

TCISCEBS

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Building a Strong Foundation
For a Compliant 2024

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Presenter



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Disclaimer

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While Holmes Murphy strives to help our clients maintain compliance with all laws relating to employee benefits, the information contained in this presentation is not and should not be construed to constitute legal advice.



A Few Notes Regarding 2023



COVID Reversions



National Emergency covered: expanded time periods and deadlines covering COBRA, special enrollment, and claims and appeals, including third-party review of adverse claim determinations

- Extended timeframes no longer apply

Public Health Emergency covers: cost-free COVID-19 vaccinations, testing, treatment, standalone telehealth

- While vaccinations must be covered, network requirements can be applied
- Treatment of COVID can include cost-sharing

Review plan documents, employee communications, and vendor agreements to make sure 2024 plans are aligned with desired changes



Remember the Standard Timeframes



30-day or 60-day period to exercise HIPAA special enrollment rights

- Birth, adoption, placement for adoption, marriage, loss of other health coverage, eligibility for a state premium assistance subsidy

60-day deadline to provide notice of divorce or legal separation, dependent child ceasing to be an eligible dependent, or a Social Security disability determination used to extend COBRA coverage

60-day deadline to elect COBRA; **45 days** to pay first premium



Transparency Marches Along



Gag clause attestation is due by December 31, 2023

- What are your carrier/TPA partners communicating to you?

Self-service price comparison tool for all covered items and services for plan years beginning on or after January 1, 2024

RxDC reporting continues

Broker and service provider compensation disclosures



Re-evaluating Medicaid Eligibility



PHE required states to keep individuals enrolled in Medicaid in order to receive a temporary increase in federal Medicaid dollars. Even if these individuals changed status, if they had enrolled or become enrolled in Medicaid during the PHE, they stayed on the Medicaid plan

In Minnesota*:

- 50,000 Minnesotans took action to keep MA or MinnesotaCare
- 10,000 Minnesotans have coverage through at least the fall due to having a disability (part of mitigation plan with CMS)
- Coverage ended for 32,600 Minnesotans whose status is unknown and for 5,600 whose renewal application were denied
 - HIPAA special enrollment event for those that lose Medicaid coverage (60 days to notify the plan sponsor of the loss)

*Information from MN Dept. of Human Services: <https://mn.gov/dhs/media/news/?id=1053-586821>



Minnesota Earned Sick and Safe Time



Minnesota Earned Sick and Safe Time



Compliance required as of January 1, 2024

Employees earn one hour of sick and safe time for every 30 hours worked

- There is a 48-hour annual maximum accrual (employer can always do more)

Can be used when the employee is sick, to care for a sick family member, or to seek assistance if the employee or a family member experiences domestic abuse

An eligible employee is any employee that works at least 80 hours in a year for an employer in Minnesota and is not not an independent contractor

- One small exclusion for construction employees covered by a collective bargaining agreement that obtains a waiver



Minnesota Earned Sick and Safe Time



Additional requirements*:

- Include the total number of earned sick and safe time hours accrued and available for use, as well as the total number of earned sick and safe time hours used, on earnings statements provided to employees at the end of each pay period
- Provide employees with a notice by Jan. 1, 2024 — or at the start of employment, whichever is later — in English and in an employee's primary language if that is not English, informing them about earned sick and safe time
- Include a sick and safe time notice in the employee handbook, if the employer has an employee handbook

*Information from MN Dept. of Labor and Industry: <https://www.dli.mn.gov/sick-leave>



Products that Make you
Go Hmmmm....



Wellness Indemnity Schemes



Comes in different variations, but basically connects a wellness program rider with some form of indemnity product that “enhances” available benefits at no or net-low cost to the employee and employer

- A “tax savings” plan

The biggest issue is that the employee doesn’t have medical expenses incurred to offset the benefit received from the indemnity benefit

- The IRS has been clear that if there isn’t an offset, the payment is taxable
 - May have prompted new indemnity rules that could have other impacts
- Vendors don’t carry the risk of an individual’s failure to report the income



Targeting High-Cost Claimants



Increase in “vendor” contacts advertising services to “help” employees find the coverage best suited for them

Essentially, they offer to contact your plan participants to find out if they are high-cost claimants, and if they are, try to convince them to purchase an individual plan

Unclear how they “help” the individual to acquire the individual coverage

The HIPAA “authorization” isn’t worth the paper that it’s written on (*that’s my opinion*)

Talk to legal counsel if you are considering such a program



The Return of the MERP



Medical Expense Reimbursement Program

- Vendors can call it what they want, but it's an HRA

The current theme is using the MERP/HRA to buy down the deductible and OOP maximum for the plan to get better rates from fully-insured carriers

- Some carriers ask that employers with such programs in place disclose their existence on their application

A deductible/OOP buy down program is a viable short-term solution

- Rates usually catch-up withing a few years



Wellness Plans Today



Wellness Plan ADA Update



The **Americans with Disabilities Act (ADA)** applies to wellness plans where there is a medical examination or a disability-related inquiry required to receive the same benefits as other employees through the health plan

