



September 2011

Banyan Consulting is pleased to present our monthly newsletter. We hope the articles in this and future editions will provide insight into an array of employee benefits topics.

We appreciate your feedback! If you have a topic for future discussion, please let us know.

New Reporting Requirement in New York State

The New York State Department of Labor announced a new reporting requirement effective July 15, 2011 for employers with employees in New York state. The requirement impacts all employees who work in the state, regardless of the employee's state residence. Effective July 15, 2011, the employer must report certain dependent health coverage information to the state of New York when an employee is hired or rehired and on a quarterly basis. The intent of the new requirement is to increase the enrollment of dependent children into employer-sponsored group health insurance programs at the initial time of hiring, the employer must report to New York State, within 20 calendar days of the employee's hire date defined as the date the employee begins earning compensation, the following information:

- Employee name (first, middle, last), address (street, city, state and zip code), and social security number
- Employer name, address, identification number assigned by the Internal Revenue Service and employee hire date
- Indication of the availability of dependent health insurance benefits for employee (either Yes or No)
- If yes, date the employee qualifies for the dependent health benefits in MM/DD/YYYY format.

On a quarterly basis, The New State Form NYS-45 Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return Prior will be

revised for the third quarter of 2011 to reflect the new disclosure requirement. Employers subject to filing a Form NYS-45 includes any employer who makes unemployment insurance contributions and withholding New York state taxes.

More information on this new reporting requirement can be found through the New York State Department of Taxation and Finance at:

<http://www.tax.ny.gov/bus/wt/newhire.htm>

As a Human Resources or Employee Benefits professional, you should coordinate your efforts with your Payroll department to ensure compliance with this new state requirement.

Is it Better to Self Fund Employee Health Benefits?

Employee health bills are fluctuating because of uncertainty related to the 2010 healthcare reform bill. Companies are trying to contain the damage by paying employee health claims out of pocket. Joseph Berardo, Jr., CEO of MagnaCare, said that the total savings from doing this could be between 10% and 20%.

When employers debate whether to adopt a self-funding plan, the possibility of lower monthly healthcare costs should be considered in comparison with the risk of covering employees' healthcare bills. There is no concrete answer for this issue that is right for all situations. The best answer depends on the demographics of employee bases and the company's financial situation. The risk of an employee having an accident or developing a serious illness is a major concern.

Although nearly 93% of companies with more than 5,000 workers have self-funded plans, many smaller companies don't. According to a recent survey conducted by Kaiser Family Foundation, the reason for reluctance among smaller companies is the possibility of being hit with a large employee healthcare bill and not having enough cash to pay it. The survey found that only 16% of companies with under 200 workers had self-funded plans. However, experts in this industry expect interest in these plans to rise in the future.

The Benefits Of Self-Funded Plans

From the data gathered, it's clear that there are some benefits to self-funded plans. However, there are more benefits than those that are apparent on the surface.

1. Quality Of Data

Employers have better access to health claims of employees. In addition to this, they also have more information about their employees' demographic information. Exposure is limited only to employees instead of a broad population. This is a major benefit over regular health plans, which only offer generalized information.

2. Customized Plans

Employers decide what is covered in the plan. This includes benefits, exclusions and eligibility provisions. Employee cost sharing, retiree benefits and policy limits are also decided by the employer. With exemption from state rules, employers are able to decide on specific provisions without state considerations.

3. Control Of Cash

Since coverage isn't prepaid, employers have access to interest and cash income that wouldn't be available under regular insurance policies. Self-funded plans may also delay payment of health plan fees until the services have been changed. However, if claims are lower, the employer is able to retain the savings instead of allowing the insurer to keep that money. Another benefit is that self-funded companies are not under obligation to pay state health insurance premium taxes.

4. Lower Employee Premiums

Workers will enjoy lower premiums for both single and family plans. In addition to this, they also pay less upfront when they're enrolled in complete or partial self-funded plans than they would at a company that is fully insured.

