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FEBRUARY 2013

AT A GLANCE ...

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Arbitration Board affirms reasonable and customary fee caps

The Ontario Arbitration Board has upheld the principle that benefit plans may include dispensing fee caps based on the reasonable and customary limits used by group benefits underwriters.

The judgement by Arbitrator Joseph B. Rose originated with a grievance filed by a union local that claimed an employer violated a collective agreement by imposing a drug dispensing fee cap based on the principle of reasonable and customary limits used by the plan's insurer.

According to the union submission, the benefit plans provided by the plan's insurer made no mention of the dispensing fee cap in the policy when it adopted "*reasonable and customary*" pricing for covered drug, health and major medical services.

The problem originated when the insurance carrier increased its drug dispensing fee limit from $10.99 to $11.99 per prescription, based on its review of reasonable and customary dispensing fees in Ontario. The insurer announced the change in December 2009, with an effective date of January 2010. The employer relayed the change to its union representatives.

The union filed a grievance, stating that by allowing the insurer to impose reasonable and customary pricing on drug dispensing fees, the employer was not providing full benefit coverage to its employees.

At the heart of the dispute was the definition of "*reasonable and customary limits.*" According to the union, such limits amount to a fee cap that effectively limits coverage for benefit plan members. Further, the union was not aware of the existence of the cap and that no mention of reasonable and customary limitations appears either in pharmacies or the group's collective agreement.

The employer countered that reasonable and customary pricing is an industry standard used by all insurance carriers, based on each insurer's analysis of market trends and pricing. As there is variation between reasonable and customary pricing between insurers based on their claims experience, its use amounts to an administrative practice rather than an employer-imposed pricing limitation. This, it said, contrasted from a benefits cap, which can be imposed by an employer at any price level to limit plan costs.

In his review of the arguments, Arbitrator Rose sided with the employer.

"*Evidence demonstrates there is a clear distinction between a dispensing fee cap and reasonable and customary limits,*" he wrote. "*A dispensing fee cap is established by the plan sponsor and is aimed at reducing costs. Reasonable and customary limits are established by insurance carriers. They are based on market conditions and are standard practice in the industry. There is no obligation on insurers to provide reasonable and customary prices for all the services and benefits covered by plans.*"

As well, ignorance of the practice does not negate this validity, he noted.

"*It may be that the union was somewhat 'in the dark' with respect to the reasonable and customary limit on dispensing fees, but this does not alter the existence of the administrative practice,*" Mr. Rose said. "*Even if members incurred out-of-pocket expenses, this does not alter the fact that reimbursement continued to be based on reasonable and customary limits.*"

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For both plan sponsors and plan members, the arbitration ruling reinforces the need to be familiar with standard insurance industry practices such as the use of reasonable and customary guidelines in claims adjudication and administration. It is recommended that plan administrators, union representatives and human resources personnel involved in the administration or communication of the terms of a benefits plan to employees or members contact their underwriter(s) to confirm their reasonable and customary guidelines on their various health and dental coverages.

For more information on reasonable and customary limits, contact Coughlin Managed Care Consultant Joe Zadzora at 613-231-2266, Ext. 256 or email jzadzora@coughlin.ca.

NOTE: Coughlin's Ontario clients, particularly those with operations in the National Capital Region, have access to Coughlin's exclusive Preferred Provider Network of pharmacies, where lower dispensing fees and limited ingredient cost mark-ups help to reduce prescription drug costs. Savings are substantial, with dispensing fees of $8.40, well below the average dispensing limits of $11.09 or more. Some pharmacy dispensing fees exceed $12 per prescription. More information is available from your Coughlin consultant. ❧

18 years later and the Coughlin PPN still means savings

In 1995, Coughlin & Associates Ltd. established a preferred provider network (PPN) of pharmacies in the National Capital Region. Its primary objective at the time was to contain the rapidly rising costs of prescription drugs.

The issue of rising drug costs has not changed. In fact, it is still one of the biggest challenges facing many plan sponsors as they attempt to manage the rising costs of their benefit plans.

The Coughlin PPN has helped contain costs. It does so by limiting pharmacy dispensing fees, ingredient mark-ups and encouraging generic substitution wherever possible.

