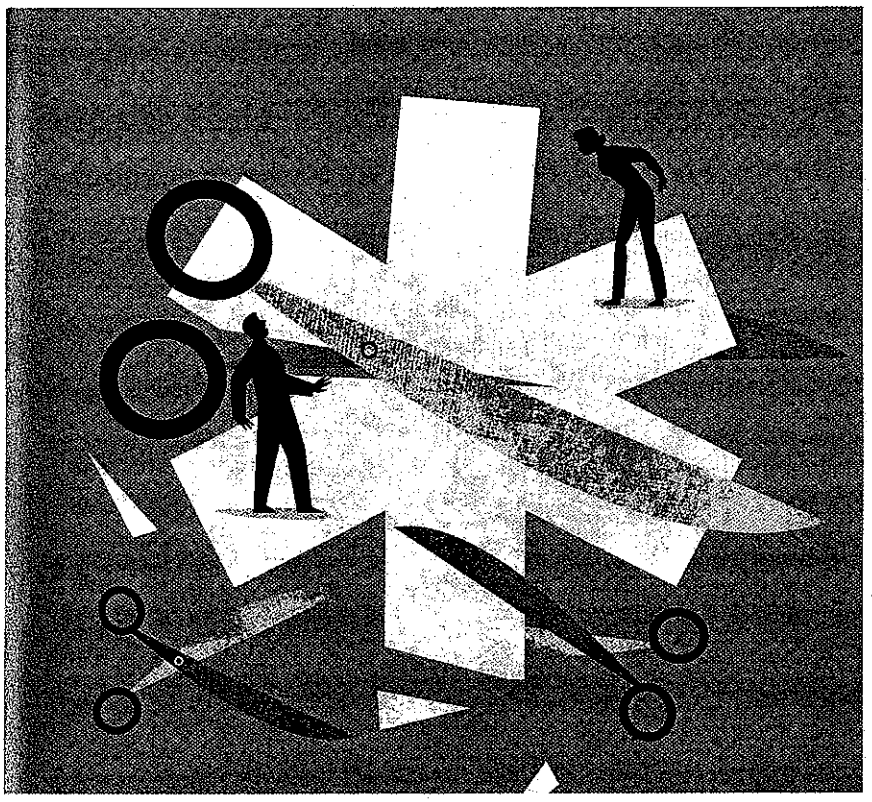
Spousal Exclusions on the Rise

To rein in rising health care costs, employers tell employees' working spouses to go elsewhere for insurance.



By David Tobenkin

Pressed between a hammer of rising health care costs and an anvil of mandatory health insurance rules, employers are renewing interest in adding "working spouse" provisions to their health care plans. These provisions limit access to a plan when an employee's spouse works for another employer that offers health insurance.

But before adopting such policies, employers should examine whether the savings will be sufficient to offset the administrative burdens and possible adverse employee reactions. Employers also must pay attention to the nuances of spousal exclusions, as these details can determine whether they are effective—and legal.

Gregg Bott, SPHR, an attorney and consultant at Associated Financial Group, a Kimberly, Wis.-based insurance agency and human resources consulting company, says working-spouse provisions—also termed "spousal carve-out" or "spousal exclusion" policies—generally take one of three forms:

- A requirement that a working spouse pay a premium surcharge for coverage through the employer's plan if the spouse's employer offers health insurance.
- A requirement that the spouse purchase health insurance through the spouse's employer's plan before also purchasing it through the employer's plan.
- An outright exclusion from coverage under the employer's plan if similar coverage is available from the spouse's employer.

The third option is not common: Only 3 percent of companies do not cover spouses at all if they are eligible to be covered by their own employers, according to an online survey of HR professionals conducted by the Society for Human Resource Management in 2005.

Many employers are receptive to working-spouse provisions because spouses can still obtain health insurance under their own employers' plans.

Members of the National Business Group on Health, a consortium of large employers, view the policies favorably. "We recommend that employers [use these provisions] as a way to control costs," says Helen Darling, president and chief executive officer of the group.

