Health Care Reform is Changing the Mid Year Election Rules

Welcome!

Thank you for joining us. We have a great many participants in today’s call. Your phone is currently muted so that the noise level can be kept to a minimum. If you have not yet joined the audio portion of this webinar, please click on Communicate at the top of your screen, and then Join Teleconference. The dial-in information will appear.

If you have any questions, you can send them to the host using the Chat feature in the bottom right corner during the webinar.

The webinar will start momentarily.

© 2010 Keenan & Associates
Health Care Reform is Changing the Mid Year Election Rules

A Keenan Webinar for Public Agencies and Health Care Organizations

June 17, 2010

Cynthia D. Stribling, Vice President/Training Director Keenan

Gerard A. (Jerry) Healy, Employee Benefit Counsel Keenan
Introduction

- PPACA passed on March 23, 2010, and various provisions become effective between September 2010 and 2014.
- Changes in definition of eligible dependents and the new rules created by those changes will affect eligibility rules previously created under HIPAA and IRC Section 125.
Introduction

• The most asked question is the mid-year election question.
  – What MUST I allow?
  – What MAY I allow?
  – What is CONSISTENCY?
  – What CAN’T I allow?
General Rules for Employee Elections

• Only eligible employees can make an election
• Election rules preserve employees’ ability to pay for benefits on a pre-tax basis
• Elections can be affirmative, negative, evergreen or by default and will soon be automatic
• Elections apply to future coverage; not retroactive
• Elections are irrevocable for the plan year, BUT…
• There are some exceptions to the irrevocability rule
What MUST you allow?

• HIPAA Special Enrollment Rights were created in August 1996.
• Purpose was to enhance mobility between jobs
• The first major step in making health insurance coverage in the United States available to a broader group of people and more transportable for individuals who lose their eligibility to participate in an employer-sponsored plan due to a change in employment status
HIPAA Special Enrollment Rights

• Specific right to enroll in group health coverage outside of the normal enrollment period upon certain specified circumstances for:
  – Employee
  – Spouse
  – Dependents
HIPAA Special Enrollment Rights

• Specified circumstances to allow mid-year enrollment
  – Acquisition of new dependents due to:
    • Marriage
    • Birth
    • Adoption or placement for adoption
HIPAA Special Enrollment Rights

• Loss of group health coverage due to:
  – Death of the employee covered by the plan
  – Termination of employment or reduction in hours of employment
  – Divorce or legal separation
  – Dependent loses eligibility under another plan
  – An individual in an HMO no longer resides, lives, or works in the service area
  – Other employer ceases current contributions to their group health plan
  – Loss of MediCal or California Healthy Families eligibility or eligibility for California premium assistance under these programs
HIPAA Special Enrollment Rights

• Time Period for Special Enrollment
  – Loss of group health coverage
    • Employee/Dependent has at least 30 days to request coverage after the loss of other coverage
    • Once requested, coverage must be made effective not later than the 1st day of the 1st calendar month beginning after the date the enrollment request is received
  – If coverage is for birth, adoption or placement for adoption, coverage must be effective the date of the event
HIPAA Special Enrollment Rights

• **Notice Requirements**
  – On or before the date of the first enrollment opportunity
    • Separate notice
    • Part of application for coverage
    • Part of Summary Plan Description if provided on or before first enrollment opportunity
  – CHIP Notice
What MAY you allow?

• Are your employee premiums being deducted on a pre-tax basis?
• Do you have an FSA or a DCAP?
• Then you have a section 125 Cafeteria Plan!
Cafeteria Plan Permissive Election Changes

- You MAY allow some Mid-Year Election Changes with the following caveats:
  - Cafeteria plans do not generally have to allow permissive mid-year election changes
  - Cafeteria Plan Documents must describe the allowed changes
  - Election changes generally must be prospective
  - Not all types of plans permit changes for all types of events
  - Election changes must also be permitted under the cafeteria plan’s underlying plans
What MAY you allow in a Cafeteria Plan?

