Employee Benefits Report

MSI Benefits Group, Inc.
TownPark Ravine One, 245 TownPark Drive, Suite 100, Kennesaw, Georgia 30144
Office: (770) 425-1231 | Fax: (770) 425-4722 | E-Mail: info@msibg.com

Health Transparency February 2021 Volume 19 • Number 2

New Hospital Cost Transparency Rule Now in Effect

New federal rules promise to make it easier for consumers to know the true costs of a hospital service or item, as well as the in- and out-of-network costs of health insurance benefit plans.

The Hospital Price Transparency rule issued by the Department of Health and Human Services (HHS) went into effect Jan. 1, 2021. The rule affects all hospitals operating in the United States. Federally owned and operated hospitals such as Veteran's Administration, Indian Health or Department of Defense operated hospitals are exempt.

The Centers for Medicare & Medicaid Services (CMS) issued a sepa-

continued on next page

Supreme Court Decision That Could Affect Same Sex Spouse Health Coverage

A U.S. Supreme Court ruling concerning firing an employee based on sexual orientation could lead to changes in laws regarding health insurance.

The Court ruled in *Bostock vs. Clayton* County that under Title VII of the 1964 Civil Rights Act, it is unlawful for an employer with 15 or more employees to fire an employee because of their sexual orientation or gender identity.

Legal experts think it's likely that the June 5, 2020, ruling will lead more firms with 15 or more employees to offer health coverage under Title VII protection. However, employers potentially

continued on next page

rate rule that imposes price transparency requirements on health insurers, including employers who offer self-funded plans. Insurers must ensure that members have access to information about out-of-pocket costs and other vital price information before they receive treatment.

Both rules are in response to an executive order issued by President Donald Trump on June 24, 2019. Trump directed HHS to adopt regulations improving price and quality transparency and implement statutes added by the Affordable Care Act. Trump said the new rules were a major victory for patient choice and affordable health care because they would stop people from getting "ripped off."

Consumers will now be able to shop and compare prices between hospitals. Previously, patients often didn't know the cost of a service until after it was performed.

Hospitals

The "2020 Outpatient Prospective Payment System and Ambulatory Surgery Price Transparency Requirement for Hospitals to Make Standard Charges Public" requires hospitals, including non-Medicare and non-Medicaid hospitals, to make their "standard charges" public (including rates negotiated with third parties).

Hospitals must provide the information on their website in two ways:

- As a single data file that can be read by other computer systems.
- As a display of shoppable services (that can be scheduled in advance). The display must be in a prominent location online and described in plain language.

The obligations of hospitals under the Final Rule also include:

- A description of each item and service and any code used for accounting or billing.
- Cost information for free and without the need to use a password.
- A listing of at least 300 "shoppable services."

The list must be updated annually. CMS has the authority to monitor hospitals' compliance and audit their websites. CMS also can issue warnings and levy a fine of $300 per day for hospitals that don't comply.

States that already have price transparency mandates in place are required to ensure their disclosures are consistent with the new federal requirements.

Insurers

"Transparency in Coverage" directs health insurers and group health plans to give insured members information about negotiated rates with in-network providers, as well as out-of-network pricing. This includes a lot of proprietary information that formerly was not available to the public.

This rule affects non-grandfathered group health plans, including plans in existence after March 23, 2010, when the Affordable Care Act was adopted. However, non-grandfathered employer-sponsored health plans must publish what they pay for benefits beginning Jan. 1, 2022.

Proponents hope consumers will use this information to shop for lower-cost, high-value providers and that insurers will share the savings with consumers.

Opposition

The plan assumes health providers will lower their costs to be more competitive, but there is concern that already low cost providers will increase their prices to match the competition.

Another concern is that the data sharing system will be costly to implement and could drive up costs.

continued on next page

could secure religious liberty exemptions from extending sex protections to include sexual orientation and gender identity.

Although the Supreme Court's Defense of Marriage Act decision provides that the federal government may not discriminate against same-sex couples who are legally married, it doesn't apply to employers who provide self-insured health benefits.

Also, if a state's law doesn't require parity, the employer doesn't have to offer the same benefits to same-sex spouses.

According to the 2020 Employer Health Benefits Survey, 74 percent of firms offering health insurance coverage to opposite-sex spouses also provided coverage to same-sex spouses. However, large firms with 200 or more employees were more likely to offer coverage to same-sex spouses than smaller firms.

Another point some experts make is that a list of costs does not address quality or explain why some hospitals' costs are higher (such as focus on expertise).

