

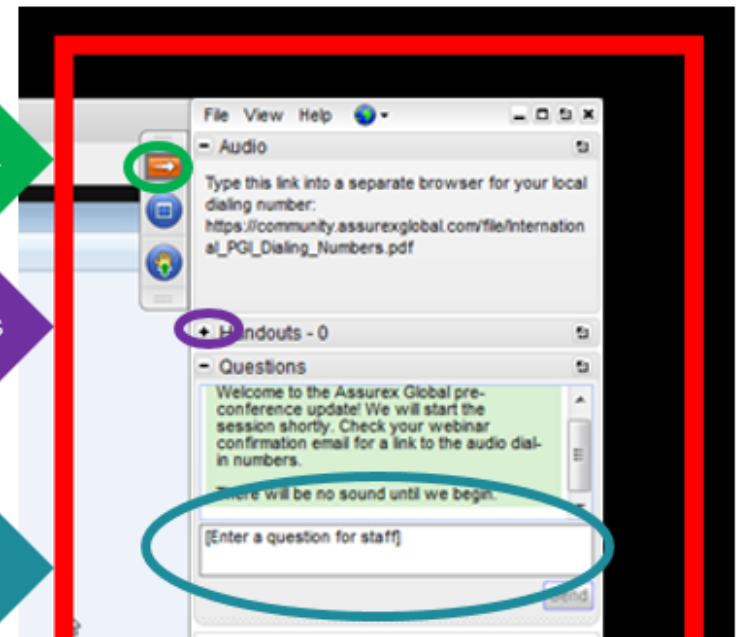
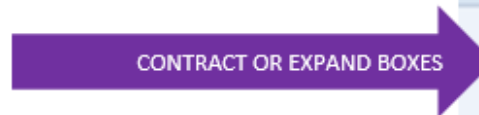
September 28, 2017

Benefit Plan Transition Issues

Presented by Benefit Comply

Benefit Plan Transition Issues

- Welcome! We will begin at 3 p.m. Eastern
- There will be no sound until we begin the webinar. When we begin, you can listen to the audio portion through your computer speakers or by calling into the phone conference number provided in your confirmation email.
- You will be able to submit questions during the webinar by using the “Questions” box located on your webinar control panel.
- Slides can be printed from the webinar control panel – expand the “Handouts” section and click the file to download.



Benefit Plan Transition Issues

Assurex Global Partners

- Catto & Catto
- Cottingham & Butler
- Cragin & Pike, Inc.
- The Crichton Group
- Daniel & Henry
- Frenkel Benefits
- Gillis, Ellis & Baker, Inc.
- Haylor, Freyer & Coon, Inc.
- The Horton Group
- The IMA Financial Group
- INSURICA
- Kapnick Insurance Group
- Lipscomb & Pitts Insurance
- LMC Insurance & Risk Management
- Lyons Companies
- The Mahoney Group
- MJ Insurance
- Parker, Smith & Feek, Inc.
- PayneWest Insurance
- R&R/The Knowledge Brokers
- RCM&D
- RHSB
- The Rowley Agency
- Seacrest Partners
- Starkweather & Shepley Insurance Brokerage
- Woodruff-Sawyer & Co.
- Wortham Insurance & Risk Management

Agenda

- Health FSA Transition to HSA
- Mergers & Acquisitions
- Fully-Insured to Self-Funded
- Mid-Year Cost, Benefit and Eligibility Changes
- Change in Employer Size
- Change in Plan Year

Health FSA Transition to HSA

- **HSA-Eligibility**
 - Individuals who participate in a general-purpose health FSA are not eligible to contribute to an HSA
 - A grace period or carryover will extend HSA-ineligibility into the next plan year
- **Transition to HDHP/HSA plan upon plan renewal**
 - Participants with a \$0 balance at the end of the plan year may contribute to an HSA upon plan renewal so long as no new election is made for the health FSA
 - Participants with a balance remaining at the end of the plan year:
 - Grace period affects HSA-eligibility through the end of the grace period unless the grace period is limited-purpose or post-deductible
 - Carryover affects HSA-eligibility for the entire plan year unless the carryover is limited purpose or post-deductible
- **Transition to HDHP/HSA mid-plan year**
 - Any individuals who made a health FSA election are not eligible to contribute to an HSA through at least the end of the current plan year (extended by a carryover or grace period)
 - Could terminate the health FSA early or make it limited-purpose, but they may result in more participants forfeiting money

Mergers & Acquisitions

- General Considerations
 - Consolidate plans or keep them separate?
 - Controlled group status
 - Nondiscrimination rules (e.g. §105(h), §125)
 - Transition plan years, use of a short plan year
 - Plan documentation amendments and communication to participants
 - Coordination between health FSAs, HRAs and HSAs
 - COBRA obligations
 - If the seller maintains a group health plan after the sale, then a group health plan of the seller must provide COBRA coverage
 - If the seller ceases to maintain any group health plan in connection with the sale, then a group health plan of the buying group must provide the COBRA coverage if: (i) the buying group maintains a group health plan; and (ii) in the case of an asset sale, the buyer is a successor employer
 - Parties may contractually allocate the COBRA responsibility differently

Mergers & Acquisitions

- ACA-Related Considerations
 - §4980H offer of coverage requirements
 - Applicable large employer status
 - Determining full-time status
 - Employer reporting under §6055 and §6056
 - Determining who reports for which employees and for which months
 - Plan design (e.g. benchmark plans, grandfathered status)
 - SBC preparation and distribution (notice of modification for mid-year changes)
 - W-2 cost of health coverage reporting
 - PCORI fees