Under the Coughlin PPN, participating Ontario-based pharmacies agree to limit their dispensing fee to the level allowed under the Ontario Drug Benefit (ODB) plan. Today, that limit is $8.40 per prescription. (On April 1, 2013, it will increase to $8.62 per prescription.) That prescription limit contrasts to the average dispensing fee of $11.09, as reported by Express Scripts Canada (ESC), the largest drug card supplier in Ontario. Many of the large pharmacy chains have dispensing fees of $11.99 or more per prescription.

In other words, based on ESC data, the Coughlin PPN offers plan sponsors potential dispensing fee savings of an average $2.69 per prescription.

In addition to the dispensing fee savings, the Coughlin PPN has an automatic generic substitution feature. Plus, ingredient mark-up costs are limited to eight per cent. Both help contain the cost of prescription drugs for plan sponsors.

In 2012, Coughlin's Ottawa offices reimbursed just under 295,000 prescription drug claims, 64 per cent of which were dispensed by participating Coughlin PPN pharmacies. The result: The Coughlin PPN generated dispensing fee savings for our clients of more than $500,000 in that year.

Since its founding, the Coughlin PPN network has grown to 567 pharmacies throughout Ontario. While many are concentrated in the National Capital Region, participating pharmacies can now be found in most major centres throughout the province. We also have affiliations with some pharmacy chains that operate throughout Ontario and, in some cases, have special arrangements with providers located near our clients' locations.

The Coughlin PPN allows your plan members to have their drug prescriptions filled and dispensed at a lower cost. Those savings serve to lower the overall benefit costs of plan sponsors. There is no additional cost to employees. In many cases, Coughlin PPN pharmacies take extra steps to provide better service to plan members.

For more information about the Coughlin & Associates Ltd., Preferred Provider Network, contact Coughlin Managed Care Consultant Joe Zadzora at 613-231-2266, Extension 256 or email jzadzora@coughlin.ca. ❧

Ruling affirms Quebec's distinct laws on common-law relationships

The Supreme Court of Canada has upheld controversial rulings by Quebec's courts affirming that common-law couples do not have the same rights and responsibilities on relationship breakdown as married couples.

In a 5-4 decision, the nation's highest court ruled in favour of a man who contended that he did not have to pay alimony to his former common-law partner because they were never married.

The case involved a prominent couple who had lived in a common-law relationship for seven years. During that time, they had three children together.

Upon separation, the woman sought a $50 million lump sum settlement in addition to $56,000 per month in additional support. While the man agreed to provide large child support payments, he refused the woman's claim for the lump sum and alimony. The case then went to litigation.

In 2009, the Quebec Superior Court rejected the woman's claims, stating that the Quebec Civil Code provided no rights, duties or responsibilities to partners in a "de facto relationship."

The woman appealed to the Quebec Court of Appeal, which struck down the Civil Code provision on the grounds that it discriminated against unmarried couples. At that point, the Quebec government contended the Appeals Court ruling was wrong and appealled to the Supreme Court.

In its ruling, the Supreme Court confined its analysis strictly to the terms of the Quebec Civil Code. The rights of common-law spouses vary widely by province. In some jurisdictions, common-law spouses enjoy virtually the same rights as married spouses. However, disputes regarding the division of assets on separation or death have led to precedent-setting court rulings. Most recently, the Ontario Court of Appeal awarded a deceased man's estranged widow the proceeds of his pension's death benefits, despite the fact that he lived in a common-law relationship at the time of death.

According to Quebec Justice Minister Bertrand St-Arnaud, the Supreme Court ruling *"confirms the principle of freedom of choice, allowing couples to choose the rules that will govern their union."* However, he also concedes that it may be time for the Quebec National Assembly to review its family laws.

For plan sponsors and administrators, the Supreme Court ruling will mean that terms regarding the division of pension, benefits and other assets on relationship breakdown will vary for Quebec residents based on whether they lived in a marital or common-law relationship.

Plus, with the courts in other provinces, such as Ontario, also adding their unique interpretations to spousal rights on relationship breakdown, plan sponsors and administrators serving members residing in various provinces will be expected to be aware of each province's asset division rules. ❧

Quebec to re-launch its own pooled pension plan

Quebec's newly elected government says it will table legislation to introduce a variable retirement savings plan (VRSP).

