Employee Benefits Report

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Protect Your Company from Health Insurance Scams

144 unauthorized entities illegally selling health insurance from 2000 to 2002 defrauded 15,000 employers and 200,000 policyholders of $252 million, according to the International Risk Management Institute (IRMI).

So how can you avoid buying fraudulent health insurance? According to IRMI, here are some things to consider:

1. **Look beyond the marketing materials.** Anyone, even a crook, can have a glossy brochure printed. So how do you spot a scam?

   Typically, a fraudulent deal will offer great prices (premiums as much as 50 percent below normal), superior coverage and a large network of providers. However, all legitimate insurers have to deal with the same cost drivers: higher hospital costs, skyrocketing prescription drug costs, increased drug usage and an aging, out-of-shape population. If the policies you're comparing offer similar coverage, deductibles and copayments, beware the one that costs significantly less than the others.

2. **"It's not insurance."** Some salespeople will say they don't need an insurance license to sell their health plan because it's not really insurance. And some will claim the companies whose health plans they sell don't need a license, because the plan "isn't really insurance."

   States regulate insurance, so anyone trying to sell insurance must be licensed by your state insurance department. Likewise, any insurer you do business with must also be licensed, or "admitted," to do business in that state. (Excep-

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This Just In

Voluntary benefits are growing in popularity. In fact, new research from LIMRA, an association of life insurance and financial services companies, reported that up to 363,000 U.S. businesses with 10 or more employees are considering introducing a new voluntary benefit within the next two years. This could affect as many as 45 million Americans.

Voluntary benefits can include traditional benefits, such as health, life, dental and vision coverage. Employers can also offer more unusual benefits on a voluntary basis, such as pet insurance and legal plans.

The holidays might be a little longer this year for some workers. A survey by the Society for Human Resource Management showed 48 percent of employers plan to close their offices on the day before Christmas this year. Christmas is on a Tuesday. The day after Christmas will be a holiday at 16 percent of companies. Twenty-seven percent of employers plan to close on New Year's Eve, which also falls on a Monday this year.

Since productivity generally drops over the holidays, some employers might find it sensible to close for the extra days.

Helping Employees Nurture a Nest Egg

Nondiscrimination rules prohibit top-heavy plans, or plans that involve too many high-income earners and not enough low-income earners. It's usually easier for high-income employees to set money aside because they have more free cash.

So what can you do to encourage your employees – all of them – to commit to a retirement savings program?

1 **Offer a 401(k) plan and discuss its advantages:**
   - ✔ Contributions are made with pre-tax dollars, which lowers the income tax bill each year. Earnings are not taxed until they are withdrawn, and since many employees move to a lower tax bracket after retirement, taxes will take a smaller bite then.
   - ✔ Matching employer contributions, if you decide to make them, help employees' savings grow faster.
   - ✔ Automatic payroll deductions means the employee has only one advertised chance a year to decide not to save for retirement. If they are saving on their own, they have a chance to make the wrong decision every pay day.

2 **Offer automatic enrollment.** Enrolling employees automatically in a 401(k) plan essentially switches the retirement savings decision from opt-in to opt-out. The U.S. Treasury Department notes that this creates a "positive presumption" in favor of saving — even though the employee must be given adequate notice and an opportunity to opt out. The Treasury Department says case studies show that automatic enrollment has a positive effect on participation – particularly among low- and moderate-income workers.

   Unless employees decide to make their own investment decisions, contributions are invested according to program terms.

3 **Make it simpler to borrow against the plan.** 401(k) plans have a loan provision that allows investors to borrow against their savings in times of need. While financial experts generally say that borrowing against a 401(k) works against the ultimate goal of saving for retirement, the ability to borrow cash from yourself can be a lifesaver.

   And knowing the money is not locked up until they reach a certain age may encourage people to save. In fact, a 1997 study by the federal government's General Accountability Office showed that *allowing loans increased participation in 401(k)s and increased the size of contributions,* particularly among lower-income employees.

4 **Give them confidence with a lifecycle fund.** Selecting among funds to create and maintain diversity of risk can be a daunting task for employees, even with the narrowed choices of a typical 401(k) plan.

   Lifecycle funds relieve some of the pressure. These are 401(k) funds that automatically diversify a participant's assets according to planned retirement date.