Trending Upward

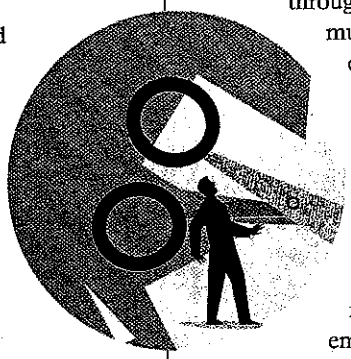
A Towers Watson survey report, *2011 Employer Survey on Purchasing Value in Health Care*, found that in 2010, 19 percent of nearly 600 employers surveyed used spousal surcharges or waivers when other coverage was available for a spouse. Three percent of employers said

The author is an attorney and freelance writer in Chevy Chase, Md.

they intended to implement such provisions in 2011, and 13 percent intended to implement them in 2012 or later.

Health care reform has likely spurred adoption of these provisions. "Health care reform, by placing more focus and attention on medical plans, has caused employers to explore their options more than they did in the past to determine what they can do to save money," Bott says.

"More companies are putting these provisions in," adds Tom Billet, a New York-based senior consultant for benefits with Towers Watson.



Will working-spouse provisions result in significant savings? In some cases, there is no question they have.

At the same time, Billet and others say surcharges or plan exclusions are only one way—and not the most common way—of addressing the costs of spousal coverage. Instead, more plans simply charge more to cover spouses than they charge to cover employees.

"Many companies are becoming sophisticated in applying actuarial data to reflect the higher per capita costs for spouses compared to employees," notes Bernard Knobbe, senior director of global benefits for Yahoo. Spouses may cost 10 percent more on average than employees, he says.

Savings

Are working-spouse provisions likely to result in significant savings? In some cases, there is no question they have.

Indianapolis-based Ivy Tech Community College will save an estimated $1.3 million in 2011 on $27 million in health and dental care costs after instituting a working-spouse policy at the beginning of the year, says Susan Farren, executive director of employee benefits. Ivy Tech sponsors a self-insured plan with 3,411 benefits-eligible employees. "We're growing quickly with staff and faculty and we have limited state funds for benefits, so we needed to look at cost-containment mechanisms," Farren says.

Under Ivy Tech's policy, employees' spouses who have access to coverage through their own employers must obtain primary coverage though their employers' plans before enrolling in the Ivy Tech plan for secondary coverage to supplement the primary plan. If spouses elect not to enroll in their employers' plans, they may not have primary coverage through Ivy Tech.

The cost benefits from working-spouse policies can vary by the approach taken. Complete exclusion obviously results in the highest savings, Bott says.

Efforts to interview employers with complete exclusions in place were unsuccessful.

Requiring a spouse to enroll in his or her own plan should limit costs by causing the employer's plan to become secondary coverage for spouses. However, because deductibles and co-payments will be required by the plan providing secondary coverage before it pays full benefits, secondary coverage is usually not a good deal for spouses, Darling notes. Darling and others say, however, that it still may make sense for a couple if the employer's plan is more generous than the spouse's plan or if it covers the cost of a spouse's particular condition.

The size of the spousal surcharge helps determine whether the surcharge is effective—both by increasing premium revenue and by giving spouses an incentive to use their own employers' plans. Towers Watson's Billet says that to influence employee behavior, such charges must be significant, with various studies indicating that $600 to $1,200 in annual costs on top of premiums will influence employee behavior.

In 2012, Xerox Corp. plans to institute a supplemental working-spouse surcharge of $1,000 for spouses and domestic partners of employees who can obtain coverage from another employer but opt into the Xerox plan. "This is one of our cost-savings actions for 2012 specifically aimed at reducing the number of adult dependents covered under our plan," says Peter Dowd, vice president of compensation, benefits and global mobility at Xerox.

Dowd estimates that the surcharge will save about 2 percent of the company's health care costs. Given Xerox's size, these surcharge fees will amount to millions of dollars, and other costs will be reduced as spouses opt out of its plan.

Legal Questions

Generally, working-spouse provisions are legal under the Employee Retirement Income Security Act (ERISA) and other federal laws, Bott says. He notes, however, that many states have marital discrimination laws that could allow challenges to working-spouse provisions. Such state prohibitions are pre-empted by federal law if the employer's plan is subject to ERISA, Bott says. That is not the case, however, for church plans, school districts, and state and local government plans not subject to ERISA.