- E.g., biometric screenings, cotinine tests, and health risk assessments

AARP lawsuit challenging final EEOC rules defining what level of reward, if any, will make a wellness plan voluntary when the ADA is implicated *resulted in the EEOC's court-ordered removal of the portion of the final rule that established the incentive limits for a participatory wellness plan*

New rules were promulgated and then withdrawn in 2021 during the presidential transition with nothing further expected until President Biden's EEOC Commissioner nomination is confirmed



Wellness Plan ADA Update



President Biden first nominated Kalpana Kotagal for Commissioner of the EEOC on April 1, 2022, to replace former President Trump's appointed EEOC Commissioner, Janet Dhillon, whose term ended in July 2022

Kotagal didn't make it out of committee last year, but was sworn in on August 9, 2023

Indications have been that the EEOC will promulgate new wellness rules now that the Commission is restored to its full complement



Wellness Plan ADA Update



While the EEOC works on its new ADA wellness rules, the real challenge for employers is not so much an enforcement action by the EEOC, but instead the risk of employee legal action challenging the voluntariness of incentivized wellness programs that include a medical examination or a disability-related inquiry

The AARP has brought legal action on behalf of employees in the interim targeting wellness programs that implicate the ADA (mostly outcomes-based programs)

- E.g., Yale University and the City of Chicago



Wellness Plan ADA Update



The biggest is whether you're comfortable with the current level of uncertainty surrounding what level of reward, if any, is permissible when determining whether a wellness plan is voluntary. If you're uncomfortable with the risk, you can redesign your wellness program to strip out medical exams and disability-related questions so that the ADA rules no longer apply, at least as far as incentive limits are concerned:

- If you have a smoking cessation program that requires a cotinine test, you could switch to an attestation process, removing the test, which is a medical exam.
- If you require employees to participate in a biometric screening through a certain vendor to receive a reward, you could instead require the employee to submit an attestation from their personal physician that they went in for an annual physical.
- Another option would be to still offer the biometric screening without offering any kind of reward.



Don't Forget the Basics



COBRA



Tasks:

- ❑ Check to make sure the COBRA general notice is getting to the employee's household
 - Having it in your benefit guide or SPD generally won't be enough
 - Is the vendor obligated to send it?
 - Are you getting a file feed over to the vendor so it can be distributed within 90 days?
- ❑ Check to make sure that those that aren't eligible for coverage are removed from the plan and offered COBRA
 - Issue often arises from leaves that aren't identified in the SPD (e.g., informal extended leaves)





Tasks:

- ❑ Look at the eligibility language in your SPDs
 - Are you following the eligibility criteria as outlined?
 - Do you have contradictory language in other documents?
 - Do you have look back language in your SPD and do you need it?
 - Watch out for the employees working odd hours

Two examples:

- The employee that agrees to go part-time instead of retiring
- The part-time employee that's picking up hours to cover labor shortfalls





Tasks:

- ❑ Review your distribution practices for your SPDs
 - Make sure you are getting your SPDs into the hands of plan participants
 - 401(k) rules for simplification of electronic distribution did not apply to health and welfare plans
 - Employees still need to either work at a computer or consent to electronic distribution in order to use electronic distribution methods
 - The kiosk still isn't enough



Open Enrollment Reminders



Health Plan Affordability



Affordability under the ACA's employer mandate is slated to decrease from 9.12% in 2023 to 8.39% for plan years beginning in 2024 (e.g., 1/1 plan years)

New calculations should be performed to make sure that employee premiums are low enough in 2024 to meet the lower affordability threshold

- For some employers this may result in a change in affordability safe harbor, e.g., from the FPL safe harbor to the rate-of-pay safe harbor
- Only one plan option that meets the MV requirements must be affordable. Other plans can be priced higher



Eligibility Reminders



It's a guarantee that next summer we will field questions regarding employees that failed to update their dependents during open enrollment and want to make mid-year changes and/or receive refunds that they may not be entitled to

Continue to remind employees to **triple check** their listed dependents for their benefit elections

While not everyone will listen, at least you can tell them that you told them so last fall (and provides additional support if you tell them they can't make the requested change)

★ **Note: an upcoming Holmes Murphy Mini will focus on midyear changes...**



Check Those Limits



While everyone is checking them twice, take one more look to make sure that the following limits aren't exceeded:

- Maximum out-of-pocket limits for plans starting on or after 1/1/24 are \$9,450 for self-only coverage and \$18,900 for family coverage
- HSA contribution limit, starting on 1/1/24 and applicable to everyone, increases to \$4,150 for self-only coverage and \$8,300 for any coverage beyond self-only coverage (e.g., family coverage)
- HSA minimum deductible for plans starting on or after 1/1/24 are \$1,600 for self-only coverage and \$3,200 for family coverage
- HSA maximum OOP for plans starting on or after 1/1/24 are \$8,050 for self-only coverage and \$16,100 for family coverage

★ Watch out for embedded deductibles and OOP maximums



Open Enrollment Materials to COBRA QBs

COBRA qualified beneficiaries have the same open enrollment rights as similarly situated employees

- This means that they can, for example, add family members not currently covered under COBRA or switch coverage options

Employers must provide COBRA qualified beneficiaries with adequate information and sufficient time to exercise their open enrollment rights the same as similarly situated employees

★ **Also a good time to review COBRA premiums**



Thank
you.