As expected, there is legal opposition to the plan. The American Hospital Association and other hospital groups have filed a lawsuit challenging the regulation as a violation of the First Amendment of the Constitution and contractual confidentiality provisions.

The American Hospital Association, Association of American Medical Colleges, Children's Hospital Association and Federation of American Hospitals issued a statement calling the rule "a setback in efforts to provide patients with the most relevant information they need to make informed decisions about their care."

They believe that instead of helping patients know their out-of-pocket costs, this rule will:

- Introduce widespread confusion because the costs will be presented without context or explanation
- Accelerate anti-competitive behavior among health insurers, and
- Discourage innovations in value-based care delivery.

In October 2020, the AHA responded to Department of Justice's Oct. 1, 2020 letter saying that the rule's two requirements for machine-readable files and shoppable-services lists exceeds the department's authority to require "a list" of standard charges. ■

The Safe Way for Employees to Roll Over a 401(k) to an IRA

To avoid pitfalls employees should talk to a financial advisor before making changes to retirement accounts

Employees who plan to roll their employer-sponsored retirement accounts into individual retirement accounts (IRA) should seriously consider talking to a financial advisor first. They could lose a lot of money in taxes and penalties by improperly moving money out of a 401(k) when they leave their jobs.

While 401(k) plans and IRAs both let investors put away tax-advantaged savings for retirement, 401(k)s differ from IRAs in three major ways:

- 401(k)s have higher contribution limits – usually three times higher than an IRA.
- 401(k)s typically provide limited investment options while invested in stock exchange-traded funds (ETF) or mutual funds.
- Many employers match employee 401(k) contributions up to a certain salary percentage.

Many employees prefer 401(k)s because of the much higher employer contributions (as much as $19,500 for 2021), compared to IRAs where contributions are limited to up to 3 percent of the employee's salary. However, if an employee has quit or been terminated for any reason, an IRA might be their best option.

Here are a few issues employees should know about before rolling over to an IRA.

Staying Put

Employees can leave their money in a 401(k), even if they leave the company. They will no longer be able to contribute, but the

continued on next page

money will continue to grow in the "orphan" account.

"Staying put" can be a great option for someone who likes the current investment and won't withdraw funds. Or, if an employee doesn't have a new job yet, the money can be left in the account until moving to the new company's plan.

Transferring to an IRA

When employees move money from a 401(k) to an IRA rather than taking cash, they avoid the 10 percent penalty applied to early withdrawals if they are younger than 59½.

Employees should choose a good brokerage. Financial experts recommend that investors seek a brokerage offering zero trading commissions and few or no other fees, a variety of investment options, good customer service, usability, and research tools.

After an account is created employees can have the 401(k) funds transferred to the IRA or get a check, which must be deposited to the new IRA within 60 days to avoid tax penalties.

This way there should be little or no cost associated with rolling over a 401(k) to an IRA.

The rule of 55

An employee who leaves a job when or after they turn 55 (but before 59½) can take penalty-free distributions from their 401(k) (although the distribution will be taxable).

However, if an employee moves money to an IRA, the ability to take early distribution without paying the 10 percent penalty will be lost — unless they qualify for another reason.

Tread Carefully with Company stock

Employees should be aware that if their 401(k) has company stock in addition to their other investments, when they roll over all of their 401(k) assets to an IRA, they will lose the potential to get more favorable tax treatment on any growth from those shares while in their 401(k).

If the company stock is publicly traded, and has unrealized gains, the employee can transfer it to a brokerage account instead of rolling it over to the IRA. Then it will be taxed on its cost basis (the value of the stock) when acquired in their 401(k). However, when they sell their shares from their brokerage account — either immediately or later — any growth the stock experienced inside the 401(k) would be taxed at long-term capital gains rates (0 percent, 15 percent or 20 percent, depending the person's tax bracket). This could be less than the ordinary-income tax treatment they'd get if the stock went into a rollover IRA and was then withdrawn.

Financial Advisors

Obviously, things can get complicated so finding a good financial advisor who will talk to your employee about their situation and goals is a good idea. Your 401(k) managers also may have recommendations. The employee can review their profiles before using them. ■

Legal Services Benefits — During the Pandemic and Beyond

70 percent of full-time U.S. workers experienced some kind of "legal life event" in the past year. Of these, 20 percent said they were less productive at work, and one-third took time off work to deal with legal needs

The value of group legal services for employees has increased exponentially since the beginning of the COVID-19 pandemic. Yet, even before the pandemic, legal services have been an important part of many comprehensive benefit plans.

