CMG EMPLOYMENT NOTES

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CONTROLLING MEDICAL INSURANCE COSTS

Introduction

Medical insurance has become an expected employee benefit in the US. Other than vacation and holiday pay, no other benefit is as universal in nature. The US Government assists this process by not taxing medical insurance when provided as an employee benefit. Groups of employees not covered by traditional medical insurance include fast food and other low wage employees, temporary employees, and employees who decline coverage to avoid paying for part of the premium. Self-employed, retired and unemployed persons must either purchase insurance for themselves, go without coverage, or participate in a program like Medicare or Medicaid.

Blue Cross started in the late 1930's in Waco, Texas. Local government and school employees paid 5 cents a week to help cover hospital expenses. Medical insurance as a major employee benefit is often traced back to World War II and unionized labor. The unions were unable to raise wage rates due to wage and price controls in place during the war. To obtain greater advantage for their members, unions demanded medical insurance as an employee benefit. Since that

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Thoughts from the Editor

This is our second issue after an extended hiatus. CMG would like to thank our many readers who sent their good wishes and compliments on our Spring issue. Please continue to update your address information, as we continue to receive many newsletters back for address correction. We also had a problem with our database and lost some recent updates. If you have moved in the last 12 months, please let us know by fax, email or telephone.

Our Summer issue examines the troublesome issue of medical insurance costs. While there is certainly no magic solution, we hope this issue will provide some guidance to our readers. Your editor thanks Thomas P. Timmins, the co-founder of CMG, for his review of this article and helpful suggestions.

Our Fall issue will explore employer management of 401(k) and other employee savings plans. Savings plans present great legal risks to employers. Many employers think they are in the clear because they have contracted with a third party for management. This is not true. While third parties are an important part of the process, employers retain primary liability.

CMG has a new web address. We hope to have it up and running before this newsletter goes to publication. Our new website is:

www.claremontmanagementgroup.com

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time, unions have consistently lobbied not only for medical insurance, but also to avoid having the employee pay anything at all, at least for single coverage. It was also expected that the employer would subsidize the premium for family coverage.

In the early days, medical insurance was a modest monthly fee. Over the last 25 years, the expansion of state mandates to increase the conditions covered by group plans, Federal mandates, including COBRA continuation coverage, HIPAA, and inflation itself, have caused medical insurance premiums to skyrocket. A recent report indicated that $1,000 of the price of each General Motors' vehicle is attributable to employee medical insurance. Former employees are often shocked when they are laid off and receive their bill for COBRA coverage. Many cannot afford the premium.

Confronted with 15% to 20% increases in 2002, smaller employers have generally attempted to maintain medical coverage, but in turn will reduce staffing or freeze wages. Employees generally prefer to have their employer pay the increasing medical insurance premiums, which are tax free event, rather than to receive more salary. Some companies have simply stopped providing the benefit. Large cost increases are projected again for 2003. The increases are equal opportunity in nature, affecting government, and for-profit and non-profit businesses alike.

Is There A Workable Game Plan?

Hiring

An obvious solution for a start-up business is to hire a stable of healthy young people. A start-up business is mentioned because existing ones already have a mixture of employees on board. Some businesses have an older workforce and are confronted with the unattractive prospect of paying ever higher rates to their current insurer, and no alternative carrier willing to bid on their insurance due to their census. Many employees become more productive with experience and maturity. Senior workers may bring with them higher medical insurance rates, but also higher productivity.

There are obvious problems with limiting who is hired. For employers with at least 15 employees, the Age Discrimination in Employment Act ("ADEA") protects employees who are at least 40 years of age. There is no maximum age cap. The Americans with Disabilities Act ("ADA") protects persons who can perform the essential functions of the job, with or without accommodation. The disability definition has been limited by the US Supreme Court to emphasize that the ADA protects employees and applicants who have significant, permanent disabilities. (See prior *Employment Notes* discussing various ADA rulings.) State and local laws may provide higher levels of protection. With the current soft job market, employers are selecting from many well qualified candidates. Selecting candidates who are physically active and follow healthy living styles may not be a violation of the Civil Rights laws.

With very few exceptions, employers cannot limit the age of their new employees. However, all employers can ascertain whether prospective employees have the present ability to perform the jobs for which they are being hired. At a minimum, employers should conduct a reasonable background check of all prospective employees. Employees should also submit to a pre-placement substance abuse screening. Persons who have completed treatment for substance abuse are protected by the ADA, but not current abusers. While employers have reduced their reliance on pre-placement physicals, CMG has continued to advocate using pre-placement physicals. The ADA permits comprehensive pre-placement physicals, but does not permit such physicals after employment. Employers who are considering rejecting a prospective employee as a result of a pre-placement physical are encouraged to consult an employment attorney before making a decision as this is a complex subject.

