Episode 2:

Benefits Accounts: The only constant is change

[MUSIC PLAYING]

Philip Massey: Well, these are certainly interesting times in the benefits universe.

[MUSIC PLAYING]

Announcer: You're listening to Benefits, with Purpose! a Willis Towers Watson podcast where Benefits Delivery experts help employers navigate the world of health benefits and deliver purpose to their people in the moments that matter most.

[MUSIC PLAYING]

Philip Massey: Hello, my name is Philip Massey. I'll be your host on this episode of Benefits, with Purpose! entitled Benefits Accounts: the only constant is change. Today, we'll be discussing the suddenly volatile world of tax-favoured employee benefits accounts. I've spent over 20 years in employee benefits myself, and I'm thrilled to be part of bringing you this podcast. But I'm not alone today. I'm here with Stephen Durso. Good morning, Stephen.

Stephen Durso: Good morning, Phil.

Philip Massey: Stephen is an associate director of Benefits Accounts at Willis Towers Watson. He is a veteran of employee benefits these last 20 plus years. And Stephen is here to lend his perspective on the recent legislative changes and what that's meant for employees enrolled in Flexible Spending Accounts, Health Reimbursement Arrangements, and Health Savings Accounts. This to me has been the craziest year for benefits that I can remember. Stephen, would you agree?

Stephen Durso: You know, Phil, I think benefits and just about everything else.

Philip Massey: Yes, just about every day, as we sit here in our respective homes, pretending like we're working, absolutely. So let's take this story back to the beginning. So employers were already feeling the impact of COVID-19 when the president signed a proclamation to declare the national emergency on March 13th, concerning the coronavirus. So this was retro to 3/1.

Stephen Durso: Yeah, that's right, Phil. And from there, the next thing that happened was the CARES Act. And the CARES Act was signed into law on 3/27. CARES stands for coronavirus, aid, relief,

economic security. So this had a number of impacts on accounts. The biggest impact that it had on accounts was an expansion of over-the-counter medicines and feminine care products. So it's a permanent change. And basically, the change for these, for over-the-counter medicines, was they no longer require a prescription in order to be reimbursed from a health care reimbursement account or from a health care FSA.

So this was really a great change, very friendly to employees. Because back in 2011, with the Affordable Care Act, over-the-counter medicines were made eligible only with a prescription. So if someone wanted to get cold medicine or flu medicine, and they wanted to have it reimbursable under one of their accounts, they actually had to make a visit to their doctor, ask their doctor to write a prescription for it, and then they would have to give that prescription to their benefits administrator, just to prove that they had the proper documentation in order to use that out of their account.

So this CARES Act removed that requirement. So now those items are eligible without the need to get a prescription. That was a great change. And then in addition to that, they added feminine care products. This is a great change with our cold and flu season coming. I no longer need to go to my doctor if I need to get my flu medicine.

Philip Massey: Yeah, that's really welcome news. I know a lot of us in the industry have been lobbying Congress since the inception of the Affordable Care Act, to bring back the OTC. So we've all been waiting a long time for this. Now, there was also legislation regarding the 2019 plan years. And again, we're into 2020 at this point, and past when those plans would have been closing their books for the prior year. What can you tell us about that?

Stephen Durso: Yeah. So the Department of Labor announced in late April, an extension of certain time frames for employee benefit plans. So for an employer, what that basically meant is that ERISA mandated a deadline extension for multiple things. So it applied to health care reimbursement accounts and HRAs. And really, the way that it worked is any deadlines that fell within the national emergency period had to be extended. So like you had mentioned, this mainly impacts the 2019 plan year incurred expenses.

So if I had expenses that I incurred last year, the most common deadline that employers make is 3/31 of the following year. That 3/31 date fell right in the middle of the national emergency. So what this ERISA mandate does is it says that 3/31 deadline no longer applies. You miss that 3/31 deadline, it's your lucky year because that 3/31 deadline does not actually apply. This was mandated so employers could not decline it. So basically, at this point, we still need to accept any claims related to the 2019 plan year if that original deadline was within the emergency period.

Like I said, a couple other areas that this impacted were appeals, as well as COBRA election period. The government was basically saying that this national emergency had so many impacts that were broad across society, that if someone missed a deadline, maybe their provider was not open and they couldn't get the right documentation in time that they're going to get some leniency. Really, this was one that was a great benefit. And we're still getting claims now, even though we're all the way in August, from 2019. It's not a large number, but we are still getting some of them, so this extra relief that the government mandated has helped people out.

I will say that I did not mention dependent care reimbursement accounts as being included in this. And you may ask why. So the reason for that is because dependent care reimbursement accounts are not subject to ERISA. This mandate strictly applies to health care reimbursement accounts or HRAs. Another interesting point here is there is just no end in sight. So similar to coronavirus, we really don't know when this is going to end. Deadlines from 3/1 will end 60 days after the national emergency is declared over. But I think you need a crystal ball to figure out when that time frame is going to happen. And, Phil, I don't know. I don't have one of those currently. Do you?

