

Benefits Insights

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Spousal Carve-outs and Surcharges

To help control health care costs, some employers have adopted group health plan provisions restricting coverage of spouses or requiring additional premiums for spousal coverage. 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 provisions for dependent coverage and plans where a significant portion of the enrolled population elects family coverage.

The Affordable Care Act (ACA) has also contributed to the popularity of spousal carve-outs. The ACA provides spouses who are ineligible for coverage under an employer’s group plan with a way to secure their own health insurance, through the health insurance Exchanges and market reforms. Also, the ACA’s employer mandate provision requires applicable large employers to provide health coverage to their full-time employees and dependent children or risk a penalty, but the coverage requirements do not apply to spouses. Further, because spousal coverage is expensive, implementing a spousal carve-out has been identified as a way to help limit an employer’s exposure to the ACA’s tax on high-cost health coverage, which is scheduled to take effect in 2022.

What is a spousal carve-out?

Spousal carve-out is a plan provision that restricts coverage for employees’ spouses. One type of spousal carve-out provides that working spouses with available health coverage through their own employers are ineligible for coverage under the employee’s plan. This saves the employer the premium contributions that it would have otherwise made on behalf of the employee’s spouse. Also, some employers have dropped spousal coverage altogether, regardless of whether spouses are eligible for group coverage elsewhere.

Another type of spousal carve-out provides that working spouses must enroll in coverage offered by their own employers to be eligible for coverage under the employee’s 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 an alternative source of coverage available 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.

Potential legal issues

In general, federal law does not prohibit group health plans from incorporating a spousal carve-out or surcharge. However, depending on how it is structured, this type of plan design may raise discrimination concerns (for example, sex or marital status discrimination). To help avoid potential discrimination issues, spousal carve-outs and surcharges should be applied uniformly to all plan participants.



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In addition, many states have laws that prohibit discrimination based on marital status or sex. However, the Employee Retirement Income Security Act (ERISA) may preempt these laws to the extent they would apply to an employer's group health plan. State insurance laws may also include mandates for fully insured plans that impact plan eligibility rules for spouses.

Before implementing a spousal carve-out or surcharge, check with your state insurance commissioner for any laws, regulations or coverage requirements that may impact this design, and consult with your insurance broker and carrier before amending your plan.

BBP Admin welcomes the opportunity to help your organization examine its plan designs and make recommendations for improvement.



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