In some cases, adding spousal surcharges now may result in a plan losing its grandfathered status under health care reform, Bott says. "There is no rule that says you'd lose that status by changing eligibility requirements," he explains, so a plan would likely remain grandfathered if it adopts a spousal carve-out and spouses cease to be eligible. "However,

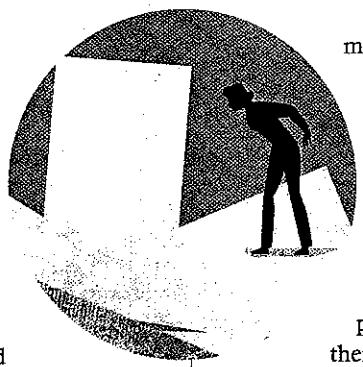
Online Resources

For more information on working spouse policies, see the online version of this article at www.shrm.org/hrmagazine/1111BenefitsAgenda.

if you implement a surcharge, it will likely exceed the maximum allowable premium increase" and cause the plan to lose its status. Still, Bott and others note that many employers will be forced out of grandfathered status by other events, reducing this issue as a consideration.

Another question relates to enforcement of the policies. Generally, employers ask employees whether their spouses work and have access to other health insurance. They may require employees to notify the HR department if their spouse becomes eligible for coverage through another employer. Some companies simply rely on the honor system. Some impose a surcharge on a participating spouse unless the spouse can demonstrate that he or she is not employed or not covered through his or her own employer's plan. Other employers retain employment verification specialists to conduct compliance audits, often as part of broader audits.

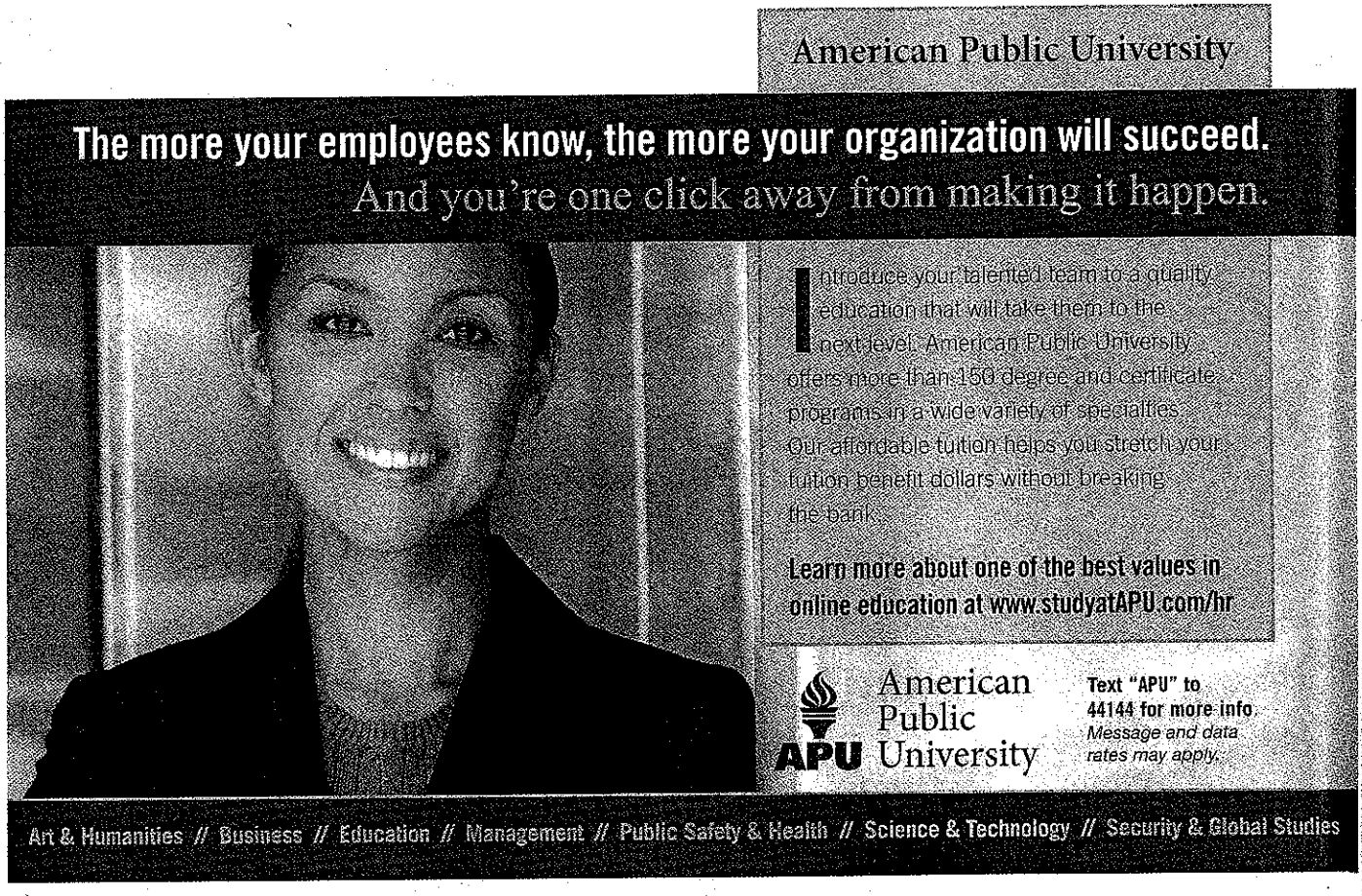
Michael Smith, president and CEO of Lakewood, Colo.-based ConSova Corp., an eligibility verification company, advises employers to temper enforcement of working-spouse policies with forbearance when verification is not possible. "Generally, if the employee and the employee's spouse have done everything an employer asked of them, and the other employer isn't cooperating, it's not fair to impose a surcharge or exclusion, though some employers still do," he says.