Philip Massey: I don't know. Need to look into offering that service. That may be next. So this seems like great news for employees, right? If you had something that you just couldn't get validated, couldn't get received, you've got more time. But for employers, you're just on hold at this point.

Stephen Durso: Yeah. That's true, Phil. So an employer probably has a good idea by now, of where their 2019 plan's financial position is. So what I would say is they've probably received well over 90% of the claims they're going to get for 2019, maybe even as much as over 99% of the claims they're going to get. But based on this mandate, they still could see additional claims come in until this national emergency plus 60 is over. So it's really something where they can't completely close their books on the 2019 plan year, because there still could be claims that are submitted, and we would need to reimburse. So it could be seen as a negative. But then again, I think that it's a positive for employees. Government definitely felt that that outweighed any negativity towards employers.

Philip Massey: Now, we also had the option for employees to extend their 2 1/2 month grace period. Was that really good news?

Stephen Durso: Well, it could be in some situations. But one of the things with the grace period is it really does not work well if you also have an HSA. So where a health care flexible spending account with a grace period-- that does offer a great benefit, because it allows employees to basically incur expenses 2.5 months into the next plan year. Employers could have extended that 2.5 month period if they wanted to. However, if they made that decision, if someone had switched from a full purpose FSA in one year into an HSA plan the following year, they're barred from contributing to that HSA until after the grace period. So by making a retroactive change like this, what it actually would have done is it would have put a number of employees in a situation where they had made contributions that became retroactively ineligible. So that could become very messy.

Philip Massey: Yeah. So, once again, the 2 1/2 month grace period doesn't play well with HSA. So that much at least hasn't changed. Now, was there any impact beyond ERISA plans?

Stephen Durso: There definitely was. So the IRS issued Notice 2020-18. And what this did, it actually extended the 2019 tax filing deadline all the way until July 15th of 2020. So what this meant was that for employees with HSAs, it had a couple impacts for HSA. The way that HSA works is you can actually make contributions to your HSA all the way through the tax filing deadline. So for my 2019 HSA, I could have made a contribution to that all the way through July 15th of 2020. And I know we did have a number of people take us up on that.

In addition, it also allowed people who maybe weren't paying enough attention to their HSA, and maybe they went over what they were supposed to contribute in 2019. Well, they actually had all the way through July 15th to remove that excess contribution in order to avoid any negative tax consequences. So it was just another additional benefit where it gave you a couple additional extensions on things you could do with the HSA. And then not only that, I did not file my taxes until exactly on July 15th, so that was a benefit to me personally, as well, that I definitely took advantage of.

Philip Massey: Still ran it out to the deadline. Good for you.

Stephen Durso: Absolutely.

Philip Massey: So all of that was just March and April. That's an entire year or years' worth of legislative change for our industry. So that's, in a nutshell, how unprecedented this year has been. And all that was just March and April, so that brings us to May, where we saw some new legislation that directly address the current state of the crisis.

Stephen Durso: That's right. The changes just keep rolling in. So once we got to May, we were about two months after that national emergency had been declared. At that point, we saw employers shutting down. We saw employers furloughing employees. The IRS came out with Notice 2020-29 that provided relief for the impact of COVID-19. So this 2020-29 offered a special enrollment window, where it would allow changes or reductions in health care reimbursement accounts and dependent care reimbursement accounts due to COVID-19.

So a couple things about this one is they did make it optional. So where we were talking about the claims filing extension being a mandate, this one was optional. So it's also temporary. This is very specific to the year 2020. But we often think of individual factors for qualified life events, like a marriage, a birth of a child, a local daycare center shutting down. What 2020-29 did was just an

acknowledgment that COVID-19 itself, and all the broad impacts, could be a QLE on its own if a client wanted to take this optional measure.

Philip Massey: So it's nice that we've got that acknowledgment that this specific event in time is its own QLE now. That's a lot of flexibility for the employees and employers. But everything always comes at a price. So if an employer is going to take that step, then, of course, they have to update their plan documents. So that piece needs to be accounted for as well by the employer, that it's a communication and then update the SPD, the SMM, whatever road they're going to take. But that has to be addressed by the end of next year, of 2021.

So there was another interesting twist here, and not on the enrollment side so much, or the eligibility side, but on the expense side. One of the things that the industry started to see is, with all of us having our kids at home, virtual day camp opportunities are popping up for employers. So how does that impact an employer and their plan?

