

# Twelve for 2012: A Dozen Flexible Ideas

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The year 2011 will soon be in the history books so it is not too early to work on the master "to do" list for 2012.

Here are a dozen suggestions for benefits and insurance professionals that are involved with flexible benefits:

- **Keep an eye on the agencies.** We expect major guidance in 2012 to be issued collectively by the Departments of Treasury (IRS), Labor (Employee Benefits Security Administration) and Health and Human Services (Centers for Medicare and Med-

icaid Services). Specifically, look for final rules on nondiscrimination testing for fully insured plans (a new Patient Protection and Affordable Care Act (PPACA) requirement that Notice 2011-1 delayed) and cafeteria plans, updating the proposed cafeteria plan regulations the IRS issued in 2007.

- **It's not as easy as S-B-C.** Effective March 23, 2012, group health plans must provide a Summary of Benefits and Coverage (SBC). The PPACA provision limits the document to four pages in 12-point font, but many plans will be challenged to keep the document within those limits. While the rules don't apply to health flexible spending accounts (FSAs), it is not clear whether health reimbursement arrangements (HRAs) will get the same pass. As of this writing, the three agencies identified above had not yet delayed the effective date, but it appeared likely that they would.

- **Hit the reset button.** Don't forget to change the dollar thresholds for benefits with annual limits. For example, the 2012 health savings accounts (HSA) limits are as follows:

- minimum high deductible health plan (HDHP) deductible: \$1,200 (single), \$2,400 (family);
- HDHP out-of-pocket maximum: \$6,050 (single), \$12,100 (family); and
- HSA maximum contribution limit: \$3,100 (single), \$6,250 (family)

Other thresholds that might change include:

- "highly compensated employee" and "key employee";
  - medical mileage rate;
  - qualified transportation fringe benefits for parking and transit passes; and
  - FICA taxable wage base.
- **Get ready for another fee.** For plan years ending after Sept. 30, 2012, group health plans must pay a patient-centered outcomes research fee equal to \$2 per participant. The fee drops to \$1 per participant in later years. This fee continues for several more years until almost the end of this decade.
  - **Pay attention to Box-ing.** Box 12 of the W-2 gets a new code DD in 2012 for reporting of employer-

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sponsored group health plan coverage. Employers with fewer than 250 W-2s in 2011 get an additional one-year delay. See the box on p. 4 to determine what benefits (if any) you need to report.

- **Get hip to HIPAA.** Two sets of regulations should be finalized in 2012:
  - interim final rule on transactions; and
  - proposed regulations on accounting of disclosures.

In two recent reports — one each on HIPAA privacy/security and the HITECH Act — the Office for Civil Rights detailed its enforcement activity and indicated that more is yet to come. This probably means that audits, violations and penalties will be on the rise in 2012.

- **Listen for the Supremes.** The future of the PPACA will likely be decided sometime in the late spring or early summer. The 11th Circuit struck down the law while the 6th and 9th Circuits upheld it. Currently, several cases disputing the law's constitutionality are pending before the U.S. Supreme Court. The final decision will no doubt be close. The court ultimately could strike down all or part of the law (for example, the individual mandate that takes effect in 2014) or uphold it.
- **Just say “no” to drugs.** Remember that health FSAs, HSAs and HRAs still cannot reimburse over-the-counter (OTC) drugs on a pre-tax basis, unless the participant provides evidence of a doctor's prescription. Other non-drug OTC items (for example, bandages and braces) are still reimbursable.
- **Stay creditable.** Employer plans offering prescription drug coverage, including HRAs, must report the creditable status of their plans within 60 days of the start of the new plan year.
- **No more rollovers.** Be sure that you no longer initiate qualified distributions from health FSAs and HRAs to an HSA. As of Jan. 1, 2012, this practice will be prohibited.
- **Solicit feedback.** Benefits administration has become so

complicated that it is easy to assume that only the experts have valid opinions about plan design and benefits offerings. Do not fall into this trap. If you have not done so lately, make 2012 the year that you survey your employees about what they like and don't like. Find out what new and innovative ideas they have. Many of those ideas may come from their former employers and actually have validity. Several web-based survey instruments are available (for a nominal fee or even free of charge).

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- **Get ready for 2013.** It's not too early to plan for the next year, especially the \$2,500 cap on employee contributions to health FSAs. Currently, the effective date of this PPACA provision is unclear. Does the limit apply to plan years starting on or after Jan. 1, 2013, or reimbursements on or after that date? Administrators of non-calendar year plans will want to know. Will you consider an employer contribution (for example, matching, seed) to bolster employees' FSAs? In addition, the Medicare tax will increase by 0.9 percent on individuals with wages above \$200,000 (single) and \$250,000 (married filing jointly).

So there it is: 12 ideas to start your 2012 “to do” list. There is little doubt that next year, you will find plenty more things to add. 🏠

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## W-2 Health Care Coverage Reporting

**NOTE: Compliance is delayed until the 2013 tax year for employers with fewer than 250 W-2s for the 2011 tax year.**

§6051(a)(14) of the Internal Revenue Code	Include in Box 12 as Code DD?		Guidance Reference (Notice 2011-28)	Comments
	Employee Contribution	Employer Contribution		
Type of Benefit				
Fully insured major medical plan	YES	YES	Q/A-13 & Q/A-14	
On-site medical clinics	YES	YES	Q/A-12	
Retiree coverage	YES	YES	Q/A-9	No, as long as there are no W-2 wages in that tax year
Self-insured major medical plan	YES	YES	Q/A-13 & Q/A-14	
Health flexible spending account (FSA)	NO	YES	Q/A-16 & Q/A-19 & §6051(a)(14)(B) of the Code	Report the value of employer flex credits applied to Health FSA
Accident-only coverage	NO	NO	Q/A-12	
Archer medical spending account (MSA)	NO	NO	Q/A-16	
Auto insurance	NO	NO	Q/A-12	
Credit-only insurance	NO	NO	Q/A-12	
Disability income insurance	NO	NO	Q/A-12	
Disease-specific insurance	NO	NO	Q/A-12	
Excess reimbursements under §105(h) nondiscrimination testing for highly compensated individuals	NO	NO	Q/A-23	These amounts are actually reported as wages in other boxes on the W-2
Health Reimbursement Arrangement (HRA)	NO	NO	Q/A-18	
Health Savings Account (HSA)	NO	NO	Q/A-16	
Hospital indemnity/fixed-dollar insurance	NO	NO	Q/A-12	
Indian tribal plans	NO	NO	Q/A-3	
Liability insurance	NO	NO	Q/A-12	
Long-term care coverage	NO	NO	Q/A-12	
Military coverage (e.g., TRICARE)	NO	NO	Q/A-21	
Multiemployer plans	NO	NO	Q/A-17	
Self-insured health coverage NOT subject to COBRA: - Church plans - Small employer plans	NO	NO	Q/A-21	The coverage MUST be self-insured; this Q/A does NOT make this exception available for fully insured plans
Stand-alone dental coverage	NO	NO	Q/A-12 & Q/A-20	
Stand-alone vision coverage	NO	NO	Q/A-12 & Q/A-20	
Supplemental liability insurance	NO	NO	Q/A-12	
Workers' compensation insurance	NO	NO	Q/A-12	

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