Employee Reactions

The way a working-spouse policy is communicated will determine how well it is received, Farren advises. Ivy Tech's HR professionals deliberately refer to its rule as a "working-spouse" policy in plan materials and related communications, as opposed to a "spousal carve-out." That's because "carve-out" wrongly implies that spouses will lose health care coverage altogether, rather than merely being required to obtain primary coverage from their own employers. "We tried to impress on employees that we were just seeking for each employer to take responsibility for its own employees," she says.

Regardless of how the policy is communicated, some employees are likely to be unhappy. Take, for example, an employee who wants to enroll in family coverage through his employer, but the worker's spouse must first enroll in his or her own employer's plan. That may seem unfair, and it quickly emerges as a major downside to working-spouse rules in employees' eyes. That's why



Bott and others encourage employers to carefully design their working-spouse policies to minimize undesirable outcomes.

Red Arrow Products Co. adopted its working-spouse policy in 2006. "I'm not going to say everybody was thrilled," says Kathleen Zucchi, SPHR, HR administrator at the Manitowoc, Wis.-based food ingredient manufacturer. "There was a fair amount of frustration from the employees, who felt we were forcing them to pay for two premiums."

Consider how a working-spouse policy will affect corporate culture, morale and recruiting.

Over time, employees have accepted the policy. "They began to understand that if we didn't take steps to rein in costs, more would be shifted to them in the future."

