

- **SPOUSAL SURCHARGES AND CARVE-OUTS**

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Spousal Surcharges And Carve-Outs Reduce Health Care Costs For Some Employers

In recent months BAS has received a number of inquiries regarding coverage for spouses who are eligible for coverage elsewhere. The following report describes how companies implement "working spouse" provisions.

The following is an excerpt from Spencer's Research Reports:

Spousal surcharges and spousal carve-outs are increasingly popular methods that employers adopt to reduce their rising health care costs.

Employers have been experimenting with spousal carve-outs and spousal surcharges (also called the working spouse rule) since the 1980s. These provisions usually take one of three forms:

1. Spouses who are eligible for coverage elsewhere are ineligible for coverage under the employee's plan. This is the most aggressive approach, although it does not appear to violate discrimination laws as long as it is applied to all spouses.
2. Spouses who are eligible for coverage elsewhere are charged a higher premium under the employee's plan if they do not enroll in the other coverage.
3. Spouse coverage under the employee's plan is provided only if the spouse enrolls in coverage available elsewhere. This has the effect of making the employee's coverage secondary to the spouse's coverage.

In a 2005 e-mail survey conducted by the Society for Human Resource Management among its members, 11% said their companies levy monthly spousal surcharges, which range from \$18 to \$464 and average \$156.

Moreover, 3% said they simply refuse to cover any spouse who can be covered under another employer's plan. Reportedly, employers that introduced a spousal surcharge have seen up to 27% of the covered people drop out of the plan.

There are few court rulings on spousal carve-outs. In *Trustees of the Southern Illinois Carpenters Welfare Fund v. RFMS*, (No. 03-2876, Mar. 24, 2005), the Seventh Circuit allowed an ERISA plan which would otherwise have been primary to shift \$160,000 in medical bills to the spouse's plan.

Lisa Krebs participated in two ERISA-governed health and welfare benefit plans. She was covered by the RFMS plan as an employee of RFMS and by the Southern Carpenters Welfare Fund plan as her husband Duane's spouse and dependent. When she incurred some \$160,000 in medical expenses, Ms. Krebs submitted the medical bills to both plans.

The Carpenters plan provides that "the plan covering the patient as a participant, active employee, member, or nondependent pays benefits before a plan covering the patient as a non-active employee or dependent." Basically, the RFMS plan limited primary coverage to \$1,000 where there was spousal coverage from another plan.

In addition, some states have placed restrictions on spousal carve-outs. Wisconsin prohibits the provision in fully insured plans. Instead, spouses can have coverage at an additional cost. In 2005, the state of Alabama prohibited a spousal carve-out rule for state employees.

What follows are some employer examples of spousal carve-outs and surcharges.

Loss Of Eligibility

A plan devised by J.C. Penney in the 1970s adopted a head-of-household rule for eligibility for medical and dental coverage that allowed an employee to obtain coverage for a spouse only if the employee earned more than half of

the couple's combined income. At the time, only 12.5% of the married female employees qualified as heads of household, while 89.3% of the married males qualified.

In 1980, Diane Colby filed a class action suit against J.C. Penney, alleging that the head-of-household rule violated Title VII of the Civil Rights Act. Ms. Colby claimed that the policy discriminated against married women, reasoning that women were concentrated in the low-paying jobs and were less likely than married male employees to earn more than their spouses.

In February 1991, the Seventh Circuit U.S. Court of Appeals entered a ruling in favor of Penney (*Colby v. J.C. Penney Company, Inc. (No. 89-3572)*). The appeals court agreed with Penney that providing insurance to as many employees as possible is a legitimate business reason for the head-of-household distinction.

In 2004, California-based WellPoint Health Networks Inc. limited health benefits eligibility for the spouses of its 20,000 employees by requiring that if a working spouse is eligible for health insurance through his or her employer, then the spouse must enroll in that plan and is no longer eligible for coverage under the spouse's employer.

Because Wisconsin insurance law prohibits spousal carve-out provisions for fully insured plans. Wellpoint employees in that state have the option of having their spouses covered at an additional premium cost.

Northwest Airlines imposes no surcharge, but instead reportedly bans spouses from its health rolls if they're eligible for coverage elsewhere.

Spousal Surcharge

A few companies apply a surcharge whether or not available spouse coverage is taken. Independence Blue Cross in Pennsylvania has adopted a spousal surcharge that applies if other coverage is available to the spouse:

"Full-time associates pay an \$18.50 bi-weekly surcharge for spouses covered under Independence Blue Cross medical, prescription drug and vision benefits if the spouse has coverage available through an employer. If an associate's spouse does not have other coverage available, a Spousal Surcharge Waiver Form must be completed and returned to the Associate Service Center for approval."

Ford was the first U.S. automobile manufacturer to charge a higher premium for spouses who are covered by the Ford Medical Plan but who are eligible for non-Ford health insurance. The company currently has about 40,000 salaried employees. Beginning June 1, 2006, Ford is charging \$110 per month for the Ford Medical Plan and \$11 per month for dental benefits when a spouse could have elected coverage under non-Ford health care plan. There is no premium for spouses who are not eligible for a non-Ford health care plan.

