

Eligibility Audits Cut Down On Health Care Costs

By Juli Hanshaw

When the going gets tough, the tough get going. This includes employers that are trying to cut the bottom line during these tough economic times. Some employers are searching to find a way to control health care costs as they continue to climb higher each year. One tactic that employers are embracing is to conduct a health plan eligibility audit.

What does an employer do with a health plan eligibility audit? Essentially it's an audit that weeds out ineligible dependents such as divorced spouses, older children who have left school and dependents who no longer qualify as disabled. At the end of the audit, employers find that they have been unknowingly carrying ineligible dependents, which translates directly into higher costs, copays and deductibles for everyone. Studies indicate that this type of plan eligibility audit can remove between 5 to 12 percent of dependents from the health plan. This in turn can provide an annual savings ranging from \$3,000 to \$5,000 per dependent.

Audit Findings

What does an employer find during an eligibility audit? Some audit findings include:

- **Older Dependent Children.** Most plans have a maximum age limit (for example, 23 years old) after which children cease to be a dependent. In addition, a requirement often exists that they attend college on a full-time basis if they are at least a certain age (for example, 19 years old). Reconfirming college attendance should be an annual exercise. To the extent that these dependents no longer met the eligibility requirements, they are required to notify the plan no later than 60 days after the qualifying event (for example, after the spring semester) in order to receive COBRA.

One cautionary note is regarding Michelle's Law. This law prevents

group health plans from kicking off the plan a full-time dependent college student who would have otherwise lost coverage because a severe illness or injury requires them to take a medically necessary leave of absence or limits them to part-time status. This law became effective beginning with plan years on or after Oct. 9, 2009. (See ¶1285 of the *Guide*.)

- **Ex-spouses.** Often, employees and their ex-spouses do not report divorces until months after the event. Make sure that you are not carrying any former spouses. As mentioned earlier, the divorce qualifying event carries a 60-day notice requirement. If the event is reported thereafter, an employer need not offer COBRA if it previously provided the COBRA notice procedures.
- **Former Employees.** Health benefits often continue at the employee rate when employers offer severance. It is easy to incorrectly continue coverage when the salary continuation period ends. Some employers continue coverage during a COBRA election period, canceling it retroactively when qualified beneficiaries do not elect COBRA.
- **Part-time Employees.** An employee's reduction in work hours may cause ineligibility. Such cases trigger COBRA coverage.
- **Current Employees.** To the extent that an employee commits fraud on the plan — perhaps by intentionally continuing coverage of an ineligible dependent — many plans allow termination of coverage. For COBRA participants there are several reasons COBRA coverage could terminate prior to the end of the allowable maximum time frame; one of



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them is for cause, such as fraudulent activity. This would be on the same basis that the plan terminates the coverage of a similarly situated active employee for cause.

Other Areas to Review

Employers should also review any health and/or dependent care flexible spending accounts, health reimbursement arrangements and other benefits where there is significant cost exposure. The IRS allows pre-tax treatment for employee contributions for qualified cafeteria plans and beneficiaries only. Allowing pre-tax deductions for unqualified dependents/beneficiaries could set-up a liability.

Additionally, ERISA mandates that plan sponsors “manage plans for the exclusive benefit of participants and beneficiaries.” Checking for ineligible dependents helps to ensure that employers are meeting their fiduciary obligations. It also provides another internal control that helps employers comply with Sarbanes-Oxley.

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who lose their jobs because of trade-related reasons, such as competition from foreign imports. The Trade Act also included a federal tax credit that qualified beneficiaries can use to offset the cost of COBRA coverage. The COBRA tax credit, originally equal to 65 percent of the cost of COBRA coverage, only applies to workers who lose their jobs due to trade-related reasons or who are older workers receiving pensions from the Pension Benefit Guaranty Corporation.

ARRA amended several provisions of the Trade Act and how the health coverage tax credit is applied. In particular, ARRA: (1) extended the authorization for TAA benefits through Dec. 31, 2010; (2) increased the tax credit for coverage months from May 1, 2009, through Dec. 31, 2010, to 80 percent; and (3) expanded the group of individuals to whom the credit is available.

Based on limited survey data available, it appears that the “take up” rate on HCTC is not very high. Therefore, a lot of employers may not realize that these benefits exist and can be used by qualified beneficiaries. Also, a number of employers may not have amended their COBRA notices and summary plan descriptions to address HCTC issues. Now that the law is extended for another year, employers would be well-advised to review their documentation and ensure that the information provided is accurate and up to date for all the latest HCTC-related changes. 🏠

Another area to review is the employer’s health plan documents and summary plan description (SPD). These items should give the plan the right to recover benefit and premium overpayments. Some employers provide an amnesty period before trying to recoup costs from employees. This is a grace period that can last from several weeks to several months where they can remove ineligible dependents without any penalties. Once the amnesty period has concluded, the employer can impose penalties on employees who are found to have enrolled ineligible dependents in the plan. This can include COBRA qualified beneficiaries. Of course, collecting such overpayments is easier when the individual is still employed.

A recent court case, *Northwest Administrators, Inc. v. Cutter* (2009 WL 2012988 (9th Cir., 2009)), found an employee had listed an individual as his spouse for purposes of his employer’s health plan. However, the individual was not a spouse and was truly ineligible for plan coverage. The health plan had paid more than \$70,000 in medical benefits for this ineligible individual’s cancer treatments. The third-party administrator sued the employee to recover those improper payments and won. While this case is uncommon, most eligibility audits do not find outright fraud. Mainly, it’s either the employees did not understand the coverage terms or the dependent’s situation has changed so that he or she is now ineligible.

One reminder to employers is to make sure that a general COBRA notice is sent to all employees enrolling in the group health plan. Why? When a covered employee or COBRA qualified beneficiary provides notice of an event, that notice must be provided within a specific time frame — usually 60 days from the date coverage is lost. After 60 days, COBRA does not need to be offered.

Enforcement of the 60 days is contingent on the person being previously informed of his or her responsibility to provide notice of the event and the time frame. This is important because the regulations have added that the 60 days **will not begin** until the notification of the specified time frames has been provided. Therefore, if the general notice never gets sent out, the individuals are not responsible to adhere to the 60-day time frames.

Everybody Wins With Audits

While it is a sensitive topic for employees, regular dependent audits indicate to employees that an organization is doing its best to minimize the costs of health insurance to the employees. Auditing will help prevent future abuses of the plan eligibility provisions. Most employees realize a greater appreciation of their health benefits as a result of the audit process. In the end, everyone wins. 🏠

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