SPOUSAL CARVE-OUTS AND SURCHARGES

In order to reduce rising health care costs, some employers have adopted group health plan provisions restricting coverage of spouses. These provisions take the form of spousal carve-outs (also known as “working spouse provisions”) or spousal surcharges. They can be cost-savings tools for health plans, particularly for plans with generous plan provisions for dependent care and plans where a significant portion of the enrolled population elects family coverage.

■ What is Spousal Carve-out?
Spousal carve-out is a plan provision that restricts coverage for employees’ spouses who are eligible for other coverage, such as through the spouse’s employer. One type of spousal carve-out provides that such spouses are not eligible for coverage under the employee’s plan. Spousal carve-out shifts a large percentage of the employer’s cost away from the plan. In effect, the employer’s plan becomes a secondary payer to other plans where employees’ spouses are covered.

■ What is a Spousal Surcharge?
A spousal surcharge is an additional premium or contribution that an employee must pay for coverage for his or her spouse. The surcharge generally applies if the employee’s spouse has other coverage available, such as through his or her own employer, and chooses not to enroll in that coverage. Most spousal surcharges do not apply to spouses who are not employed or whose employers do not offer health insurance. They also are not applicable to coverage for children. The surcharge is designed to encourage spouses to use their own available health coverage and to contribute to the added cost of covering spouses who choose not to do so.

■ Legal Issues of Which You Should Be Aware
Some states have laws and regulations that limit the design of spousal carve-out and surcharge plan provisions. In many cases, these laws and regulations prohibit discrimination (e.g., sex or marital status discrimination) that can result from an employer adopting spousal carve-out or surcharge language in a plan.

For example, the Wisconsin Supreme Court ruled that a spousal carve-out provision in a fully-insured school district health plan violated the Wisconsin Fair Employment Act. The court found that the spousal carve-out provision was discriminatory against married individuals because the plan did not require single employees who may have had coverage elsewhere to also make an election. The court noted that this type of plan language had a disparate impact on married employees.

The court implied that a spousal carve-out provision would not be a violation of the law if the plan limited duplicative coverage to any employee, rather than to any married employee. The court also suggested that a spousal carve-out provision would be lawful if the employer’s plan was made secondary to any other coverage for which an employee might be eligible.

Finally, spousal carve-out and surcharge plan provisions may not always be enforceable. Both state and federal courts have struck down certain provisions based on public policy grounds.

Thus, check with your state insurance commissioner for any laws, regulations or public policy issues that may impact spousal carve-out or surcharge, and consult with your insurance broker and carrier, before amending your plan.

The Horton Group, Inc. welcomes the opportunity to help your organization examine its plan design(s) and make recommendations for improvement. The sample spousal carve-out plan provision on the reverse side may be a permissible design if allowed by applicable law.

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2 For example, Northeast Department ILGWU Health and Welfare Fund v. Teamsters Local Union No. 229 Welfare Fund, 764 F.2d 147 (3rd Cir. 1985).
Important Notice Regarding Your Medical Insurance

In order to determine whether you can be covered, or your spouse can be covered as your dependent, under the ABC plan effective 1/10/12, please provide answers to the following questions.

1. Are you also currently employed at another employer, or if you are married, is your spouse employed elsewhere? _________ Are other covered insureds employed elsewhere? _________
   If so, what is the name and telephone number of the company? ______________________________

2. If so, does your other employer, your spouse's employer, or the other covered insured's employer offer medical insurance? _________

3. Are you, your spouse, or the other covered insured currently taking the other employer's medical coverage? _________ If yes, is medical coverage single or family coverage? ______________________________

4. What is (will be) the effective date of coverage? ______________________________

5. What is the name of your, your spouse's, or the other covered insured's medical plan?
   ______________________________

6. Are you eligible for coverage under the medical plan of other covered insured's in addition to your spouse? ______________________________

If you indicated that your other employer, your spouse's employer, or other covered insured's employer offers medical insurance that would cover you and the monthly premium contribution for that medical insurance is $50.00 or less per month, you, your spouse, or the other covered insured will not be covered under the ABC Company medical plan unless you, or they, enroll in the other company's medical plan by January 1, 2012. (Single coverage is sufficient.) You, your spouse, or your other insured should contact the other employer's employee benefits department to enroll in that company's medical plan during the proper enrollment period.

This form should be completed and returned to the HR department by December 1, 2011 to ensure that you and your insureds, if applicable, will be covered by medical insurance in 2012. I certify that the answers provided on this form are true and correct.

____________________________________  ______________________________
Employee's Signature                  Date Signed

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