5. ERISA Laws Replace State Regulations

This federal law exempts self-funded plans from the state's regulations. This includes reserve requirements, insurance laws, premium taxes, mandated benefits and consumer protection regulations. Employers must still abide by rules from the following entities:

- ADA
- U.S. Tax Code
- Health Insurance Portability & Accountability Act
- Newborns' & Mothers' Health Protection Act
- Pregnancy Discrimination Act
- Mental Health Parity Act
- Women's Health & Cancer Rights Act

The Cons Of Self-Funded Employee Plans

Although there are many benefits to enjoy by implementing self-funded plans, there are also potential downfalls. It's important to consider these.

1. Financial Risk

With less employees than a larger company, there is a higher statistical risk of costly claims for illnesses or accidents. Most employers with self-insured plans purchase stop-loss coverage in order to get a reimbursement for claims totaling amounts over a specific dollar level. In a description posted by the Self-Insurance Institute of America, stop-loss coverage is insurance that indemnifies a plan sponsor from claim frequency or severity that is abnormal. Companies such as Zurich, Gerber Life and Arch Insurance, which are all considered large companies, provide this type of coverage.

2. Administrative Risks

The Department of Labor has researched how self-funded employers fail to implement efficient administrative systems. Failure to correctly administer a plan is considered a breach of fiduciary duty. Employers take full legal responsibility for operating the plan, so it's important to realize just how crucial this responsibility is. In addition to worrying about this, there are also strict rules for private claims information. Since employers have access to such information, they must take further measures to protect it and keep it secure. In some cases, this may require hiring one or more security workers.

3. Administrative Costs

Self-insured claims can be administered within the company or handled by a subcontracted party, which is commonly called a TPA. These administrators assist employers in setting up self-insured group plans. They also coordinate stop-loss coverage, utilization review services and provider network contracts. However, there are extra costs for these services.

4. Economic Weakness

It may be necessary to keep a self-funded plan for a minimum of three to five years in order to fully enjoy the benefits. This may be extremely difficult for some companies during economic hardship.

Be sure to weigh the benefits and disadvantages of self-funded plans before making any changes. If the task of determining how profitable such a change would be is too difficult, please contact a member of your Banyan Consulting team.

Save the Date for Banyan's Fall Seminar



GET YOUR DUCKS IN A ROW

In 2012, your employee...

- asks for an early 2012 W-2 form including the cost of the health plan. Are you ready?
- would like to enroll her same-sex spouse in the health plan. Can she?
- wants to change all of his employee benefit elections mid-plan year. You say he cannot. He says he wants to see proof. How do you prove it?
- requests a copy of her new 4-page Summary of Benefit Coverage included in PPACA. Where do you get it?

If you're unsure how to answer these questions, join us on 10/27/11 to learn the answers to these questions and more!

Click here to read more on [Banyan's Fall Seminar](#)

Featured Link

NLRB Requires Employers to Post Notice Notifying Employees of Rights
By Brian D. Balonick, Buchanan Ingersoll & Rooney PC

On August 25, 2011, the National Labor Relations Board ("NLRB") issued a final rule that will require all employers under its jurisdiction to post an 11-by-17-inch notice form by November 14, 2011, describing employee rights under the National Labor Relations Act ("NLRA"). Employers must also post the notice form on an internet or intranet site if the employer uses such a site to communicate with employees about workplace policies. Because of the broad jurisdiction of the NLRA, virtually all employers will be required to comply with this rule.

The NLRB will provide the content of the notice on its website by November. However, the content will be similar to the notice that is already required of

federal contractors. Employers must post the notice in English and another language if 20 percent of employees are not proficient in English and speak the other language.

Failure to post the notice will constitute an unfair labor practice in violation of Section 8(a)(1) of the NLRA. Section 8(a)(1) prohibits employer conduct which interferes with, restrains or coerces employees in exercising their rights under the NLRA. The NLRB could seek an order requiring compliance, as well as other remedies that could affect representational case proceedings. The NLRB also may use the failure to post the notice to toll the statute of limitations and as evidence of unlawful motive in other unfair labor practice proceedings.

The NLRA permits employers to express their opinion regarding unionization as long as they do so in a noncoercive manner. Therefore, employers who feel the required NLRB notice may be too one-sided are permitted to post another notice with the employers' opinion on why employees do not need to have a union, as long as the additional notice is not coercive.

Client Spotlight

Saint Vincent Health Center will join with the Cleveland Clinic to improve its care for cardiac and neurological patients.

[Click here to read more.](#)