• 3 broad groups of allowable changes:
  – Group 1: Change in status
  – Group 2: Cost or coverage changes
  – Group 3: Other laws or court orders
Cafeteria Plan Allowable Changes
Group 1: Change in Status

- Change in legal marital status
- Change in number of dependents, which includes:
  - Commencement or termination of adoption proceeding
  - Dependent satisfies or ceases to satisfy dependent eligibility requirements
- Change in employment status
- Residence change that affects eligibility for coverage
Cafeteria Plan Allowable Changes

Group 1: Change in Status

- **Timing Considerations**
  - No prescribed time period in the regulations
  - Cafeteria Plan Document may require that any allowed election change be made within a specified period after a Change in Status event
  - Suggest that the general HIPAA 30-day period be used for ease of administration
  - No retroactive elections
  - No violation of consistency rules
Mid-Year Election Changes: Change in Status Consistency Rules

• Consistency rule
  – Change in status event must affect eligibility for coverage under an employer’s plan
  – Election change must be “on account of and correspond with” change in status event
Mid-Year Election Changes: Change in Status Consistency Rules

• **Application of Consistency Rules**
  - Specific application to election changes for loss of spouse or dependent status
  - Limitation on election change to cease or decrease coverage because of gain in eligibility under family member’s plan
Cafeteria Plan Allowable Changes
Group 2: Cost Changes

• Cost changes with automatic increases/decreases in elective contributions
  – Automatic election language must be in the written plan
  – Health FSA not eligible

• Significant cost increases
  – Cost increase must be “significant”
  – Must determine whether any alternate coverage is similar
  – Health FSA not eligible
Cafeteria Plan Allowable Changes
Group 2: Coverage Changes

• Significant coverage curtailment
  – Overall reduction in coverage provided under the plan so as to constitute reduced coverage generally

• Addition or significant improvement of benefit package option
Cafeteria Plan Allowable Changes

Group 2: Coverage Changes

• Change in coverage under other employer’s plan
• Loss of health coverage sponsored by governmental institution (e.g. California Healthy Families Program)
Cafeteria Plan Allowable Changes: Group 2 Cost and Coverage Changes

• Health FSAs--None of the Group 2 Cost or Coverage Change events apply, due to the Uniform Coverage Requirement (“insurance risk rule”)

Cafeteria Plan Allowable Changes
Group 3: Other Laws or Court Orders

- Medicare/Medicaid entitlement
- FMLA leaves
- USERRA leaves
- Court Orders/Qualified Medical Child Support Orders
- COBRA-qualifying events
What CAN’T You Allow?

• Anything that is NOT allowed by law
  – Example: Reduction of contribution to FSA after plan year has commenced

• Anything that is NOT allowed by the written Cafeteria Plan document
  – IRC Section 125 lists what could be allowed

• Anything that is NOT allowed by the underlying documents of the health plans covered by the Cafeteria Plan
  – Employer can always be more restrictive than the Section 125 rules, but never less restrictive
Mid-Year Election Change Decision Path

Mid-Year Change Requested

MUST Allow If …
- HIPAA Rules Require

CAN Allow If …
- Section 125 Regulations Allow
- Written Plan Document Allows

CAN’T Allow If…
- Not Allowed By Law
- Not Allowed By Insurance Carrier
- Not Allowed By Plan Document

NEW! Expanded Coverage for Children

• PPACA requires group health plans to make coverage available to children until age 26
  – Effective for plan years beginning on or after September 23, 2010
  – Including Plans subject to a collective bargaining agreement
  – Excluding Free Standing Dental and Vision Plans

• Mandate: Cover children to age 26 whether or not tax dependents
NEW! Expanded Coverage for Children

• Mandate: All children under age 26 must be treated the same
  – No difference in rates based on age
  – Rates may be different based on the number of children
  – Coverage for children may not vary based on age

• Preexisting condition exclusions permitted for children age 19 and above until 2014
NEW! Expanded Coverage for Children

- HHS has encouraged insurance carriers and self-funded plans to be early adopters of this change without impacting “grandfathered status.”
- Choices:
  - Continue Coverage for Adult Children already enrolled but don’t enroll uncovered Adult Children
  - Enroll Adult Children mid-year
  - Wait until next Open Enrollment
NEW! Expanded Coverage for Children

- A “child” is a son, daughter, step-child, adopted child and eligible foster child (i.e. placed with employee by authorized placement agency or court order).
  - No residency requirement
  - No student status requirement
  - No marital status requirement
  - No support requirement
- Grandfathered plans may exclude children who are eligible to enroll under another employer’s plan until plan years beginning in 2014.
NEW! Expanded Coverage for Children

• Which children can be excluded from coverage?
  – Eligible to enroll in another employer’s plan
  – Children of children (grandchildren)
  – Spouses of children
  – Child eligible to enroll in spouse’s plan?
NEW! Expanded Coverage for Children