Stephen Durso: That's a very good question, Phil. So we did get some questions on this one. And like you said, life is changing every day, and new things are popping up. So this virtual day camp concept was new for us. So the IRS has not provided a formal opinion, and that's not unusual either. They're usually very slow to provide formal opinions, if they ever get back to a formal opinion. But in general, there's two standards for a dependent care reimbursement account, for an eligible expense. So one, it has to be for the care of the dependent. And two, it has to enable the participant to work. So what we came to the conclusion of was, a laptop, a monitor, those do not really constitute care. So if you have a laptop or a monitor watching a child, it might be the same as just showing them a YouTube video. But if that child gets up from that laptop or monitor, I don't think the person is going to be able to reach through the screen and make sure that that kid has not escaped to somewhere else. So really, just for many different reasons, this one did not meet the qualifications for being an eligible expense under dependent care.

Philip Massey: Yes, that's interesting. Definitely an opportunity out there for the dependent care industry, but not necessarily something that would impact spending for dependent care reimbursement accounts.

Stephen Durso: That's right, Phil. I don't know if we're going to see robot daycare someday, but that one has not been asked yet. When it is asked, we will do a full evaluation.

Philip Massey: We also saw at the same time, Notice 2020-33. Now, this wasn't directly related to COVID. It's interesting because it's sort of similar to how the OTCs came about, the over-the-counters, as being added back into eligible expenses. But 2020-33 actually impacted the FSA carryover. The first time we've seen, really, any change in this since the onset in 2013.

Stephen Durso: Yeah. That's right. That one was interesting. So not only was it an increase for now, it's also an increase year over year going forward, really tied to the overall health care FSA limit increases. So just like the prior one we discussed, this one's optional for employees. So each employee gets to decide what they want as their carryover limit. So if an employee wanted to stay at 500, they could certainly make that decision.

However, now the maximum that they can allow for carryover has moved to $550. And that can actually be taken up for 2020 going into 2021. And then, like we were saying, it's pegged to future updates of the overall FSA contribution limit. An example I could give, it's actually 20% of the overall limit.

So if the current limit of 2,750 went all the way up to 3,000, then what that would do is it would increase the carryover limit to 600. So this is a great benefit. Because, like you had mentioned, this was rolled out back in 2013, and they allowed 500, and there have been no updates since then. But now they've given us an update, allowing us to increase to 550, and then also pegged future increases to any increases in the overall limit.

You know, this one is great for employers who are very employee-friendly. And it really gives employees the benefit of not having to be quite so precise when they're planning what their health

care expenses are for the next year. So when they're going through annual enrollment, as long as they are within $550 of what they think they're going to spend for the next year, they won't lose any money. That really is a great benefit. And we think that it will likely lead to more enrollment in FSAs in the future.

Philip Massey: I would imagine these-- they keep getting more flexible, hence the name. It's good to see.

Stephen Durso: That's right. And if you think about the permanent changes of over-the-counter being back, you think about the carryover built-in increase, and then the uncertainty of COVID, an employer can really bring these different features together in their account offering, just to present that added flexibility to their employees. Hopefully, gaining future increases in enrollment, too.

Philip Massey: Well, these are certainly interesting times in the benefits universe. We've had a lot of movement just directly related to the current state, COVID-19, and then some not so related, but brings opportunity, right, hence the over-the-counters and the carryover. And then on the horizon, right, we still have the HEROES Act out there that was signed by the House. And then the Senate responded at the end of July, with the HEALS Act. So I know there are more benefit-related regulations within both of those, but we're still waiting on Congress to come up with one package that the president could sign into law.

Stephen Durso: That's exactly right, Phil. So this one we are watching it very closely. One of the things that I would point out about both of those acts, both the HEROES Act that was passed in the House and the HEALS Act from the Senate, both of them had a provision that related to health FSA carryover, that would allow carryover from 2020 into 2021 of up to $2,750. So that would be a very large benefit to employees. And it also proposed allowing dependent care plans to carry over, which is something that has never been allowed in the past.

So those are pretty dramatic changes if they are actually passed into law. And I know we'll keep watching this closely. Because, like we said, this has not been agreed upon yet. But it is very interesting that this was in both versions, both the HEALS as well as the HEROES Act. So that leads us to believe that there's a good possibility that it could come to fruition in the future.

Philip Massey: Well, thanks, Stephen, for being here today.

Stephen Durso: Yes, Phil. I was glad to do this. Look forward to doing it again.

Philip Massey: We certainly covered a lot of great updates. 2020 continues to be full of surprises, especially in the benefits area.

[MUSIC PLAYING]

I also want to thank our listeners of Benefits, with Purpose! for joining us. This concludes our episode for today – make sure you subscribe and join us for future episodes. Be well, everyone.

[MUSIC PLAYING]

Announcer: Thank you for joining us for this Willis Towers Watson podcast, featuring the latest thinking on the intersection of people, capital, and risk. For more information, visit the Insights section of willistowerswatson.com.