Modelled after the federal pooled registered savings plan (PRPP), the Quebec pension scheme is designed to allow the self-employed and workers employed by small businesses that may not have a pension plan or group registered retirement savings plan to save for retirement.

Like the federal plan, employers in Quebec will be required to offer the program to their employees while the administration of each employee's contributions would be handled by an accredited financial institution. However, unlike the PRPP, the VRSP would be mandatory for employers with as few as five employees. As well, members may be able to access their contributions at any time. With the PRPP, contributions would be locked-in.

The previous Quebec government had tabled legislation mandating the creation of the VRSP. However, that legislation died when the summer 2012 election was called.

The VRSP legislation is expected to be re-introduced this spring.

To date, Quebec is the only province to endorse the federal government's PRPP pension concept. ❧

Ontario court's common-law ruling could disrupt millions of pensioners

An Ontario Court of Appeal decision awarding the proceeds of a deceased man's pension to his divorced wife rather than the common-law spouse with whom he was living at the time of his death could result in many costly lawsuits, a loss of pension assets and the re-assignment of pension earnings, according to lawyers representing various prominent pension plans.

According to the pension plans' representatives, the Court's decision overturned a 25-year administrative practice of awarding pension benefits on death to the *"spouse in the house"* (often a person living in a common-law relationship with the deceased individual at the time of his/her death) rather than to divorced or estranged spouses.

Reports suggest that could mean common-law spouses who are now in receipt of survivor benefits from pension plans may be disentitled in favour of deceased members' divorced or separated spouses.

According to reports published in the *Toronto Star,* up to two million people could be affected by the ruling.

"The ruling has very serious implications for pension plans, their members and the large number of common-law spouses who have received payments over the years, and whose entitlements may now be questioned," says Ontario Teachers' Pension Plan President James Leech.

The ruling could also result in increased pension costs and a reduction in payments to pensioners and their survivors, warns pension consultant and actuarial firm Morneau Sheppell.

The controversy stems from an October 31, 2012 decision by the Court that awarded the man's pension assets to his former spouse instead of his common-law spouse. Since both the separated spouse and the common-law spouse met the spousal definition, the Court had to base its decision on Section 48(3) of the Pension Benefits Act (PBA), which deals with the disbursement of benefits to spouses *"living separate and apart from the member."*

In its assessment, the Court concluded that a common-law partner can become a legal spouse only by living in a conjugal relationship with a member. However, since it is possible for legally married spouses to live separate and apart, the terms of the PBA must then refer only to legally married individuals. As a result, the Court awarded the benefits to the separated spouse. (See the January 2013 edition of the *Coughlin Courier* for background.)

The common-law spouse is appealing the ruling to the Supreme Court of Canada. ❧

Pensioners must pay for $5 million pension error

The retired members of the NewPage paper mill in Port Hawkesbury, Nova Scotia have received notice that they must repay $5 million in pension overpayments resulting from a miscalculation by their former pension administrator.

For most pensioners, the pension debt amounts to tens of thousands of dollars each. Some must pay back as much as $60,000 to the pension plan's new administrator.

The error, which affects 250 retirees, was discovered when a new plan administrator was appointed to the plan.

To make matters worse, since the pension is already underfunded, many of the plan's members are already receiving smaller pension payouts than originally projected.

The province's superintendent of pensions has said she has no authority to correct the mistake. ❧

(Image source: The Chronicle Herald)

Supreme Court reverses Ontario insolvency ruling favouring pensioners

The Supreme Court of Canada has ruled that pensioners should not be first in line to claim a company's assets during bankruptcy or insolvency.

In a precedent-setting case, the Supreme Court overturned an earlier Ontario Court of Appeal decision that had pushed pension plan members ahead of other creditors during corporate bankruptcies. (See the May 2011 edition of the *Coughlin Courier* for background.)

The decision is a hard blow for pensioners, such as those formerly employed by Nortel Networks and other prominent companies that faced major pension reductions or cuts when their companies faced financial hardships during and after the 2008 market meltdown.

The Supreme Court's decision originated with an April 8, 2011 Ontario Court of Appeals ruling that said the members of two underfunded pension plans of an aluminum smelter seeking protection under the Companies Creditors Arrangement Act (CCAA) should have precedence over debtor-in-possession lenders that provided emergency money to the failing company on condition that they would be paid first in a bankruptcy.