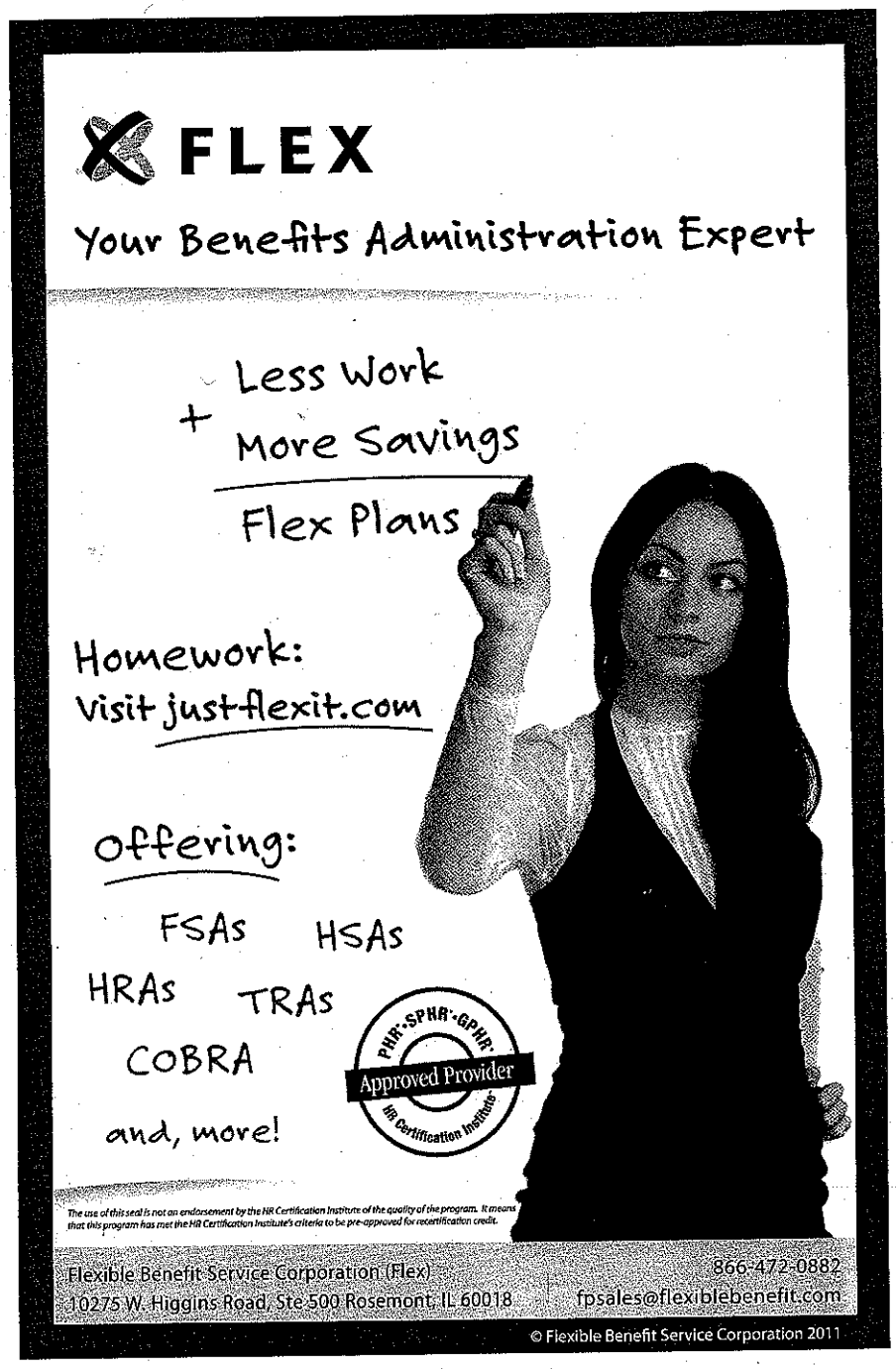
Dowd predicts much the same outcome as Xerox implements its surcharge next year.

Foth & Van Dyke LLC, a 550-employee Green Bay, Wis.-based engineering consulting firm, instituted a spousal surcharge in 2007 on plan participants with spouses who had coverage available through their own employers. A surcharge was less drastic to contain spousal costs than a complete carve-out, says Teri Parins, a Foth benefits specialist.

Jeanie Ackley, a Foth corporate project coordinator, has paid the surcharge to cover her husband, who is employed at a small construction company. She was not pleased when her employer required working spouses to pay the new $1,300 per-year fee.

"No one is really happy when you have to pay additional money and you don't receive an additional benefit," Ackley says. Still, the surcharge is the least expensive option. "For my husband to go on his own insurance, it would cost us $250 per paycheck vs. the $50 spousal [surcharge] per paycheck," she explains. "We'd also have to pay an additional deductible for him to be on his own plan."

When instituting a working-spouse policy, consider how it will affect corporate culture, morale and recruiting. For example, the policies may be less attractive to employers in industries such as retail, insurance and hospitals, where health benefits are a major recruitment and retention tool, Darling says.

"If the employee's purpose in taking the job was to cover the family and they are good employees," she says, "you may not want to impose a surcharge."

But Darling, who previously was responsible for purchasing health and disability benefits at Xerox, says most HR professionals would prefer a surcharge to an outright ban on spousal participation, noting that "That's our culture as HR people." HR