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Top 10 Topics for Directors in 2015: Explore New Trends in Reducing Corporate Health Care Costs

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Companies are also taking other steps to manage health care costs. Following in the footsteps of Target, Home Depot and Trader Joe's, who already moved away from providing health insurance to part-time workers, Wal-Mart recently announced plans to eliminate health insurance coverage for employees who work less than 30 hours a week and to raise premiums for its other employees.[iv] And last year, UPS eliminated health care coverage for employee spouses who have other available coverage.

An increasing number of employers are pushing employees into high-deductible plans that require the employee to pay more out of pocket before coverage kicks in. According to a report by PwC, enrollment in high-deductible plans has tripled since 2009 and 44 percent of employers who haven't made the switch say they are considering it.[v] Other actions that companies are taking include increasing the share employees and their dependents pay in premium contributions, implementing higher medical and pharmacy deductibles, eliminating retiree health benefits, providing wellness programs and reviewing the company's relationship with its providers.

Managing costs will become even more significant for companies as 2018 approaches and the excise tax underObamacare kicks in for high-cost "Cadillac" plans. Beginning in 2018, certain high-cost group health plans, both insured and self-insured, will be subject to an excise tax of 40 percent on the amount by which the health plan's annual cost for coverage, including both employer and employee contributions, exceeds $10,200 for single-only coverage and $27,500 for family coverage. Based on a recent survey by Towers Watson, three out of four companies responding said that they are either "somewhat" or "very" concerned that they will be subject to the excise tax in 2018 if they don't make adjustments to their current benefit strategy.[vi] Forty-three percent of companies surveyed said that avoiding this tax is the top priority for their health care strategy in 2015.[vii] As such, companies need to review their health care plans in the coming years to control their costs and avoid the excise tax.

- *Encourage a healthy workforce*. Having a healthy workforce can give a company a competitive advantage. Employee wellness programs have become a popular choice for companies attempting to reduce health care costs and improve the health of their workforce. These programs are designed to encourage workers to be more healthy, often by using financial incentives to motivate employees to participate, or by using penalties, such as an increase in premiums and deductibles, for certain unhealthy behaviors, such as smoking, or having high cholesterol or a high body mass index. More than half of all organizations with more than 50 employees have a wellness program in place.[viii] And according to a recent survey, 36 percent of companies with more than 200 employees use financial incentives tied to health objectives, and 51 percent offer incentives for employees to complete health risk assessments aimed at identifying health issues.[ix]

How much money a wellness program will actually save a company is debatable, but a wellness program does allow a company to shift higher costs to those employees who have unhealthy behaviors, or who don't participate in the program or fail to meet certain benchmarks. Some view this as a form of discrimination. But this approach is acceptable under the Affordable Care Act, which allows employers to vary total premium costs by as much as 30 percent in connection with a wellness program, and to charge tobacco users up to 50 percent more in premiums.[x]

- *Assess strategy and costs relating to play or pay*. Under the Affordable Care Act, employers with 100 or more full-time employees will have to pay a penalty if they do not offer health insurance to at least 70 percent of their workforce beginning on January 1, 2015, and to at least 95 percent of their workforce beginning in 2016. This employer mandate, often referred to as the "play or pay" rule, kicks in on January 1, 2016 for employers with 50 to 99 full-time employees. Health benefits are often viewed as an important part of an employee's compensation package, so most companies that currently offer health benefits to employees will likely continue to do so for the foreseeable future. But it will be important for the board of directors to know the company's options and responsibilities under the statute to best determine whether the company should take the "play" or "pay" approach in 2015 and beyond. In making this determination, the board should consider, among other things, (i) the costs of the company's health care programs and what steps the company can take to manage these costs, (ii) the amount of any penalties the company would have to pay under the statute if it eliminated health care coverage for its employees and (iii) the actions taken with respect to health care by other companies in the industry. If the company does elect to "pay" instead of "play," it will need to carefully consider how to explain its decision to employees and inform them of their options.

This post was excerpted from our annual Top 10 Topics for Directors in 2015 alert. To read the full alert, please click here.

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[i] Elizabeth Renter, "Health Care Costs Expected to Rise in 2015: Are you Ready?," U.S. *News and World Report* (Oct. 21, 2014).

[ii] Bruce Jaspen, "Private Exchange Beats Health Inflation, Shows Staying Power," *Forbes* (Sept. 18, 2014).

[iii] *Id.*

[iv] "Shelly Banjo, Anna Wilde Mathews and Theo Francis, "Wal-Mart to End Health Insurance for Some Part-Time Employees," *The Wall Street Journal* (Oct. 7, 2014).

[v] Elizabeth Renter, *supra*.

[vi] Dan Mangan, "Cadillac 'whack': Employers Prep for Obamacare's Looming Levy," CNBC (Aug. 20, 2014).

[vii] *Id.*

[viii] Austin Frakt and Aaron E. Carroll, "Do Workplace Wellness Programs Work? Usually Not" *The New York Times* (Sept. 11, 2014).

[ix] *Id. See also*, The Kaiser Family Foundation and Health Research & Educational Trust, Employer Health Benefits, 2014 Summary of Findings, at p. 5-6.

[x] Austin Frakt and Aaron E. Carroll, *supra*.

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