   There are two types of lifecycle funds. In a target-date fund, a manager, using a standard defined by the plan, gradually shifts investments from aggressive to conservative as the employee ages. In a target-risk lifecycle fund, the employee/investor decides the level of risk he wants in the fund and the manager adjusts the holdings to create that risk. The employee can ask that the risk level be changed as time goes by.

   Lifecycle funds' one-size-fits-all approach might not work for certain individuals. Still, employees intimidated by the selection process might find lifecycle funds an inducement to save. And savings – even with drawbacks – are better than no savings at all. ■

401(k) Loans

Some 401(k) providers are making loans easier for plan sponsors by allowing 401(k) investors to take loans from their account by debit card or check. Eric Lansky, a managing director at The Reserve, told *Finance Week* that his company wanted to create a product that resembled a home-equity line of credit.

Borrowers pay 2.9 percentage points above prime, with the prime rate portion going back into their account and the 2.9 percent going to The Reserve as a fee. They also pay an initial set-up fee and a yearly maintenance fee. The Reserve handles all administration, removing the employer's staff from the process. Look for other fund companies to provide similar services. ■

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tions exist for excess or surplus lines insurers, such as Lloyd's of London, that write unusual or difficult to insure risks, but insurance buyers can only access these insurers through a specially licensed surplus lines agent.) You can verify licensing information with the state's department of insurance, which can also tell you whether the particular policy you're considering is approved for sale.

It's true that you don't need a license to sell a healthcare discount card program. But if it sounds like insurance and works like insurance, it probably is. One clue is that insurance products offer a potential benefit that could far exceed the premiums (or fees) paid. Check the "lifetime maximum benefit" of the program you're considering. A typical health insurance policy offers a maximum lifetime benefit of $1 million or more. Potential savings with discount cards are much lower.

3 **Beware so-called ERISA plans.** The Employee Retirement Income Security Act of 1974 (ERISA) allows employers to set up their own benefit plans for employees. State insurance departments do not regulate these plans, although they are subject to federal laws governing benefits.

Beware of anyone claiming that the plan they are selling is cheaper than others because it is an ERISA plan that requires no oversight. ERISA plans are self-insured, not sold. In other words, an employer might hire a third-party administrator to create the plan, not buy one off the shelf.

4 **A great network doesn't equal great coverage.** Employees demand a good provider network, and a fraudulent insurance plan will almost certainly provide it. However, networks don't always review the authenticity of plans that want to use their providers. If it is a bogus plan, patients will get great care – and a big bill. If the insurer does not pay, the provider will bill the patient. And the fraudulent insurer will disappear with your premium payments.

5 **Don't join an association just for its insurance plan.** Beware agents who say you must join an association to gain access to an insurance policy. While many professional and trade associations offer insurance coverage as a benefit of membership – think AARP and the American Bar Association – those groups have a purpose beyond selling insurance. Associations set up solely to sell insurance are commonly organized by those perpetrating insurance fraud. And they are bad news.

One way to tell whether an association is legitimate is to look at how much control members have over the group and its leadership. Often, if the association was organized simply to sell insurance, members have no say in how the group is run.

Sometimes the premium will be described as a fee rather than a premium. The seller may even say he is not selling insurance, but rather a discount plan or benefit of association membership. If this happens, see #2.

6 **Don't confuse representations about stop-loss coverage with a guarantee of group health benefits.** Some salespeople point to their plan's high stop-loss coverage limits as evidence of great benefits. But stop-loss coverage exists to protect the issuer, not the insured individuals.

7 **Ask about the allocation of premiums charged for commissions, fees and administration expenses.** Allocation of a high percentage of the premiums to commissions, fees and administrative expenses may indicate a problem with the product or insurer.

8. **Check an insurer's references before buying.** Ask your agent to provide the names of benefit administrators at other employers that have bought coverage through this insurer. Ask them about their experience, particularly whether the insurer paid claims on time and in full.

9 **Make sure you get policy documents before the plan goes into effect, and check them thoroughly.** Make sure you got what you paid for.

For assistance in selecting a health insurance plan, please call us.

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that, "As currently interpreted by DOL, the FMLA has become the single largest source of uncontrolled absences [among members] and, thus, the single largest source of all the costs those absences create: missed deadlines, late shipments, lost business, temporary help, and over-worked staff."

