NIXON BENEFITS
LEADING CHANGE
Revolutionizing Employee Benefits and Health Management

News & Notes
Winter 2022

The Benefits of Benefits

The U.S. Chamber of Commerce has links to two valuable resources; a new Society of Human Resource Management (SHRM) survey and a Chamber study. The SHRM survey highlights the trends in employer-benefit offerings and what U.S. employees value most. Perhaps more importantly, the Chamber white paper demonstrates the value to business as well. The study reveals a significant return on investment for businesses offering employer-sponsored insurance. On average, employers with 100 or more workers who provide notable health benefits see a positive ROI of 47%. Or stated another way, Return on Investment on health benefits means that for every dollar paid for health insurance it yields an additional $1.47 cents in other benefits. The Chamber report attributes this ROI to factors like higher worker productivity, lower direct medical costs, and reduced spending on recruitment and retention. This number is expected to rise to 52% by 2026. *U.S. Chamber of Commerce* https://bit.ly/3Hp8Zat

Compliance Tip: Reproductive Healthcare Benefits & Travel

Following the US Supreme Court's decision in Dobbs v. Jackson Women's Health Organization, many employers extended travel benefits to women residing in states where abortion or reproductive health procedures may now be unlawful.

When drafting these policies employers should be mindful that when Title VII was amended in 1978 by the Pregnancy Act, language was added requiring pregnancy, childbirth and related medical conditions be treated equally with other medical conductions under an employer's "fringe benefit programs." As a result, travel benefits should also be treated equally, covering not only abortion and/or reproductive health, but all covered services or procedures that are unavailable within a covered individual's state of residence or area, regardless of the individual's gender, pregnancy or childbirth status, or disability status. This would make the benefits "available" to everyone. *McDermott Will & Emery* https://bit.ly/3PgL1A7

Must Employers Offer COBRA to Retiring Employees If They Remain Eligible for Coverage for 18 Months After Retirement?

QUESTION: Our company's group health plan for active employees also covers retirees for 18 months after retirement. While the company pays 100% of the premium for active employees, it pays only 60% of retiree coverage. Must retiring employees who were covered under the health plan as active employees be offered COBRA coverage?

ANSWER: COBRA requires plan administrators to furnish a COBRA election notice to qualified beneficiaries whenever there is a triggering event listed in the statute that causes a loss of coverage. While a retiring employee's termination of employment is clearly a triggering event, the critical issue is whether the retiree has had a loss of coverage. If retirees' coverage under the combined active/retiree plan will not continue under the same terms and conditions under which active employees are covered, then retirees and related qualified beneficiaries must be given the opportunity to elect COBRA. The IRS COBRA regulations make clear that "to lose coverage means to cease to be covered under the same terms and conditions as in effect immediately before the qualifying event."

Even though it may seem that retirees are able to continue their same coverage under the plan without interruption, the increased premium charged to retirees is considered a loss of coverage for COBRA purposes. It is difficult to imagine why qualified beneficiaries would elect COBRA and pay a premium of up to 102% when they could instead choose 18 months of retiree coverage with the employer providing a 60% premium subsidy. Nevertheless, IRS regulations clearly require an offer of COBRA in these circumstances. Your company should ensure that a timely COBRA election notice is provided. *Thomson Reuters Tax & Accounting* https://bit.ly/3hl6ETd

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Paxlovid: Price to Soar as it Enters the Private Market

In response to the unprecedented public health crisis caused by Covid, the federal government has spent billions of dollars on developing new vaccines and treatments. But soon the Department of Health and Human Services will stop supplying covid vaccines and treatments, and pharmacies will have to purchase and bill for them the same way they do for say, antibiotic pills or asthma inhalers. In 2023 the government will stop paying for Covid vaccines' likely quadrupling the price on the private market. Paxlovid, the drug preventing many people infected with Covid from hospitalization or death, is expected to hit the private market in mid-2023. While the U.S. has so far purchased 20 million courses of Paxlovid, priced at about $530 each, the drug will cost far more on the private market. *KHN* https://bit.ly/3iVUmRv

Cash for Care in Colorado

The state of Colorado has been experimenting with providing incentives to state employees for seeking health care based on cost and quality.

