Proskauer

A New Normal? Omnibus Bill Extends High Deductible Health Plan Telehealth Safe Harbor

Employee Benefits & Executive Compensation on **January 31, 2023**

The Consolidated Appropriations Act of 2023 ("CAA 2023"), signed into law on December 29, introduced sweeping reforms to the employee benefits landscape. Not only do the CAA 2023's "SECURE 2.0" provisions make some significant changes for retirement plans , but CAA 2023 also extends the telehealth plan safe harbor for high-deductible health plans ("HDHPs") that were first introduced in the 2020 CARES Act. HDHPs can continue to offer first-dollar coverage for telehealth and other remote care services while preserving participants' eligibility for health savings account ("HSA") contributions. The two-year extension continues the relief until January 1, 2025.

Telehealth Services Safe Harbor

The Internal Revenue Code provides that only individuals participating in an HDHP are eligible to make or receive contributions to an HSA. Generally, a participant must pay their HDHP's deductible before the plan can cover medical services. If a plan covers a participant's medical services before the deductible is paid, it is not an HDHP, and the participant is ineligible to make or receive contributions from an HSA. Any amounts contributed while a participant is ineligible must be included in the participant's taxable income and are subject to an additional 10% excise tax.

The 2020 CARES Act temporarily allowed HDHPs to cover telehealth and other remote care services while preserving participants' eligibility to make or receive HSA contributions even if the plan's deductible has not been met. This safe harbor first expired at the start of 2022. It was reintroduced by the Consolidated Appropriations Act of 2022 in March of 2022 for the remainder of the year, and now CAA 2023 has extended the relief for plan years beginning January 1, 2023, through December 31, 2024.

Since CAA 2023 extends the relief for plan years *starting* in 2023, sponsors of non-calendar year plans that have part of their 2022 plan year in 2023 should be mindful of the gap in the protection for the portion of their 2022 plans that spillover into 2023, and may want to consult with counsel. Absent additional guidance, participants' contributions to their HSAs during this period may be subject to the applicable income and excise taxes.

Other Changes to Health Plans in CAA 2023

CAA 2023 made several other significant changes to health plans, including:

- **Increase Medicare Provider Reimbursements.** Beginning in 2023, Medicare anticipated cutting its provider reimbursement rates by about 4.5%. CAA 2023 reduced these cuts to 2% in 2023, with another 1.5% cut scheduled for 2024. The act also delayed the Statutory-Pay-As-You-Go Act of 2010 4% provider reimbursement cut until 2025.
- **Mental Health Parity Enforcement.** CAA 2023 authorized the Centers for Medicare and Medicaid Services to award states up to $10 million in grants to enforce the Mental Health Parity and Addiction Equity Act's nonquantitative treatment limitations.
- **Medicare Mental Health Parity Coverage Report.** The Government Accountability Office was directed to report on Medicare's coverage of mental health/substance use disorders compared to its medical and surgical services coverage.

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