

# NIXON

## BENEFITS

### *Industry Notes, March 2013*

- In February's HHS ruling regarding Essential Health Benefits was welcome information about determining actuarial value of benefit plans. The EHB Final Rule n 45 C.F.R. § 156.135(c), provides that plans, other than those in the individual market, that at the time of purchase are offered in conjunction with an HSA, may take into account the annual employer contribution to the HSA, when calculating the actuarial value of the health plan.

*McDermott Will & Emory 2/27/2013*

- Also in the final rule regarding Essential Health Benefits is clarification regarding which plans are affected by ACA's limits on cost sharing, specifically annual deductible and out-of-pocket maximums. The Annual deductible limits of \$2,000 (self-only coverage) and \$4,000 (family coverage) apply only in the small group market, not to large group or self insured plans. However, out-of-pocket maximums will apply to all non-grandfathered health plans. Out-of-pocket maximums will be tied to the IRS cost sharing limits of an HSA qualified HDHP which in 2013 are \$6,250/\$12,500.

*Chelko Consulting Group February 2013*

- ACA has added to the Fair Labor Standards Act. Under section 18C, an employer may not retaliate against an employee for receiving subsidized coverage through an Exchange. Large employers who fail to offer affordable coverage that provides minimum value may be assessed a tax penalty if any of their FT employees receive a subsidy for coverage obtained through an Exchange. This may create an incentive for an employer to retaliate against an employee.

*Jackson Lewis Workplace Resource Center 2/27/2013*

- Patients' share of health spending is shrinking. Yes, really. Medicine has changed a lot over the past 40 years. We've advanced in how we treat

serious diseases, such as cancer. And we've come up with new treatments for diseases that, a few decades ago, didn't even exist, such as AIDS. Even with that revolution in treatment, we still essentially buy the exact same mix of medical services that we did in the 1970s.

Out-of-pocket spending, what consumers spend on their own health care, has fallen by more than half over the past four decades. 3rd-party payers, such as private health insurers, Medicaid and Medicare, now cover 74% of all health care spending in the US. Back in 1970, that number stood at 42%. This trend is continuing. In 2011, patient share of spending fell to the lowest level ever recorded, despite a movement toward plans with higher deductibles. It's near certain that the Affordable Care Act will also put downward pressure on patients' share of spending, as it extends insurance coverage to \$30M Americans. Consumers probably don't notice that their share of health care spending has been dropping because the cost of health care has been growing so quickly.

*Washington Post Wonkblog 2/5/2013*

- Under PPACA non-discrimination provisions, employers need to be careful not to provide terms of eligibility or benefits that discriminate in favor of highly compensated employees. While the penalties are not yet being enforced, companies are advised to take care of promises made to departing employees, including executives. One example of how an employer could potentially violate the nondiscrimination rule is by paying a top executive's COBRA premiums for 18 months of COBRA, while paying a clerical employee's COBRA premiums only for a month, or not at all. If a plan is found to have discriminated in favor of providing additional benefits to a highly compensated employee that are not provided to non-highly compensated employees they would be in violation of PPACA. To avoid that result, an employer may instead pay the departing highly compensated employee a sum of money that might be used to pay for all or a portion of his or her COBRA premiums, but need not be used for COBRA.

*Littler 10/29/2012*

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