The decision by the Ontario court reversed the traditional order of credit precedence in restructuring proceedings. Until that ruling, lenders that provided emergency funding to failing companies, known as debtor-in-possession (DIP) lenders, were given "super-priority" status and were considered first in line to receive any funds from the restructured companies.

Under the Ontario Court of Appeal ruling, companies would have to declare to the courts that they cannot meet their pension obligations when they apply for CCAA protection. Many legal and bankruptcy financing experts felt that would make emergency financing harder to secure as lenders could be hesitant to finance firms considered to be in breach of their fiduciary duty. Plus, their claims would be considered secondary to those of pensioners. The result could be increased corporate bankruptcies and fewer applications for CCAA protection.

The Supreme Court based its ruling on the *doctrine of federal paramountcy*, which asserts that federal legislation trumps provincial laws. Based on that, the federal CCAA has precedence over provincial pension legislation. Therefore, the traditional order of creditor preference will prevail in corporate bankruptcies and CCAA restructuring.

For pensioners of failed plan sponsors, the only silver lining to the Supreme Court decision was its confirmation that the total amount of a pension shortfall during a plan's wind-up under CCAA rules would be considered a "deemed trust" under Ontario pension law. While that would move pensioners ahead of other, smaller creditors during bankruptcy or restructuring, they would still be secondary to DIP lenders. ❧

New Brunswick cities struggle with pension deficits

Large pension deficits in two major cities may force the province of New Brunswick to create a single provincial pension plan for its municipalities.

The City of Saint John reports that its pension deficit now totals $195 million and has been described as *"the worst ever seen"* by one pension consultant.

Compounding the problem for the province is the city of Fredericton's pension deficit, now estimated at between $33 million and $59 million.

The pension plans of both cities were hit hard by the 2008 stock market collapse, which eroded pension investment values. In addition, the increased lifespans of retirees have also added to the cities' financial strain, particularly in Fredericton.

A provincial task force has urged the province's 104 municipalities to consolidate their various pension programs into one plan, similar to the Ontario Municipal Employees Retirement System (OMERS.) Consolidation would save the municipalities six to seven per cent in administration costs alone, task force chairperson Susan Rowland says.

The OMERS plan has a surplus of more than $300 million and controls more than $55 billion in assets. ❧

More than one-in-three made withdrawals from their RRSPs

The year 2012 saw more Canadians withdraw more money than ever from their registered retirement savings plans (RRSPs), a Scotiabank study suggests.

According to the bank, 36 per cent of Canadians withdrew money from their RRSPs in 2012, compared to only 23 per cent in 2005. As well, the average amount being withdrawn from the retirement savings plans more than doubled in seven years, from $10,716 to $24,531.

Home purchases were the biggest reason for making the withdrawals, the study says, accounting for 40 per cent of reported withdrawals. Paying down debt was the second most common reason, but lagged far behind at 16 per cent. Converting funds to a retirement income fund – the primary reason for RRSPs – placed third at 15 per cent.

The top reasons given for withdrawals were:

1. Home purchase: first home.
2. Pay down debt.
3. Purchase a retirement income fund.
4. Cover day-to-day expenses.
5. Home renovations.
6. Vacations.
7. Education.
8. Health care or medical costs.
9. Home purchase: second home.
10. House/support disabled relative.

(Source: Scotiabank)

While the federal government allows up to $25,000 of RRSP money to be used to purchase a first home (provided that the money is repaid within 15 years), early withdrawals from the registered plans for other reasons can trigger minimum withholding taxes. Withdrawals up to $5,000 generate a 21 per cent withholding tax in Quebec and 10 per cent in the other provinces. Taking out $5,001 to $15,000 can involve withholding taxes of 26 per cent and 20 per cent respectively while removing more than $15,000 generates withholding taxes of 31 per cent and 30 per cent respectively.

Depending on an individual's income, marginal tax rates could be higher. Plus, once the money is withdrawn, building a retirement fund will take that much longer to accomplish. ❧

Dental fee guide increases

Following are the suggested provincial and territorial dental fee guide increases for 2013 as established by their respective dental associations:

Province	Fee guide increase
British Columbia	3.74 per cent.
Yukon	Available April 1, 2013.
Alberta	N/A. Insurers determine reimbursement levels.
Northwest Territories/Nunavut	To be determined.
Saskatchewan	4.17 per cent.
Manitoba	3.2 per cent. Add 10 per cent in areas north of 53rd parallel.
Ontario	2.14 per cent.
Quebec	3.10 per cent.
New Brunswick	2.00 per cent.
Prince Edward Island	2.73 per cent.
Nova Scotia	2.63 per cent.
Newfoundland & Labrador	5.00 per cent.

