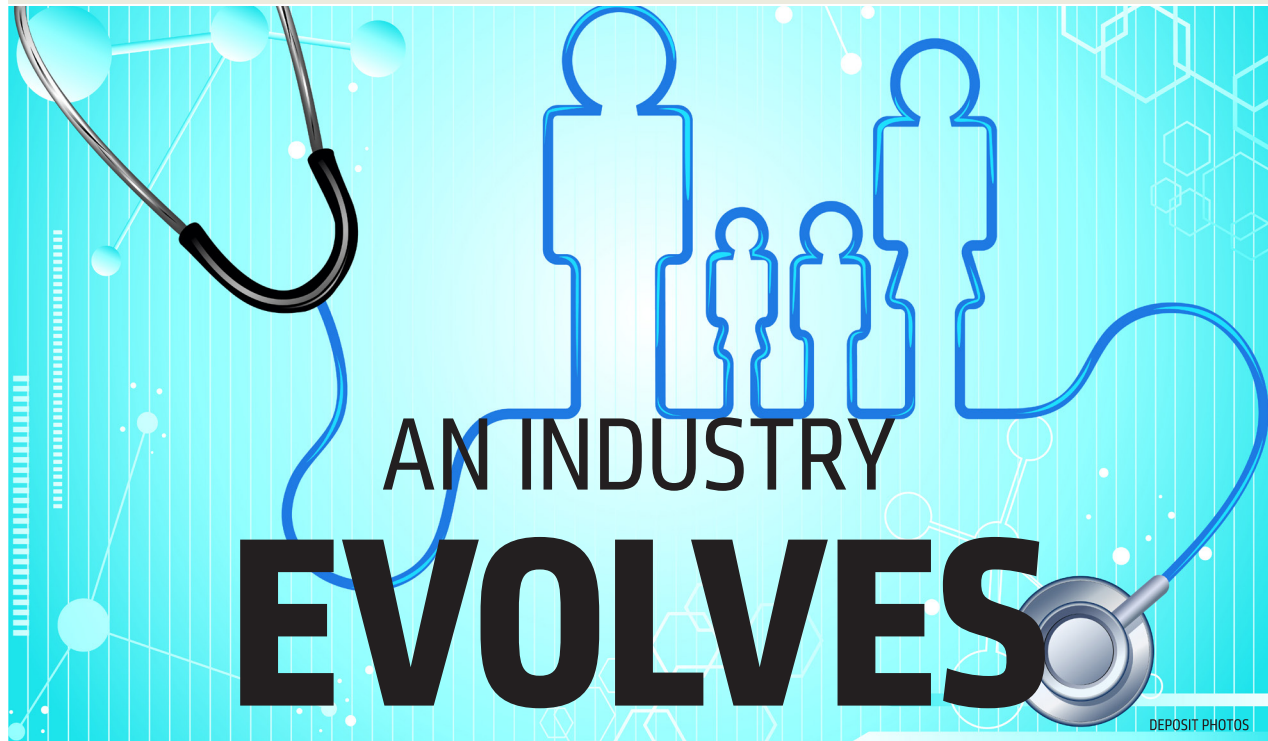


"Health care consumers are increasingly checking deeper and comparing networks..." — Scott Peloquin, CEO of BenefEx



Health care economics and other issues spur changes in employee benefits

BY MARTIN DAKS

Even before the COVID-19 pandemic ripped across the globe, economic and other issues were driving changes in businesses' approach to employee health care and other benefits, according to some experts. From stepped-up analytical models to new ways of contracting with providers, the benefits landscape is undergoing seismic shifts.

One ongoing development is a resistance to 'retail' pricing," according to Scott Peloquin, CEO of BenefEx, an employee benefit consulting firm. "Health care consumers are increasingly checking deeper and comparing networks, and are often choosing ones that offer good discounts," he said. "Consumers are paying more attention as an increasing number are paying a percentage of claims costs instead of a fixed-dollar-based copay."

To accommodate this new model, more insurance companies are turning to reference-based pricing payments, he added. "Insurers are engaging third-party independent analysts to check Medicare pricing and are then offering providers a fixed percentage above that price. It generally means lower prices for the consumer, a higher-than Medicare payment to the provider and reduced administrative costs for the insurance company."

Large employers originally embraced this model, said Peloquin, "but as technology made it easier to roll out to low-volume employers, insurers have started to offer the model to smaller businesses, too."

Another change is a resistance to "paying claims based on other people's experience," according to Peloquin. "In New Jersey, by law, many large health insurers base their premiums on 'community rating,' which means that the rates are the same for everyone who purchases the particular individual plan and are not based upon the actual or expected claims history of any particular person. In addition, carriers may not consider the health status of any specific person purchasing an individual plan; so, for instance, there is no special rate for smokers versus non-smokers. Also, carriers do not rate based on gender or where someone lives in New Jersey."

A FEDERAL ALTERNATIVE

But under the federal Employee Retirement Income Security Act of 1974, employers can establish a health care plan with premiums that are based on a company-specific medical underwriting analysis, he added. Although individuals with pre-existing conditions cannot be excluded and are not charged a higher rate individually, their risk factors can be considered in establishing the company's overall premium.

"We advised a four-employee consulting firm that was paying an average of \$3,975 per month in total health care premiums in 2018, under the community rating model," Peloquin said. "Then their renewal quote for 2019 was \$4,456. We suggested considering an ERISA plan, and the premium was only about \$2,900 a month. When they were re-evaluated in 2020, the company's actual claims were lower than actuarially estimated, so it got a refund of about \$9,000, which was a pleasant surprise."

