



## NEW - HRA Medicare Secondary Payor Mandatory Reporting Requirement

Congress passed a law in late 2007 called the Medicare, Medicaid and SCHIP Extension Act of 2007 (MMSEA). Under Section 111 there is a mandatory reporting requirement for group health plan arrangements, liability insurance, no-fault insurance and worker's compensation. This means that third party administrators, like FlexMagic Consulting, will need to report certain health plan enrollment information to the Centers for Medicare and Medicaid Services (CMS). This report must be submitted quarterly to the CMS and begins after the first quarter of this year.

These reporting requirements, much to the surprise of most administrators of Health Reimbursement Arrangements ("HRAs"), do apply to HRAs. However, the ruling does not apply to Health Flexible Spending Accounts (FSAs). We learned that the HRA would be included in the reporting requirements late January 2009 and are actively working toward meeting the reporting requirements by the end of this quarter (as required).

We will be required to collect data from all HRA participants, eligible spouses and dependents. In 2009 we will need to report data on any person age 55 or older who is active in the HRA Plan. We will also need to report anyone covered under the HRA who has End-Stage Renal Disease or permanent kidney failure and anyone who is currently enrolled in Medicare. In 2010 we will need to report data on all covered people age 45 or older, as well as anyone with kidney failure issues. Data that needs to be reported will include the individual's Social Security number and, if applicable, their Medicare number (HICN).

*The Employer's Counsel on Flexible Compensation (ECFC) in Washington DC, our lobbying group for consumer driven health plans, has been working with the CMS in an effort to obtain an exemption or at a minimum, a delay for HRAs and HRA administrators to comply with the new regulations. However, we do not know what the outcome of this effort will be and therefore need to move forward.*

There is some good news. If your HRA plan is bundled with your Health Insurance Plan (which means your HRA participants must be active in the group health insurance plan in order to be on the HRA plan) then your health insurance carrier should be able to be the assigned reporting agent for both the health insurance plan and the HRA plan since the participants are the same people. This will save you a lot of unnecessary data collection and also save you some additional fees. We ask that you get a letter from your insurance carrier stating that they

will act as the agent for your HRA Plan Medicare Secondary Payor Reporting. We will need a copy of this letter for our records.

If your HRA is not bundled with the Health Insurance Plan we will need to get additional information on all HRA participants and eligible family members in order to properly report your plan information to CMS. There will be a nominal fee from FlexMagic to meet this additional quarterly reporting requirement. We will provide the necessary data collection forms for this purpose soon.

If you are administering your own plan, you will need to be your own agent for reporting purposes. We will provide you with new forms for the data collection. To learn more visit: <http://www.cms.hhs.gov/MandatoryInsRep/>

## NEW COBRA SUBSIDY IS NOT APPLICABLE TO FLEX HEALTH CARE SPENDING ACCOUNTS

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On February 17, 2009, President Obama signed the American Economic Recovery and Reinvestment Plan (the "Act") into law. This Act requires the immediate attention of employers and administrators with regard to employer health plan administration.

Under the Act's COBRA subsidy rules, an assistance eligible individual is treated as having paid the full COBRA premium to the extent he/she pays 35%. The Government will then reimburse employers for the remaining 65% using an offset in payroll taxes. An employee (and his/her eligible dependents) is eligible for the premium reduction if the employee involuntary terminated employment between September 1, 2008 and December 31, 2009. The Act also mandates an extended election period for employees and their eligible dependents who became entitled to COBRA as a result of an involuntary termination between September 1, 2008 and February 16, 2009 but who failed or have yet to make a COBRA election or who elected COBRA and lost it prior to the February 17th enactment date. This rule does not apply to flexible benefit plans. We are currently unclear on how it will impact Health Reimbursement Arrangements (HRA). It does apply to dental, vision EAP plans etc. Additional Information will be provided as we learn more about changes that may impact your benefit plans.