• Transition Rules for Next Plan Year Only
  – Special Enrollment Right for Adult Children
  – Give written notice about the Adult Child opportunity to enroll
  – Notice may be given to employees on behalf of children
  – Notice must be given no later than the first day of the plan year
  – The child must be given an opportunity to enroll for at least 30 days or longer
  – The election is effective the first day of the plan year
NEW! Expanded Coverage for Children

• Transition Rules for Next Plan Year Only
  – Adult Children can have an enrollment period
    greater than 30 days but not less than 30 days
  – Elections made after the beginning of the plan year
    will be retroactive to first day of the plan year
  – Retroactive coverage will be a problem if
    sponsor/insurer fail to give timely notice
  – Notice by either insurer or sponsor satisfies the
    requirement for the other
NEW! Expanded Coverage for Children

• Transition Rules for Next Plan Year Only
  – Parents of Adult Children have a Special Enrollment Right
  – Parents should have the same 30-day opportunity to enroll
  – Parent may make change that is consistent
  – Child on COBRA may enroll in plan without the need to exhaust COBRA

• If they again become ineligible, child has full COBRA continuation
NEW! Expanded Coverage for Children

• Who has special enrollment rights under HIPAA?
  – Employee
  – Spouse
  – Tax Dependents
  – Children to age 26

• HIPAA Specified Events for Adult Children
  – Special Transition Rule for Next Plan Year
  – Loss of eligibility to enroll (coverage) in another employer’s plan
NEW! Expanded Coverage for Children: Permissive Changes

- Who are the subjects of cafeteria plan permissive mid-year election changes?
  - Employee
  - Spouse
  - Tax Dependents
  - Children to age 26

- Change in Status Events:
  - Change in number of Adult Children
  - Change in employment status of Adult Child
  - Change in residence of Adult Child
NEW! Expanded Coverage for Children: Permissive Changes

- Mid-Year Election Changes for Adult Children
  - Attainment of the limiting age of 26
  - Eligible to enroll in another employer’s plan
NEW! Expanded Coverage for Children: Permissive Changes

• Eligibility of Adult Child who lives outside of service area
  – Child excluded from coverage because of location
  – Check plan eligibility rules; speak with carrier

• Change in Residence of Adult Children
  – Move outside of plan’s service area
  – Move into plan’s service area
NEW! Mid-Year Election Issues

• Mid-Year Election Issues - Early adopters of Adult Child Mandate:
  – Increase in premiums for participants
  – Adding/continuing Adult Children mid-year
  – Health FSA – Increase in contribution consistent with event
  – Excluding children (or dropping children) eligible to enroll in another employer’s plan
  – Request to enroll Adult Child who was previously ineligible (i.e. carrier imposed cut-off dates)
  – Request to drop Adult Child who is being continued automatically
NEW! Mid-Year Election Issues

• Mid-Year Election Issues – During Next Plan Year and Later
  – Migratory nature of Adult Children will be a challenge but coverage stops at the U.S. border
  – Eligible for enrollment (as opposed to actual enrollment) in another employer’s plan
  – Parent’s who wish to drop an Adult Child mid-year must wait until open enrollment unless there is a permissible reason to make a change

• Over-the-counter drugs will not be reimbursable under a health care reimbursement plan – effective January 1, 2011.
  – Changes in cost or coverage don’t apply to health FSAs.
NEW! Children – What now?

• Send questions to us.
• Evaluate the impact of early adoption of the Adult Child mandate by speaking to health insurance carriers, stop-loss carriers and TPAs.
  – Collective Bargaining Agreements
• Early adopters must adopt retroactive plan amendments prior to December 31, 2010.
  – Mid-year election change rules apply for addition of Adult Child
  – Employees may change Health FSA elections to increase contributions
• Plan Amendments for next plan year must be adopted prior to the beginning of the first day of the plan year beginning on or after September 23, 2010 – December 31, 2010 for calendar year plans
Questions?

Disclaimer—Keenan & Associates is an insurance brokerage and consulting firm. It is not a law firm or an accounting firm. We do not give legal advice or tax advice and neither this presentation, the answers provided during the Question and Answer period, nor the documents accompanying this presentation constitutes or should be construed as legal or tax advice. You are advised to follow up with your own legal counsel and/or tax advisor to discuss how this information affects you.
Questions?