The pharmaceutical industry's top 10

The following were the top 10 drugs in Canada in 2010 as measured by sales, according to Industry Canada:

Product name	Therapy	Reported sales ($ million)
1. Lipitor	Cholesterol reduction	$1,249.20
2. Crestor	Cholesterol reduction	521.70
3. Remicade	Arthritis	360.50
4. Plavix	Circulation	271.00
5. Nexium	Stomach acid control	264.60
6. Enbrel	Arthritis	257.70
7. Oxycontin	Pain control	217.50
8. Humira	Arthritis	188.50
9. Advair	Asthma	188.10
10. Lyrica	Seizures	180.60

(Source: Industry Canada)

Pharmaceutical sales totalled $21.6 billion in 2010.

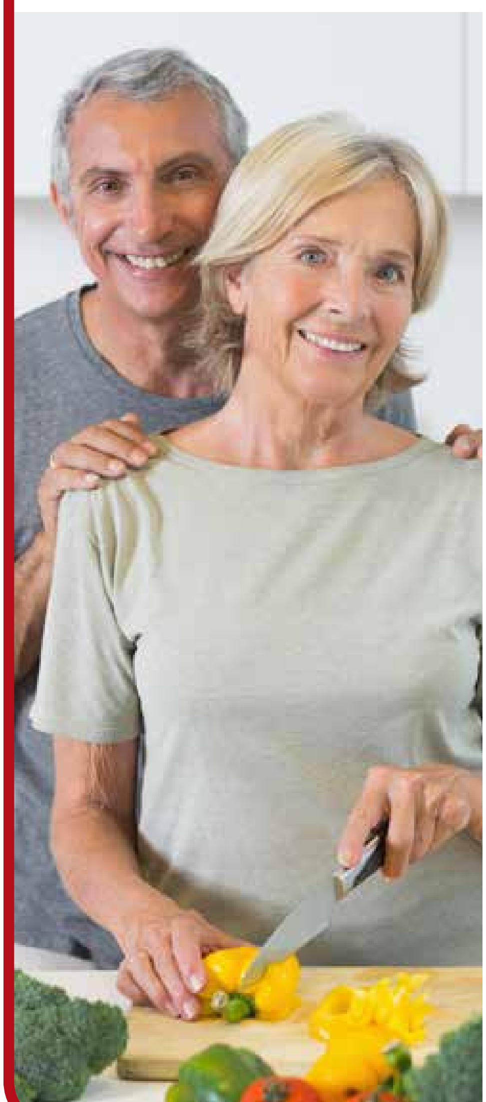
Your last 10 years could be filled with illness or disability, report warns

Research by the Canadian Heart and Stroke Foundation suggests that the average Canadian will spend the last 10 years of his/her life in sickness, disability and immobility.

In its *2013 Report on the health of Canadians,* the Foundation says there is a 10-year gap between how long Canadians are living and how long they will live in good health. The report is particularly critical of the assumptions of baby boomers who, according to the Foundation's research, plan to grow old with vitality but have adopted lifestyles that strongly increase the risks of heart disease, stroke and other illnesses.

"The Foundation's poll tells us that baby boomers are concerned about their health but it also shows this concern is not translating into action, even though they say they are looking for quality time in their later years," the report notes. *"While boomers have big plans, they need to realize they may not get the quality time they so desire unless they make lifestyle changes now."*

According to the report, the behaviours with the highest risk factors and impact on the quality of life in its last decade are:



Behaviour	Impact on quality life
Physical inactivity The Foundation suggests 150 minutes of moderate to vigorous physical activity per week.	*-4 years*
Poor diet Only 40 per cent of people eat fruit and vegetables five or more times per day. The Canada Food Guide recommends seven to eight servings daily for women age 19 to 50; eight to 10 servings for men in the same age bracket.	*-3 years*
High stress 30 per cent of boomers say they are often or always stressed. High cholesterol and blood pressure often accompany stress.	*-2 years*
Smoking One in five Canadians still smoke, despite its well-documented health risks. The Foundation's report indicates that health risks begin to decrease within 48 hours of quitting smoking.	*-2.5 years*
Unhealthy alcohol consumption Up to 19 per cent of people can be classed as heavy drinkers. The Foundation's report suggests women should restrict alcohol intake to 10 drinks per week and men to 15 drinks per week.	*-2 years*

Nine in 10 Canadians have at least one risk factor for heart disease or stroke, the Foundation says.