The COVID-19 economic downturn is also prompting many companies to adjust their employee retirement plans, according to

Charles Rosenberg, a vice president at Intac Actuarial Services Inc. "The government has made it easier for businesses to adopt retirement plans, but at the same time, the slow economy has driven some companies to terminate or modify their 401k Safe Harbor plans mid-year," he said, referring to a kind of regulation-light plan that commits an employer to guarantee a certain contribution to every employee. "Our own company modified our plan. It's a good idea, however, to speak with a benefits consultant or third-party administrator before making any changes," to avoid incurring penalties or otherwise running afoul of retirement plan rules.



Peloquin

Rob Saphow, president of the New Jersey Association of Health Underwriters and owner of Broker on Demand LLC noted that, "Alternative health insurance models— like Professional Employer Organizations — are gaining traction, along with hybrid self-funding arrangements."

A PEO basically becomes a "co-employer" with multiple small businesses and may be able to bargain for reduced health care costs by aggregating the employees under one umbrella organization. Under one alternative, a hybrid self-funding model, an employer commits to funding up to a certain level of health care costs, and purchases insurance to cover expenses above the specified amount.

"Another model that's gaining popularity in New Jersey is a Multiple Employer Welfare Arrangement, or MEWA," Saphow said. "That involves a number of employers banding together to achieve economies of scale."

In October 2018, BioNJ announced it agreed to partner with the Affiliated Physicians and Employers Master Trust's existing MEWA. "The new partnership will enable BioNJ to provide high-quality, affordable group health benefits to its member companies and their employees," according to the announcement. In June 2019, the APEMT plan was renamed as the Members Health Plan NJ and, according to BioNJ, "currently services more than 3,800 member companies in NJ from existing associations, currently covering more than 37,000 participants."

THE VIRTUAL WORLD

Colleen Coyle, employee benefits team lead at insurance brokerage and advisory services company Brown & Brown Metro observed that "We are living in a new virtual world as a result of the Covid-19 pandemic."



DEPOSIT PHOTOS

In April, to accommodate today's socially distanced workplace, Brown & Brown worked with online benefit portal and employee discount marketplace BenefitHub to establish the Brown & Brown Relief Center. "It's a platform that provides our clients' employees access to thousands of consumer products and discounts," Coyle said. "Through the Relief Center website, companies and their current or former employees can access products and services at a discount. We have provided access to anyone interested or in need of services, at <https://bbinsrelief.benefitHub.com>."

Beyond health care, many Brown & Brown Metro clients are trying to offer a variety of benefits to meet benefit needs of their multi-generational staff, according to Brown & Brown Metro President Lou Della Penna Jr. He noted that Baby Boomers often look for certain benefits, but "Gen Xers are interested in salary, advancement and matching 401k benefits, and they are more technology focused, independent and desire work life balance," Della Penna said. "Generation Y appears to be interested in work-life balance, wellness programs and lots of benefit options. Generation Z individuals are interested in mentorship and guidance."

One Brown & Brown client, a Monmouth County software company, "has expanded their benefits portfolio every year to meet the needs of their multigenerational employee population," he explained. "This employer's HR team actually negotiated 10 percent off of the monthly rent for staff electing to live in a nearby luxury apartments. The deal included application fee waivers and arrangements for reduced security deposits."

To meet the needs of its own workforce, Brown & Brown recently began offering student loan repayment assistance to employees. "Brown & Brown has partnered with Tuition.io, the leading student loan management platform, to administer the program," he said. "Through this partnership, we have achieved our goal to provide a meaningful and equitable contribution to as many teammates as possible."



Flanagan

Will remote-work requirements spark lawsuits?

The COVID-19 pandemic has driven lawyers, like many businesses, to operate remotely. But remote-work arrangements may raise a host of legal issues, according to David Koller, a Philadelphia employment attorney with a sizeable number of New Jersey clients,

"Companies will have to revisit, explore and revise their policies," he said. "Issues may arise under 'under the ADA [Americans with Disabilities Act], which requires employers to make 'reasonable accommodations' for employees who require special equipment or other accommodations to successfully get their job done."

Many workplaces have already invested in specialized seating, desks or cubicles or other equipment for employees that fall under the ADA protections, but it may be a whole new ballgame when they're working from home. "The law requires interactive discussions, where the employer and employee engage and ... hopefully determine reasonable accommodations."

One client, a 30-year-old woman from Pennsylvania, suffered a stroke and is partially paralyzed, noted Koller. "She works for a large employer, who previously made reasonable accommodations for her in the business' office," he said. "But when the pandemic struck, her employer denied a request to let her work from home on a long-term basis — they claimed she has to be in the office to perform her job. We've filed an EEOC [Equal Employment Opportunity Commission] case on her behalf."

Even though "Technology makes it easier to work from home, employers may have to offer 'reasonable accommodations' for employees who are now working from home on a long-term basis, according to Pat Flanagan, a partner with the law firm Florio Perrucci Steinhardt & Cappelli, LLC. "From what I've been reading, employees who are under the protection of the Americans with Disabilities Act may begin raising issues," he said. "But there's another issue: what happens when employers open up and bring employees back to the workplace? Individuals with underlying medical conditions — or with vulnerable household members — may request work from home arrangements until a cure is found. It's conceivable that could fall under the ADA."

Koller warned that if employees who have been "successfully working from home are then terminated for resisting a back-to-office request, we'd have to review the facts and see if a claim for wrongful termination should be filed."

Recently enacted regulations, like the federal Families First Coronavirus Response Act (FFCRA) may further spur litigation, especially for smaller businesses, he added. The FFCRA, which is effective through Dec. 31, requires certain employers to provide employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19.

"No one knows yet how the law will evolve to handle this new situation," said Koller. "One thing's for sure though — it's going to be a busy time for attorneys."