qualified plan distributions to a Roth IRA.

According to IRS Publication 575, after 2007, a participant can roll over distributions directly from a qualified retirement plan to a Roth IRA if, for the tax year of the distribution, both of the following requirements are met:

a. The participant's modified adjusted gross income for Roth IRA purposes is not be more than $100,000, and

b. The participant is not a married individual filing a separate return.

The participant must include in his or her gross income distributions from a qualified retirement plan that would have had to be included in income if they had not rolled over into a Roth IRA.

After-tax contributions are not taxed again. In addition, the 10 percent tax on early distributions does not apply. Any amount rolled over to a Roth IRA is subject to the same rules for converting a traditional IRA into a Roth IRA.

Take note: Plan sponsors must notify participants of the fact they will have to pay income taxes on the amount rolled over to the Roth IRA. Therefore, they will need additional resources available outside of the plan and IRA to cover tax payments. ■