Fully-Insured to Self-Funded

- Changes in Funding and Administration
- PCORI Fees
 - Handled by the insurer for fully-insured plans
 - Handled by the employer for self-funded plans
- §105(h) Nondiscrimination Rules
 - Self-funded group health plans may not structure eligibility, benefit coverage, or contributions in a way in which highly compensated individuals are favored
- Employer Reporting (Forms 1094 and 1095)
 - All employers who offer self-funded group health plans, regardless of size, must report coverage information for all individuals (including non-employees and dependents) who are covered under the self-funded plan
- HIPAA Privacy and Security
 - Potential increased compliance obligations

Mid-Year Cost, Benefit or Eligibility Changes

- **Communication**
 - Material changes to information provided in the SBC requires a notice of modification 60 days in advance of the change
 - Material changes to information provided in the SPD requires a summary of material modification (SMM) within 60 days following a material reduction, or within 210 days following any other material modification
 - State payroll and other notice requirements may require advance notice of the change before the employer could deduct a different employee contribution
- **§125 Election Changes**
 - Changes mid-plan year to cost, benefit coverage or eligibility may allow pre-tax election changes depending upon what changes occur and how the cafeteria plan document is drafted
 - The plan document MAY allow employees to make changes and/or even newly enroll or terminate due to such change. If there is a desire not to allow such changes, the plan document could be amended accordingly
 - While most carriers will allow coverage to be dropped, changes to cost or benefit coverage generally will not trigger a HIPAA special enrollment right requiring the insurance carrier or employer to allow enrollment mid-plan year

Cost, Benefit or Eligibility Changes

- Change in Cost (Increase in Employee Contributions)
 - §125 rules permit mid-year election changes on account of a change in cost of coverage initiated by the employer
 - If a change is **insignificant**, §125 rules allow the plan sponsor to simply adjust participants' contributions
 - If a change is **significant**, §125 rules allow participants to change election amounts, switch to another similar plan and even drop/enroll in coverage depending upon whether there is a significant increase or decrease
 - The term "significant" is not defined, therefore it is up to the plan sponsor to determine what is and what is not significant

Cost, Benefit or Eligibility Changes

- Change in Benefits (Coverage)
 - §125 rules permit mid-year election changes on account of a significant curtailment or improvement of coverage
 - **Significant curtailment of coverage** (e.g. lower deductible, copay, or out-of-pocket)
 - Without loss of coverage, participants may make new elections for coverage under a similar benefit package option (if any)
 - With a loss of coverage, participants may make new elections for coverage under a similar benefit package option (if any) or may revoke election if no similar benefit package option is available
 - **Addition or significant improvement of coverage**
 - Participants may (whether or not they previously made an election for coverage) elect coverage under the new or improved benefit option
 - The term “significant improvement” of coverage is not clearly defined, but likely includes a decrease in copayments, reduction in deductible, or an increase in medical providers in a network

Cost, Benefit or Eligibility Changes

- Change in Eligibility
 - Coordination with the insurance carrier or stop-loss carrier
 - Amendments to eligibility rules in the plan document, SPD, employee handbook
 - §125 rules allow for enrollment or revocation and corresponding election changes
 - Generally no COBRA rights for individuals no longer considered eligible

Changing from Small to Large Employer

- **Employer Mandate & Employer Reporting**
 - Employers with an average of 50 or more full-time equivalents (FTEs) in the previous calendar year – applicable large employers – must comply with §4980H offer of coverage requirements and §6056 employer reporting requirements
- **COBRA**
 - Employers with 20 or more employees (full-time and part-time) on 50% or more of its business days in the previous calendar year are subject to COBRA
- **Medicare Secondary Payer (MSP)**
 - Employers with 20 or more employees for each working day in at least 20 weeks in either the current or the preceding calendar year
- **FMLA**
 - All public sector employers
 - Private sector employers with 50 or more employees in 20 or more workweeks in the current or previous calendar year
- **Form 5500 Reporting**
 - ERISA-covered plans with 100 or more participants (employees and former employees) at the beginning of the plan year
- **Large Group Market for Medical Insurance**
 - Varies from state to state, some consider employers with 50 or more FTEs to be large group and others consider large group to be 100 or more FTEs

Change in Plan Year

- Transition
 - ERISA and §125 rules generally require that a plan year be 12 months (never longer)
 - A short plan year is allowed for a valid business purpose to transition to a different plan year
- Short Plan Year Considerations
 - ERISA
 - The plan document, which generally defines the plan year as a 12 month period, needs to be amended to allow for a short plan year
 - If subject to 5500 filing requirements, a Form 5550 is required for the short plan year
 - Section 125 (Cafeteria Plan)
 - The cafeteria plan document should be amended to reflect a short plan year
 - For health FSAs, specifically:
 - If the plan year is changed after starting, participants may face forfeitures
 - Better to plan ahead and communicate a short plan year
 - Salary reductions must be prorated based on the number of months in the short plan year
 - Consider whether or not to allow for a standard run-out period, grace period or carryover

Change in Plan Year

- Short Plan Year Considerations (continued)
 - COBRA
 - COBRA regulations do not address changes to a plan's determination period, which must generally be a 12-month period applied consistently from year to year. However, if changing the plan year due to a valid business reason, it may be okay to select a new determination period
 - Look-back measurement method timeframes
 - Change in measurement and stability periods
 - Rules require the employer to honor the current stability period before transitioning to the new stability period
 - PCORI Fees
 - PCORI fees are required for short plan years (not on a pro rata basis)

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