

BENEFIT

Plan Developments

A monthly report covering plan design and legislative changes

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IRS Issues Guidance On Electronic Health Care Payments

Now that the Internal Revenue Service (IRS) has issued guidance on the use of credit or debit cards for **health reimbursement arrangements (HRAs)** and health care **flexible spending accounts (FSAs)**, more employers are expected to adopt electronic payments for qualified medical expenses.

In issuing Revenue Ruling 2003-43, the IRS illustrated how an electronic payment program could be implemented and what types of programs would be permissible. Prior to the ruling, employers had been concerned as to whether debit and credit card programs met the Internal Revenue Code substantiation requirements under Section 213(d).

The IRS ruling stated that credit or debit card reimbursement programs are permitted if:

- A card is issued to each covered employee. In turn, employees must certify that the card will only be used to pay for eligible medical expenses for themselves,

spouses, or dependents, and that those expenses will not be reimbursed by another health plan.

- Employees must agree to retain invoices or any receipts associated with expenses paid using the card.

- Use of the cards by employees is limited to maximum dollar amount of coverage available in the employee's FSA or HRA. Furthermore, cards may only be used with service providers designated by the employer.

- If reimbursement payments are \$600 or more, employers must report them on Form 1099-MISC, unless they meet specific exceptions (e.g., payments to tax-exempt hospitals). Note: Some legal experts have asked for additional guidance on making

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The IRS
illustrated
how to
implement
an electronic
payment
program.

these reports because when some cards are swiped for payments, the health provider's tax identification number is not given—and that's information employers need in filling out 1099 forms.

Verification Needed

In order for any medical reimbursements to be excluded from an employee's gross income, the IRS stated expenses must meet substantiation requirements. If a service provider or other independent third-party provides information to the employers verifying the charge is for an eligible medical expense, the charge meets the IRS's substantiation requirements. In addition, established co-payments and recurring expenses also meet those requirements. Employers must generally treat all other charges as conditional and subject to review.

The IRS said employers are not allowed to use "sampling" or "amount-based" methods to determine qualified expenses and payments. The IRS Code requires each claim to be substantiated.

Repayment Required

Any reimbursed claim found to have been ineligible, must be paid back to the health plan, according to the IRS ruling. If not repaid, the employer must withhold the amount from the employee's compensation to the extent consistent with existing laws. If not paid back or withheld, employers must use a claims substitution method to obtain the funds—such as not providing reimbursements for future valid claims until the improper payment has been made.

The revenue ruling is effective for plan years beginning after December 31, 2003.

Constitutionality Of HIPAA Upheld By Court

Congress did not improperly give away its legislative authority when it charged the U.S. Department of Health and Human Services (HHS) with issuing privacy regulations under the **Health Insurance Portability and Accountability Act of 1996 (HIPAA)**.

That was the judgment of the 4th Circuit Court of Appeals which upheld a district court ruling regarding the constitutionality of HIPAA that was based on a suit filed by the South Carolina Medical Association, Physicians Care Network, and several individual doctors.

3 Points Argued

The medical groups and individuals filing the suit had been seeking relief from the provisions of HIPAA and the accompanying Privacy Rule that had been issued by HHS. They had argued three points: (1) HIPAA violates the non-delegation doctrine of Congress; (2) the Privacy Rule exceeds the scope of authority granted to HHS under HIPAA, and (3) HIPAA's non-preemption of "more stringent" state privacy laws was unconstitutionally vague and in violation of the Due Process Clause of the Fifth Amendment.

A 'Clear Mandate'

In studying the claims, the appeals court found HIPAA did provide "a clear mandate from Congress directing HHS to act in accordance with the intelligible principles set forth in HIPAA. . . (and) there are clear limits upon the scope of that authority and the type of entities whose actions are to be regulated."

Under HIPAA, patients have the power to approve the release of their medical information to employers and life insurers, but not health plans or billing companies. Furthermore, medical information can be disclosed if a patient is unconscious or is unable to be identified, or in instances involving public health issues.

