



## REGIONAL HR UPDATE: NORTH AMERICA ISSUE 15

### Health Care Reform, Part 4

| MIKE KENT

In the last three issues, I described the major provisions of the health care reform legislation, their effective dates and the impact on self-insured plans. In this issue, I'd like to deal with a variety of other miscellaneous issues related to this legislation, from the significant to the trivial, which are of interest to HR professionals. Some of these have been touched on in prior articles and, as previously stated, most of these provisions apply only to companies of fifty or more employees.

- **Consumer-Directed Plans:** A high deductible plan, coupled with another program such as a Health Savings Account, remains a viable coverage option so long as the plan adheres to a middle of the road approach. The plans must be designed so they are not so generous as to trigger the severe excise taxes generated by so-called "Cadillac Plans" beginning in 2018. The plans also must be generous enough to meet the minimum requirements of covering at least sixty percent of allowable costs. In addition, for low wage workers, employee contributions must stay below 9.8% of adjusted gross income. As actual health care costs change (presumably upward for the foreseeable future), HR must monitor their companies' plans annually to insure they stay within these "guardrails."
- **FSA Limits:** As mentioned in previous articles, beginning in 2013, Healthcare Flexible Spending Accounts will be limited to \$2,500 per year. This may influence some families, who historically have used FSA's to a greater degree, to shift to more expensive basic plans to insure the best possible coverage. Also, contributions to FSA's and HSA's are counted in determining whether a plan qualifies as a Cadillac Plan. Nonetheless, most experts expect more employers to offer savings plans and more employees to utilize them in the new healthcare environment. In addition, the limitations on these plans, which are usually funded by pre-tax salary contributions, means higher taxable income for many employees and higher payroll taxes for employers!
- **Medicare Drug Subsidies:** One of the most disliked provisions is the disallowance of tax deductions by companies for the drug subsidies they provide to Medicare-eligible retirees. This

provision takes effect in 2013 and, according to TowersWatson, it will cost the 3,500 corporate users collectively about \$14 billion annually. In addition, current users were required to record that future loss in the first quarter of 2010. The result is expected to be that many of those companies will drop the subsidy and those retirees will move into Medicare Part D plans, thus significantly increasing the overall costs to a Medicare program that is already facing huge future deficits. By the way, the legislation does increase the Medicare payroll tax for high earners (not employers) by 0.9% in 2013. This requires an interesting new payroll programming twist as, in the past, the employee and employer rates were always the same.

- Nursing Mothers: The healthcare legislation amends the Fair Labor Standards Act to require employers to provide reasonable break and an appropriate space for nursing mothers. They must also provide access to water for washing and refrigeration for breast milk. Employers are not required to compensate mothers for that time and the frequency and duration of breaks is not specified. More generous state laws are not pre-empted.
- Annual and Lifetime Limits: The prohibition on such limits for most services will not only increase costs, but will also increase the volatility of annual costs. Since most large companies do not have lifetime limits, this change will primarily impact small and medium sized organizations that already see higher volatility due to the lack of smoothing that naturally comes with larger populations. And, of course, smaller organizations are often those who can least afford volatility.
- Automatic Enrollment: Employers with more than 200 full-time employees must automatically enroll new full-time employees in one of their plans unless the employee affirmatively opts out. There are no regulations as yet to specify which offered plan must be used if there are multiple plans. Neither has there been any direction as to how to handle employee contributions in such a situation, particularly if the employee objects to being charged and refuses to formally opt out. The law does specifically pre-empt any state law that would prevent this provision from being enforced. Also, employers will be “encouraged” to participate in, and adopt automatic enrollment in, the new national voluntary insurance program for purchasing community living assistance, i.e. long term care plan, administered by the government starting in 2011. This program is known as the CLASS Act.

Of course there is much more to the legislation than these provisions. Because the legislation is so lengthy, complex and far-reaching, it is only possible to touch here on a sampling of the most significant or interesting provisions. Some of the rest is covered in prior articles. Some will not be clear until the enabling regulations are published. Some will change as we all get experience with the program (much as Medicare continues to evolve over time). I encourage you to watch the news services and the professional publications for developments. We will keep you apprised of significant developments, in these pages, as they occur. Stay tuned. 🌐

Note: The data and opinions provided here are informational only. As always, you should consult your providers, brokers, administrators and/or benefits counsel for definitive determinations on how the provisions of this complex legislation affect your organization, your benefit plans and your employees. 🌐

*About the Author:* Mike Kent is a Vice President and Executive Consultant for Jeitosa Group International. He has over 25 years of experience supporting organizations as the leader of their global human resources functions. He can be reached at [mike.kent@jeitosa.com](mailto:mike.kent@jeitosa.com).

---

Copyright 2011. Jeitosa Group International. All Rights Reserved.

[www.jeitosa.com](http://www.jeitosa.com)

---