



# Benefit Insights

## ***Legal Service Plans***

This past spring, many Americans were disturbed by the events surrounding the Terry Schiavo drama. Regardless of what side of this issue they were on, Americans were made aware of the need for a living will. A family and a nation were torn apart over what was right for Terry. Her family and courts were asked to determine what medical care she would have wanted. As we all know because she never left a clear indication there were differences of opinions as to what should be done.

On a personal note the Lambert family faced a similar crossroad with their mother's treatment. The difference is they were comforted by knowing what her wishes were because they had the benefit of a living will. While her passing was sad and painful, they did not have to make the same tough decisions because her wishes were very well documented.

During the Schiavo debate, how many of your employees

thought that they should have a living will for themselves and for their loved ones? How many actually did something about it? Offering a voluntary prepaid legal services plan may help stimulate our employees into action.

According to a survey conducted by the American Prepaid Legal Services Institute (API), 57% of people represented in the survey group who voluntarily enrolled in a legal service plan did so through their employer.

According to the survey data, the majority of legal plan members are enrolled in legal "Access" plans which are designed to provide easy access to a lawyer for legal advice and other non-complex preventive services at low cost. An access plan provides an enrolled member with specified basic legal services at no additional cost, plus other services at special negotiated legal fee rates. For these additional services the member-client pays the lawyer directly.

## ***Legal Plan Members' Usage for Estate Planning Documents Increases***

A recent press release from Hyatt Legal Plans, reported that plan usage for preparation of wills, living wills, trusts and powers of attorney has increased 139 percent from January 2000 to December 2004 among Hyatt Legal Plans' voluntary enrollment legal plan members.

During this period, preparation of estate planning documents accounted for more than half of all voluntary group legal plan services. Attorney services for preparation of powers of attorney were the most frequently used, comprising 36 percent of services for documents prepared in the estate planning category. Services for preparation of wills were second at 31 percent, followed by living wills at 24 percent and trusts at 9 percent.

"According to a recent LIMRA study, most Americans do not have a will, living will or durable power of attorney for financial affairs," said Bill Brooks, CEO of Hyatt Legal Plans. "A legal plan removes the fear of high attorney fees that may be keeping some people from obtaining these essential documents. Our plan members recognize the value of their legal plan and are taking advantage of it to prepare for their future."

*Regardless of your company's size there are prepaid service companies available to your business. If you are interested in exploring this further, please contact Paul Lambert or Sean Carney of **Lambert & Carney Benefits Group, LLC** at: 800-357-1840.*



We are pleased to present to you Lambert & Carney's Employee Benefits newsletter. This newsletter is designed to give you timely and important information regarding employee benefits, government regulations, new products, and other areas of interest to employers and their employees. We value you, your employees, and your business and continue to strive to provide you with the very best products and service available.

Please contact Paul Lambert or Sean Carney at (800) 357-1840 if you have any questions.

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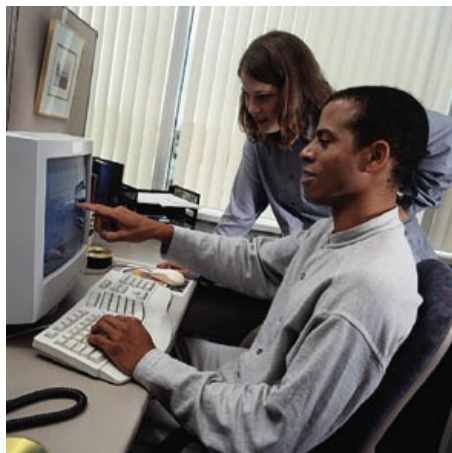
## Correct Delivery of Notices Key Element of Proper COBRA Administration

COBRA continuation of coverage law requires that certain notices be furnished to employees and other qualified beneficiaries by the employer or plan administrator. Because the penalties for noncompliance with the COBRA notice requirements can be costly, following the requirements for furnishing—that is, delivering—the necessary notices is an important part of COBRA administration.

COBRA notices that the employer or plan administrator must furnish include—

- The initial (or general) notice containing information about COBRA rights and responsibilities, which must be provided to the employee and spouse within 90 days of when the employee first becomes covered under the plan.
- The election notice, which must be provided to qualified beneficiaries within 14 days of the administrator being notified of a COBRA-qualifying event.
- The notice of unavailability of COBRA coverage, provided when the administrator receives notice of a qualifying event from an individual who is not eligible for continuation coverage.
- The notice of termination of COBRA coverage, required when COBRA coverage terminates before the maximum COBRA continuation period.