The Society for Human Resource Management (SHRM) reported that 40 percent of human resource professionals surveyed said confusion over implementation of the FMLA has led to the granting of illegitimate leave. Respondents specifically cited tracking and administering intermittent FMLA leave as a problem. In the comment portion of the survey, many HR professionals also noted that the timing of intermittent FMLA leave requests (e.g. around weekends, holidays, pleasant weather) raised suspicions of abuse.

Despite the problems the report highlighted, don't expect the DOL to make changes soon. Observers expect the DOL to tackle the redefinition of "serious health condition" and revising the medical certification form before fixing the problems with intermittent leave. "It does not by any means present any easy resolution," Victoria Lipnic, assistant secretary of labor for the Employment Standards Administration, told *Workforce Management*.

Clarification: Our October item on the IRS's new proposed rules for cafeteria plans said that "Generally, if an employer or employers provide more than $50,000 in group term life insurance to an employee, the cost of coverage amounts over $50,000 is includible in the employee's gross income." The proposed regulations will determine the employee's gross income on this excess group term life coverage solely on the basis of the Table I rates. Effectively, an employee may be paying for coverage in excess of $50,000 and the employer will deduct the entire amount through salary reduction, but then using Table 1 rates, add it back in on the W-2 at year end as imputed income.

FMLA Working…Mostly

Congress passed the Family and Medical Leave Act (FMLA) in 1993 to help employees retain job rights while coping with the serious illness of themselves or a family member. After analyzing input from more than 15,000 employees and employers, the U.S. Department of Labor (DOL) reported in June that the law was largely working as intended.

According to the DOL report, some 76.1 million employees were eligible for leave under the law as of 2005, and somewhere between 6 percent and 17.1 percent of those employees had taken leave. Chances are, if the FMLA applies to your company, one of your employees will want to take leave, if they haven't already.

According to the DOL report, problems and conflicts over FMLA implementation arise most frequently in two areas: the definition of "serious health condition" and in situations of intermittent leave.

What is "a serious health condition"?

The FMLA defines this as incapacity or treatment that involves inpatient care in a medical facility, as well as subsequent treatment related to inpatient care. It also includes any period of incapacity due to pregnancy, a chronic serious health condition or a health condition lasting more than three days that requires treatment by a health care provider. The FMLA also applies to employee absences to receive multiple treatments to address conditions that are not currently incapacitating but would be if left untreated.

To qualify for FMLA medical leave, an employee must provide enough information to substantiate the need for leave. He or she must obtain certification from a physician that leave is necessary, but does not have to supply a specific diagnosis.

What about intermittent leave?

Employees do not have to take leave all at once – they can take time in increments as small as the lowest increment used by the company payroll system. And employees who qualify for FMLA leave do not have to provide advance notice if the leave is not foreseeable – for example, a migraine sufferer could leave work every time he gets a headache. And the law allows him up to two days after taking time off to declare it FMLA leave.

As many as 3 million workers take advantage of this provision, according to the DOL. While intermittent leave helps some employees, it can cause major problems for employers. The National Association of Manufacturers, one of the country's largest employer organizations, told the Department of Labor

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The FMLA:

- Applies to any employer with 50 or more workers in a 75-mile radius each working day during each of 20 or more calendar workweeks in the current or preceding calendar year.
- Applies to employees who have worked for their employer for at least 12 months and have worked for at least 1,250 hours over the previous 12 months.
- Requires employers to allow eligible workers to take up to 12 administrative workweeks of unpaid leave per year.
- Allows eligible employees to take leave for 1) the birth of a son or daughter and care of the newborn; 2) the placement of a son or daughter with them for adoption or foster care; 3) the care of their spouse, son, daughter or parent with a serious health condition, or 4) their own serious health condition that makes them unable to perform the duties of their position.
- Requires employers to return an employee coming back from FMLA leave to the same or equivalent position.
- Entitles the employee to maintain health benefits coverage while on leave. If on leave without pay, the employee is responsible for paying employee share of premiums.

Following these procedures can help ease FMLA administrative burdens:

- Create a written policy and process for FMLA administration.
- Compare company leave policy with FMLA to ensure consistency. Consult a lawyer if needed.
- Provide written notification of FMLA leave start and end dates to all parties within two days, including reason for leave and impact on other benefits.
- Develop a leave-tracking mechanism for relevant personnel.
- Explain impact of FMLA to employees and advise two weeks prior to end of leave.
- Require recertification of intermittent leave at specified times.
- Utilize medical consultant services as needed to clarify an employee's medical condition.