Disclaimer— Keenan & Associates is an insurance brokerage and consulting firm. It is not a law firm or an accounting firm. We do not give legal advice or tax advice and neither this presentation, the answers provided during the Question and Answer period, nor the documents accompanying this presentation constitutes or should be construed as legal or tax advice. You are advised to follow up with your own legal counsel and/or tax advisor to discuss how this information affects you.
Questions?

Disclaimer—Keenan & Associates is an insurance brokerage and consulting firm. It is not a law firm or an accounting firm. We do not give legal advice or tax advice and neither this presentation, the answers provided during the Question and Answer period, nor the documents accompanying this presentation constitutes or should be construed as legal or tax advice. You are advised to follow up with your own legal counsel and/or tax advisor to discuss how this information affects you.
Questions?

Disclaimer—Keenan & Associates is an insurance brokerage and consulting firm. It is not a law firm or an accounting firm. We do not give legal advice or tax advice and neither this presentation, the answers provided during the Question and Answer period, nor the documents accompanying this presentation constitutes or should be construed as legal or tax advice. You are advised to follow up with your own legal counsel and/or tax advisor to discuss how this information affects you.
Questions?

Disclaimer—Keenan & Associates is an insurance brokerage and consulting firm. It is not a law firm or an accounting firm. We do not give legal advice or tax advice and neither this presentation, the answers provided during the Question and Answer period, nor the documents accompanying this presentation constitutes or should be construed as legal or tax advice. You are advised to follow up with your own legal counsel and/or tax advisor to discuss how this information affects you.
Questions?

Disclaimer—Keenan & Associates is an insurance brokerage and consulting firm. It is not a law firm or an accounting firm. We do not give legal advice or tax advice and neither this presentation, the answers provided during the Question and Answer period, nor the documents accompanying this presentation constitutes or should be construed as legal or tax advice. You are advised to follow up with your own legal counsel and/or tax advisor to discuss how this information affects you.
How Will Keenan Help?

• Webinars
  – www.keenan.com/events.asp
Reform is Changing the Mid Year Election Rules
This one-hour, no-cost webinar will orient you to the changes in rules for making midyear benefit elections involving Section 125, health insurance and HIPAA portability coverage.

Resources and Recordings of Past Events

KPPC Specialty Pharmacy Update
Keenan and Solid Benefit Guidance (SBG) conducted a no-cost, one-hour webinar on the latest developments in this area of pharmacy benefit management.
04/28/10 10:00 am - 11:00 am

Health Care Reform Update
This one-hour, no-cost webinar updated you on the latest developments in Health Care Reform.
04/10 10:00 am - 11:00 am

COBRA Subsidy
This one-hour, no-cost webinar was created to prepare employers for the sweeping changes to COBRA.
03/10 10:00 am - 11:00 am

FMLA and Leave Integration
This one-hour, no-cost webinar was created to help simplify the FMLA, and focus on the most critical issues and common situations encountered in leave of absence integration and administration.
02/19/10 10:00 am - 11:00 am
How Will Keenan Help?

• Webinars
  – www.keenan.com/events.asp

• Briefings
May 2010

05/24/10 - Health Care Reform: Coverage Eligibility - Children to Age 26
Interim final regulations have been issued which will mandate that group health plans cover dependent children until they are 26.

05/23/10 - Department of Industrial Relations 2010/2011 Self-Insured Assessment Rates Projected
The DSIP has issued an anticipated increase range for 2010/2011 assessments.

05/12/10 - Health Care Reform: Retiree Reimbursement Regulations Issued
HHS has issued interim final regulations regarding the Early Retiree Claims Reimbursement Program.

05/04/10 - Update to the Retiree Reimbursement Program
The White House had provided further clarification to regarding the Retiree Reimbursement Program that will begin implementation on June, 1, 2010.

05/03/10 - Workers’ Compensation Legislative Summary
A summary of significant proposed worker’s compensation legislation that may have impacts on our clients.

April 2010

04/28/10 - Health Care Reform: Reimbursement Program for Early Retiree Claims
The Department of Health & Human Services (HHS) will establish a temporary program that provides reimbursements to approved employment-based plans for a portion of the cost of claims for early retirees.
How Will Keenan Help?

• Webinars
  – [www.keenan.com/events.asp](http://www.keenan.com/events.asp)
• Briefings
• FAQs
Thank you for your participation!