Disability Insurance Helps To Attract Good Employees

As a means to attract and retain good employees, nearly nine out of ten employers who offer **disability insurance** to their employees would recommend it to those who do not, according to a survey released this year by the Health Insurance Association of America (HIAA).

The survey showed that 86% of those surveyed felt they need to offer more than health insurance benefits to be competitive in the labor market, with six out of ten disability insurance purchasers saying they do so to attract or retain better qualified employees.

The survey results were based on interviews with 401 employers and 166 financial planners.

Valuable Product

Less than one-third of those surveyed, however, said disability insurance hastens an employee's return to work. However, 90% said they found the product valuable and 87% said they would recommend it to others.

A total of 77% of all financial planners said that disability insurance was necessary to secure a client's financial well being, with 16% saying they would recommend

supplemental disability insurance to existing coverage. The higher a client's income, the more likely financial planners were to recommend disability insurance.

Wellness Programs Linked To Happy, Satisfied Employees

A key to employee retention today is offering workplace wellness programs, according to the American Association of Occupational Health Nurses, Inc. (AAOHN).

In surveying 500 full-time employees nationwide (November 2002), AAOHN found that more than 50% said they would remain at their current job if their employer offered a health and wellness program. And nearly 80% of the respondents said they believed their overall health would improve if offered the right information and tools through a health and wellness program.

Preferred Programs

Employees said the programs they would prefer would be: stress management (85%); screening (84%); exercise/physical fitness (84%); health insurance education (81%); and disease management seminars (80%).

AAOHN said employee participation in health and wellness programs seemed to be linked to how such programs were administered. A total of 61% of the employees surveyed said they preferred to receive health and wellness information from a health care consultant or on-site nurse, versus pamphlets (18%), or human resources staff (15%).

50% would remain at their jobs if offered a health and wellness program.

Deborah DiBenedetto, president of AAOHN, characterized those latter results as “making perfect sense” because getting advice from industry professionals has become routine in most people’s lives—accountants provide tax advice and mechanics solve car programs, she noted. “A healthcare professional would naturally be the most trusted source and more of an incentive for employees to utilize a health and wellness program.”

Despite those findings, health and wellness programs appear to be on the wane. The Society for Human Resource Management, for example, has said that 76% of employers offered mental health benefits in 2002, compared to 84% four years earlier.

Employee Ignores Policy, Seeks FMLA Protection

The firing of an employee upon his return from leave under the **Family and Medical Leave Act (FMLA)** was not a violation of the law, according to the Sixth Circuit U.S. Court of Appeals, because the employee had violated company policy. In issuing the judgment, the circuit court affirmed the decision by a lower court to dismiss the case.

Viengsamon Pharakhone was a production technician with Nissan North America when he notified his immediate supervisor, Rodney Baggett, that his wife was due to give birth and that he intended to take a leave of absence to care for his wife and baby, as well as help to manage a restaurant he and his wife had purchased.

Nissan’s employee handbook, however, contained a provision prohibiting unauthorized work while on leave. Pharakhone’s supervisor informed him he could not manage the restaurant because of the published provision. The conversation was reported to Baggett’s supervisor and a human resources representative.

The day after his child was born, Pharakhone called Baggett. He requested and received four weeks of leave. During the conversation, Pharakhone gave Baggett the telephone number of the restaurant where he said he could be reached. Baggett later called Pharakhone at that number and reminded him about the provision that prohibited working while on leave.

Policy Confirmed

Pharakhone subsequently called the human resources manager who confirmed the no-work policy. In addition the manager sent a memo to Pharakhone that restated the policy and noted that failure to obey it would be “grounds for termination.”

Despite the warnings, Pharakhone worked at the restaurant throughout his four weeks of leave. Nissan discovered this information and fired him at the completion of his leave.

Pharakhone filed suit in U.S. District Court alleging a violation of the FMLA. The court dismissed the claim, concluding the company was entitled to terminate his employment because he had worked while on leave. In upholding the decision, the circuit court noted “there is no evidence that (the company) had an ulterior motive for doing so. The undisputed evidence thus compels a finding that Mr. Pharakhone was discharged because he violated. . .policy.”

The court concluded the employee violated company policy.