Group legal services were first offered in the late 1970s and have become common since the 1990s. Having a network of law firms "on retainer" gives employees access to legal advice for a fraction of the cost of most attorneys outside of such plans.

Many people won't call an attorney, even if they need one, because they fear high hourly fees. For instance, when hiring an at-

continued on next page

torney without the help of legal insurance, hourly rates can range from $50 per hour to $1,000 per hour or more. Plus, some attorneys require a retainer to be paid up front. With group legal services, though, alternative pricing models, such as prearranged flat fees, eliminate surprise charges. Also, these fees usually are discounted.

Group legal services are considered a voluntary benefit. With voluntary benefits employees choose from a wide variety of benefits to meet their individual needs. According to a 2018 Willis Towers Watson survey, 75 percent of organizations particularly like voluntary benefits because of their ability to provide personalized options to staff, allowing for tailoring to different generational or income brackets as opposed to the one-size-fits-all benefits packages of the past.

The COVID-19 Effect

Forced government shutdowns have wreaked havoc with individuals' incomes. Some of the reasons employees appreciate having easy access to legal representation include:

- Chapter 7 & 13 bankruptcy services and legal help with bankruptcy filings.
- Foreclosure help and assistance with keeping a home or vacating it in a way that has the smallest financial impact.
- Landlord/tenant issues, such as eviction notices (Centers for Disease Control's eviction moratorium only lasted through the end of 2020).
- Estate planning, including basic estate documents, such as last wills and testaments; living wills; financial and health care powers of attorney; or simple trusts.
- Family law issues ranging from child support payments to spousal support.

COVID-19 complications aren't the only reason employees need affordable legal services. Here are a few of the popular services offered through group legal plans:

- **Real Estate Transactions:** Even though real estate agents usually handle most of the details for home buyers, they are not permitted to give legal advice. For instance, unless the real estate purchase agreement includes it already, a buyer may want to include a contractual clause that lets the buyer cancel if an inspection reveals serious flaws. Or an attorney may be necessary to protect a seller if a buyer backs out of a deal.
- **Family Law:** Some of the services included under this category include prenuptial and post-nuptial agreements; paternity issues; adoption proceedings; child custody issues; child emancipation proceedings; and divorce.
- **Traffic Violations:** An attorney can be helpful when an individual believes a ticket is unfair.
- **Personal Injury:** Victims of a traffic or workplace accident may need the services of a personal injury attorney to receive fair compensation through a settlement; mediation/arbitration; or by filing a lawsuit.
- **Identity Theft Protection:** Identity theft can have a serious impact on an employee's credit score, making it challenging to buy a home or car; apply for a credit card; or rent an apartment. Tax return fraud can cause an employee to not receive the money owed them.

Most people don't think they need legal services, until they do.

more on next page

More Identity Scams Target Employers and Employees

Tax-Related Identity Theft

Thieves often use stolen names and data to file fraudulent tax returns. The Federal Trade Commission recommends businesses protect themselves by:

- Setting security software to update automatically
- Backing up important files
- Requiring strong passwords for all devices
- Encrypting devices
- Using multi-factor authentication.

Employers and employees also should be aware of COVID-19 or tax-related phishing email scams that attempt to trick employees into opening embedded links or attachments. A popular scam is when a thief poses as a high-ranking company executive and requests a list of employees and their W-2s. Businesses don't know they've been scammed until fraudulent returns show up in employees' names.

The Internal Revenue Service is now masking sensitive information from business tax transcripts to prevent thieves obtaining identifiable information allowing them to file fake returns.

Unemployment Claims

Scammers are using illegally obtained personal information to file claims in the name of employees who still have jobs.

It happens in every state. The U.S. Department of Labor said in October 2020 that theft costs taxpayers \$8 billion and could reach \$26 billion.

Fraudsters often set up a fake company and then file claims against the phony business. This has been a popular strategy during the pandemic to take advantage of the Pandemic Unemployment Assistance (PUA) program. For instance, earlier this year the Kansas Department of Labor was prepared to pay out \$37 million in PUA payments only to learn upon investigation that \$35 million of them were fraudulent.

Employers or employees usually become aware of the fraud when they receive a letter saying that a claim has been received.

Fake claims should be reported to your state Department of Labor immediately. Employees can lessen the impact of identity theft by reporting the fraud to credit agencies and checking bank accounts and credit card security.