The *Report on the health of Canadians* can be found at www.heartandstroke.com ❧

Fast facts

- The month of January saw the following increases in the maximum benefits paid by government benefit programs: the maximum weekly Employment Insurance benefit increased to $501 from $485; the Canada Pension Plan increased its maximum benefit by 2.8 per cent to $1,012.50 per month; and the maximum basic Old Age Security benefit increased to $546.07 from $544.98.

- Years of record low interest rates are taking their toll on Canadian life insurance companies, the Bank of Canada says. In its bi-annual review of the Canadian financial system, Bank of Canada Governor Mark Carney notes that insurers are being forced to reinvest cash at lower interest rates, which has forced many companies to restrict or eliminate their long-term products.

- Effective January 1, 2013, the federal employee pension plan changed to a 50-50 employer-employee contribution arrangement. The normal retirement age for federal pensions also moved to age 65 from age 60.

- More than one-quarter of retired people fear that they will run out of money during their retirement, a CIBC poll suggests. The least worried live in Atlantic Canada, where 21 per cent expressed concern about how long their money will last. The highest percentage of worriers live in British Columbia, where 45 per cent expressed doubts about their finances lasting throughout retirement.

- Essar Steel of Algoma, Ontario has received approval from the Ontario government to defer making special payments to its pension plan for up to 12 months.

- Effective April 1, 2013, the Ontario Drug Benefit Plan maximum dispensing fee will increase as follows:

	Current rate	New rate
Category 1 pharmacies:	$8.40	$8.62
Category 2 pharmacies:	$9.45	$9.69
Category 3 pharmacies:	$11.55	$11.84
Category 4 pharmacies:	$12.61	$12.92

  Category 2, 3 and 4 pharmacies tend to be located in rural or remote areas.

- The Hospitals of Ontario Pension Plan (HOOPP), the Ontario Public Service Employees Union (OPSEU) and the Colleges of Applied Arts and Technology (CAAT) Pension Plan have each signed an agreement with the Ontario government to exclude them from a proposed "superfund" comprised of various pension plans. They also agreed to freeze employer contributions to their pensions for the next five years in return for the three pensions being able to maintain control over investment decisions and plan assets.

- A Harris/Decima poll of 2,000 Canadians conducted for CIBC indicates that 45 per cent of Canadians have not set aside any money to deal with emergencies.

- A Statistics Canada study indicates that those with less education will likely live shorter lives than those with more education. In its *Insights on Canadian Society,* the government agency projects that, on average, a 50-year-old employee with only a high school education should expect to live to age 82.5 while a person the same age with a post-secondary degree will live to age 86. Those with lower education tend to work in physically more demanding jobs and have poorer health, it says.

- Union membership in the United States continues to decline, according to the US Bureau of Labour Statistics. The government agency says that 11.3 per cent of the workforce was unionized in 2012, compared to 20.1 per cent in the 1983. Union membership is now at its lowest level since the organization began collecting union membership data.

- Almost half, 46 per cent, of senior citizens in the United States have less than $10,000 in financial assets when they die, according to a Social Security study published jointly by Harvard University, Dartmouth College and the Massachusetts Institute of Technology (MIT.)

- Google has launched a new insurance benefit that will provide families of deceased employees with half of their annual income for 10 years following death. In addition, employees' children will receive $1,000 per month until age 19 or 23, if a child becomes a full-time student. The company employs 34,000 people worldwide.

- Average annual premiums paid by US companies employing fewer than 199 people, according to the Kaiser Family Foundation, Health & Education Trust: $15,073. Average amount paid by employers: $10,944. Amount paid employees: $4,129. Percentage of employees with an annual deductible of $2,000 or more: 25 per cent. ❧

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