A Healthier Workplace

Not necessarily an easy thing to accomplish, but employers can certainly strive to improve the overall health of their workplace. Banning smoking in the workplace, offering smoking cessation and weight loss programs, providing discounts for fitness clubs or providing fitness facilities, offering training on both safety and health matters are some of the ways that employers may help to create a healthier workplace. CMG has for many years advocated that employers offer Employee Assistance Programs, ("EAPs"), to help employees with various problems and to offer advice on selecting healthcare providers. EAPs are generally modest in cost, which is often recovered by reduced healthcare expenditures.

Parallel to the increase in medical insurance premiums has been the increase in Workers' Compensation costs. Employers can reduce this cost by adopting an aggressive across the board safety program. Such a program usually includes a review of the workplace and work situations by safety experts, adoption of procedures for reducing risks at work, comprehensive training programs for employees, and discipline for employees who do not follow the safety guidelines. In addition to reducing

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Workers' Compensation premiums, such a program can also reduce the use of medical insurance.

Changing the Medical Insurance Model

Often cited as the most compelling reason medical costs have shot up is that people with medical insurance, especially the low deductible or low co-pay plans, make no effort to control their own expenditures. This varied from seeing the doctor for every minor ailment to accepting prescriptions that do not permit a generic drug replacement. Many employees have avoided selecting preferred provider options ("PPOs") for fear having to select a different doctor, despite the large number of doctors included in most PPOs. Using self-employed people as an alternative example, most purchase medical insurance with large deductibles and participate in PPOs. Many such plans have a significantly greater co-pay when a plan member uses a non-PPO doctor or fills a prescription with a brand name drug. However, employers should be prepared for a tough sale when copays, deductibles and coinsurance are increased. Employees have become "spoiled" and at times have been irresponsible because of cheap and easy access to medical care. When employees go to the doctor's office or hospital with an insurance card, they have the same clout and resources as Bill Gates.

Some businesses are restricted in the changes that they can make due to union contracts or other legal impediments. Any unionized plan change must be negotiated with the union in advance. When the economy was hot, changing a unionized plan was unlikely. Now, with the economy still struggling, and medical insurance costs rising, this may be the best time for employers to approach unions with proposals to change the structure of medical insurance. A recent issue of the *Economist* cited the cost of union demands for medical insurance in the American automobile industry as leading to its probable demise.

Suggestions

All organizations should be aggressively shopping for their medical insurance. Most insurance agents are able to present multiple carriers to their clients for consideration. Getting bids from several insurance carriers and comparing them may lead to better alternatives, including cost saving measures. The insurance industry, like much of our economy, is experiencing a consolidation of carriers and a more competitive market for the insurance agents. Many agents have college degrees and some, advanced degrees. Most states require licensed agents to meet some level of continuing education. Selecting a good agent who has the organization's interest in mind and who is well-qualified to research and present plans is important. Buying the lowest cost insurance policy may not be the best approach. Employers still need to address the price of medical insurance versus the cost of medical insurance. If there are administrative problems with a lower cost insurance company, employees typically try to resolve the problems during the workday while they have access to the insurance carrier's customer service department.

The current reform movement in medical insurance costs is known as "consumer driven healthcare," although this is certainly not a new concept. One of the most common methods of reducing insurance costs is to increase deductibles and co-pays. This concept is regarded as "consumer driven" because the financial burden on employees, even if funded in some manner, underscores the true costs of healthcare. If businesses adopt higher deductible plans, they can assist employees by funding in-house medical plans that will cover a portion of the deductibles. Businesses can also assist employees in establishing cafeteria plans, (Section 125 plans), and medical savings plans ("MSAs"), which would allow employees to pay deductibles, co-pays and non-covered medical expenses from special accounts. Encouraging employees to select a high deductible medical insurance plan by funding the higher out of pocket expenses through MSAs has generally not been a successful approach. Most employees realize that they cannot save enough money on the premiums to make up for the increased out of pocket expenses.

A common strategy is to limit employees' access to medical insurance. Employees who are part time or seasonal are routinely not covered by medical insurance. A controversial issue tends to revolve around the definition of "part time." New employees, especially with smaller employers, are often not eligible for medical insurance for 60 to 90 days after employment. Any such procedures must be in compliance with the employers' medical plan and consistent with Federal and state regulations.

Any changes in medical plans must be accompanied by effective communication of the reasons for the changes, how employees can adjust to the changes, and how employees can reduce their overall medical costs. As discussed above, combining plan changes with safety and health improvement programs may emphasize the fact that the employer is not simply looking out for its own finances or well-being.

The HIPAA Privacy Rules went into effect in April 2003. Is your organization covered?

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