Since July, state employees have had access to the Healthcare Bluebook, an online tool that ranks health providers by both costs and quality. Providers in the top 25% for quality are designated in green, the bottom 25% in red, and anyone in between in yellow. The same color scale is used for costs.

"If you go to a green-green provider, then we'll send you a check," said Josh Benn, director of employee benefits contracts for the Colorado government.

The checks can range from less than $50 for something like a mammogram to thousands of dollars for surgery. In most cases, the money helps offset the employee's copayments, coinsurance, or deductible. But for preventive services like colonoscopies, which have no copay, it's extra cash in the employee's pocket. *KHN* https://bit.ly/3VLdO22

Health Plans and Marijuana: Now and the Future

• In early December the Medical Marijuana and Cannabidiol Research Expansion Act was signed into law. While the bill does not address health plan coverage of medical marijuana it will set in motion processes to make it easier for researchers to access Marijuana and study its therapeutic uses.

• In October the President asked HHS and Dept of Labor to review how Marijuana is scheduled under federal law and at the same time pardoned all federal offenses for simple possession of marijuana.

• Two more states legalized recreational marijuana in the fall elections bringing the total to 21.

Despite this movement, it remains a Schedule I substance: illegal to possess, sell, give away, or grow. As a result, health plans do not cover medical marijuana, even when legal in their state, to avoid jeopardizing their tax-exempt status or risk a breach fiduciary duty under ERISA.

This breach of fiduciary duty could come from failure to follow plan documents under ERISA Section 404(a)(1)(D). Most health plans include exclusions for claims related to illegal drugs, and most prescription drug benefit plans state that medications will only be provided consistent with Food and Drug Administration (FDA) approval and guidelines. If a plan has documents containing such provisions, trustees would be wise to decline covering medical marijuana as a benefit.

Medical necessity is another factor in the consideration for covering medical marijuana. Employee welfare benefit plans provide treatment, services and medications only for things that are "medically necessary." "For marijuana to be medically necessary, more will be required than simply moving it from the CSA Schedule I to Schedule III. Prescribers and providers will also need to be able to demonstrate that medical marijuana is needed to diagnose or treat an illness, injury, condition, disease or its symptoms' and that its use meets accepted standards of medicine a key term in most health plans' definitions of medically necessary. *IFEBP* https://bit.ly/3FHawaC

2022 End of Year Plan Sponsor "To Do" Lists

A series of "To Do" lists to help employers and plan administrators focus their efforts on important health and welfare items that require action on or before the end of 2022 or in early 2023. Topics included: year-end Health and welfare plan issues, annual cost-of-living increases and qualified plan and executive compensation issues. A great resource to bookmark as new data is released.

COLA for Health & Welfare Plan Dollar Limits

Health & Welfare Plan Dollar Limits	2022	2023
Annual Cost Sharing Limit (self-only)	$8,700	$9,100
Annual Cost Sharing Limit (other than self-only)	$17,400	$18,200
HDHP Out-of-Pocket Maximum (self-only)	$7,050	$7,500
HDHP Out-of-Pocket Maximum (family)	$14,100	$15,000
Annual HDHP Deductible (self-only)	Not less than $1,400	Not less than $1,500
Annual HDHP Deductible (family)	Not less than $2,800	Not less than $3,000
Maximum Annual HSA Contributions (self-only)	$3,650	$3,850
Maximum Annual HSA Contributions (family)	$7,300	$7,750
Maximum HSA Catch-Up Contribution	$1,000	$1,000
Health Flexible Spending Account Maximum	$2,850	$3,050

Snell & Wilmer https://bit.ly/3VNvfip