In providing COBRA notices, the employer or administrator should “use measures reasonably calculated to ensure actual receipt” by the employee, spouse, or other qualified beneficiary. COBRA regulations recognize that notices may be furnished through a number of different methods, including mailing, hand-delivery, and electronic transmission. According to these regulations, a notice is considered furnished as of the date of mailing, if mailed by first class mail, certified mail,



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or express mail; as of the date of electronic transmission, if the notice is transmitted electronically; or upon receipt by the individual to whom a notice is directed, if the notice is hand-delivered.

In the case of the initial COBRA notice, which must be provided to both the employee and covered spouse, the regulations specify that a single notice may be provided addressed to both the employee and spouse if, on the basis of the most recent information available to the employer, the employee and spouse reside at the same address. There is no separate notice requirement for dependent children who live with the employee or spouse who receives the notice.

Though the regulations permit the initial notice requirement to be satisfied by including COBRA information in a summary plan description (SPD), since spouses also are entitled to this notice, plans that include the COBRA notice in an SPD and then hand-deliver the SPD to the employee at work will not be considered to have fulfilled the initial notice requirement concerning the spouse. Similarly, delivery of a required notice to an employee’s work email would not meet the requirements when notice also is required for a spouse.

Though the regulations offer several options for delivery of COBRA notices to the required parties, in practice, many employers have opted for delivery by first class mail. First class mail has the advantage of being a reliable method for delivery of items and an accepted business practice. If an employee or other intended recipient raised an improper notice challenge, the employer or administrator would need to prove that it furnished the notice through an acceptable delivery method, not that the employee actually received the notice. Thus, establishing processes for mailing notices and keeping records that such processes were followed are important. For example, obtaining a certificate of mailing (which provides evidence that an item has been presented to the Postal Service for mailing) would establish that the notice was, in fact, mailed. Note that a certificate of mailing differs from certified mail with a return receipt—the latter provides evidence of actual receipt by the addressee, which is not required to show compliance with COBRA notice requirements.

Ensuring correct delivery of the necessary notices, and establishing procedures that show COBRA notices are being furnished as required by law, can help avoid costly compliance challenges.

*If you need help with any COBRA related administration call Lambert & Carney Benefits Group, LLC. We can remove that burden.*

## ***HSAs Add Flexibility to Your Health Care Dollars***

Health savings accounts (HSAs) provide a tax-advantaged way to save for and pay for your and your family's health care expenses. With an HSA, you set funds aside to pay for health care expenses that are not covered by your health care plan. You receive a tax deduction for amounts you contribute to the HSA, and amounts you withdraw to pay for qualified health care expenses are also free of tax. HSA account funds are invested, giving the HSA growth potential beyond the amount of the contributions you make. Amounts remaining in an HSA at the end of the year carry forward for use in subsequent years.

In order to be eligible to open an HSA, you need to be covered by a high deductible health plan (HDHP) and, generally, have no other health plan. The HDHP can be the coverage you have through your employer, or a policy that you've obtained on your own. An HDHP is defined as a plan with a minimum deductible of \$1,000 for individual coverage/\$2,000 for family coverage, and annual out-of-pocket maximums of \$5,100 individual/\$10,200 family (these amounts are for 2005 and are indexed annually for inflation). The plan can include coverage for preventive care that is not subject to the deductible, and still qualify as an HDHP.

The most you can contribute to an HSA in any given year is based on your health plan's deductible. For example, if you have family coverage under your health plan and the annual deductible is \$4,000 for the family, the most you could contribute to an HSA is \$4,000 annually. However, if your health plan has a very high deductible, your contribution is limited to the maximum set by law, which for 2005 is \$2,650 for individual coverage and \$5,250 for family coverage (these amounts also are adjusted annually for inflation). Unlike many other tax breaks, the HSA contribution maximum does not phase out for individuals at higher income levels.

Because the premium cost for an HDHP will be less than that for a plan with a lower deductible, you can use the amount you save on your health plan premium to contribute to an

HSA. Then, you can make additional contributions, if desired, up to the maximum amounts described above. Individuals who are age 55 or older are permitted to make extra "catch-up" contributions (until they enroll in Medicare).