Other companies apply the surcharge only when the spouse declines available coverage.

Caterpillar, Inc., U.S. health care plans are implementing a spousal surcharge effective Jan. 1, 2007. The spousal surcharge will apply when a spouse has access to health care coverage from his/her employer and elects to decline that coverage, using Caterpillar coverage as primary.

The spousal surcharge amount for employee plus spouse coverage will be 3.8 times the amount for employee-only coverage. For family coverage, the surcharge will be 5.0 times the amount for employee-only coverage.

For example, if the monthly premium for employee-only coverage were \$50 for a certain plan, the following premium amounts would apply to participants with spouses:

Employee Only = \$50
Employee + Spouse coverage = \$125
Employee + Spouse coverage with surcharge = \$190
Family coverage = \$175
Family coverage with surcharge = \$250

In 2005, the City of Sarasota adopted a spousal surcharge policy that reads as follows:

"If a City employee carries their spouse on his/her medical coverage and the spouse is employed with access to insurance coverage through their employer AND declines that coverage, the City employee will be charged \$50.00/month (\$11.54/week) in order to carry that spouse on City coverage as Primary."

Allows Only Secondary Coverage

Other companies provide spouse coverage for those who have other coverage available only if the spouse enrolls in that other coverage.

Bowling Green State University has this policy:

"If the BGSU's employee's spouse works full time and their employer offers a health care plan and pays at least 70% of the cost of that health care plan, the BGSU's employee's spouse must take coverage with their employer. The BGSU employee may keep their spouse on the BGSU's plan as secondary should they choose to do so.

"If the spouse's employer offers more than one plan option to choose from and the employer's cost varies with each plan, as long as one plan option is paid by the employer at least 70% then the spouse must be covered by one of the employer's plans to be eligible to be covered secondary on the BGSU plan."

Northrop Grumman requires spouse coverage if the

employer pays at least 50% of the coverage, as follows:

If you have a working spouse (or eligible domestic partner) who has medical coverage available through his or her employer, you can enroll your spouse in a Northrop Grumman medical plan option as your eligible dependent. However, Northrop Grumman requires that your spouse also enroll in his or her employer's medical plan if that employer pays 50% or more of the cost of its plan....Even if your spouse's employer offers only one medical plan option (for example, a health maintenance organization [HMO]), your spouse must enroll in that option. Claims for your spouse's medical care must first be submitted to his or her employer's plan because that plan is the primary payer...."

Dow Chemical Company requires spouse coverage if there is any employer subsidy: "If your Spouse/Domestic Partner or your Spouse of Record/Domestic Partner of Record is working full time and his or her employer offers subsidized group health coverage to its employees, you cannot cover him or her as a Dependent under the Program unless he or she has enrolled himself or herself in his or her employer group health plan. If his or her employer does not subsidize the group health coverage, he or she is not required to enroll. However, if there is an employer subsidy, no matter how large or small the subsidy is, or what the premiums are, your Spouse/Domestic Partner or Spouse of Record/Domestic Partner of Record must enroll to be eligible for coverage as a Dependent under the Program."

System Of Rewards And Charges

Some companies impose surcharges for spouses with other coverage but also provide incentives for those spouses not to enroll in a company plan.

A 2006 agreement between Verizon Northwest and the IBEW provides the following options to employees and their eligible dependents pertaining to enrollment in a company-sponsored medical plan or HMO:

1. In situations where Verizon employees elect to cover their spouse where the spouse is eligible for medical coverage from another employer, the spouse's medical plan is considered primary and the employee's plan is considered secondary. In this situation no additional employee contribution is applicable.
2. In situations where employees elect not to enroll themselves and their eligible dependents in a Verizon company-sponsored medical plan or HMO, the employee is eligible for an annual "opt out" credit of seven hundred dollars (\$700).
3. In situations where employees elect not to enroll their spouse in a Verizon company-sponsored medical plan or HMO, the employee is eligible for an annual opt out credit of three hundred fifty dollars (\$350). Other eligible dependents may continue to be enrolled in the plan. There is no additional opt out credit if other eli-

gible dependents may continue to be enrolled in the plan. There is no additional opt out credit if other eligible dependents are not enrolled.

4. In situations where employees elect to cover their spouse where the spouse is also eligible for medical coverage from his/her employer and does not enroll in that medical plan, a "spousal surcharge" shall apply. The spousal surcharge of \$40 per month shall apply to all medical plan options and is deducted from the employee's bi-weekly paycheck.

However, the spousal surcharge does not apply when the spouse's annual salary is \$25,000 or less, the spouse's annual individual premium contributions are \$900 or more under his/her employer's plan.

Should you wish to modify your Plan's coverage for "working spouses", please contact your Account Executive – Client Services.