What can you use your HSA for? HSAs were created to pay for health care expenses, and so long as a withdrawal is used for a medical care expense, it will be free of tax. "Medical care" is defined by Sec. 213 of the IRS Tax Code, and includes the types of health care services and supplies that you would expect: physician and hospital services, lab tests, prescription drugs, dental and vision expenses, and the like. A handy guideline as to what is considered a medical care expense is IRS Publication 502. An HSA cannot be used to pay the premium for the HDHP (unless you are on COBRA, or are receiving unemployment benefits).

The philosophy behind HSAs urges individuals to take more charge of, and to be more responsible for, how their health care dollars are spent. For example, instead of paying hefty premiums for extensive health care coverage you may not want or need, you buy a lower cost health plan with a higher deductible. This HDHP still will protect you from the cost of catastrophic health care expenses. However, because it does not provide first-dollar coverage for most care, you face decisions similar to those you make in other purchasing situations: Do I really need these services? If so, am I getting value and quality for the price I pay? In other words, for non-emergency situations, the HSA encourages you to shop around before spending your health care dollars.

If you think an HSA might be right for your situation, your insurance agent or broker can help you get started in setting one up. Many insurance companies sell HSAs that are packaged with an HDHP, and also provide the investment management of the HSA funds. However, any HDHP can be used, so long as it meets the qualification requirements set by law. HSAs also may be established through banks and other financial institutions.

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considered to offer adequate investment choice, compared with the research-based indexes. Only among plans that offered 14 or more investment choices did virtually all meet the researchers' standard for adequacy.

What's the loss to plan participants, as a consequence of having inadequate investment choice available in their 401(k) plans? According to the study, over a 20-year period, "the cost of not offering sufficient investment choices makes a difference in terminal wealth of over 300%. Since, for more than one half of the plan participants, a 401(k) plan represents the participant's sole financial asset, the consequences are serious."

What meaning does research such as this have for 401(k) plan sponsors? Though plans in the study with a

larger number of investment choices were more likely to have met the researchers' criteria for adequacy, the number of investment choices alone is not determinative. In fact, too great a number of investment choices can confuse and not necessarily help participants: many participants simply allocate their account among all available choices, which can be counterproductive. What this research does signal is that plan sponsors would be well-advised to take steps to clearly understand the scope or range of investments in the mutual funds they choose to make part of their 401(k) plan's investment menu. Such steps will ensure that their particular employee population can select from appropriate investment options that will help them build the optimal retirement nest egg.

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A majority of 401(k) plans offer participants inadequate investment choice; potentially depriving participants of optimal asset accumulation over a lifetime of plan participation, according to a new study.

The analysis, conducted by finance professors at New York University and Fordham University, used data from Moody's Investor Services on a group of 680 401(k) plans. Among these plans, the most prevalent investment offerings were domestic equity funds (offered by 97.4% of the plans), GIC/money market accounts (86.8%), domestic mixed stock/bond funds (80.6%), international stock or bond funds (75.1%), and domestic bond funds (71.5%). Also, 48 of the plans offered some type of "specialized fund," with the most common of these a science/technology fund (other specialized fund offerings included those invested principally in telecommunications, health care, natural resources, utilities, e-commerce, and financial services).

In a recent Lambert & Carney Benefits Group, LLC retirement survey 23.4% of companies offered 13 to 16 investment choices, 12.9% offered 17 to 20 choices and 19.9% offered

21 or more investment options.

To determine what would be an adequate range of investment offerings, the study used an approach drawn from the field of financial economics, rather than classifications developed by the financial services industry. From this approach, the authors came up with eight "research-based" indexes that included large-cap growth, small- and medium-cap growth, large-cap value, small- and medium-cap value, government/corporate/mortgage-backed debt, international equity, non-U.S. world bond, and high-yield debt. If the investment alternatives offered by a plan "spanned the space" offered by these research-based indexes, the plan was considered to offer adequate investment choice.

Using this standard, of the 401(k) plans examined, only 38% were considered to offer adequate investment choice. As stated by the authors, "This means that, for 62% of the plans, the plan participants would be better off with additional investment choices." Among plans that offered seven or more funds, 54% were



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