

Roundup of Recent Developments Impacting Health and Welfare Plans

EXECUTIVE SUMMARY

There have been a variety of recent developments related to health and welfare benefit plans that we want to bring to your attention. This Employee Benefits Update addresses the following:

- Guidance on the End of the COVID-19 National Emergency & Public-Health Emergency;
- Flexible Spending Account Substantiation Rules;
- Litigation on Claim Denial Letters for Medical Benefits; and
- 2024 Inflation-Adjusted Amounts for HSAs and Excepted Benefit HRAs.

IMPORTANT DATES

July 10

- End of Outbreak Period (relevant to deadline extensions during COVID-19)

July 28

- Distribute revised SPDs or SMMs reflecting plan amendments that were adopted and became effective in 2022

July 31

- File Form 720 and pay PCORI fee
- File Form 5500 and 8955-SSA for calendar year retirement plans, and Form 5500 for calendar year health and welfare plans (or file Form 5558 extensions)

End of the COVID-19 National Emergency and Public-Health Emergency

On March 29, 2023, the Departments of Labor, Health and Human Services, and Treasury jointly issued FAQs regarding the end of the COVID-19 national and public health emergencies on May 11, 2023. As previously discussed in our [Employee Benefits Update](#) issued February 28, 2023, the end of the national and public health emergencies removes certain coverage mandates and affects several deadlines for group health plans.

The FAQs encourage plans to continue previously required coverage even after the coverage mandates no longer apply, discuss notice requirements regarding coverage changes, and confirm that the “outbreak period” (the time period during which certain group health plan deadlines were extended) ends on July 10, 2023. The FAQs notably did not delay the effective date for any changes and did not provide any staggered end to the deadline extensions.

Furthermore, on June 23, 2023, the IRS issued Notice 2023-37 (“Notice”), which ends relief provided during the pandemic for high deductible health plan (HDHP) coverage of COVID-19 related services. Specifically, for plan years starting on or after January 1, 2025, the exception that HDHPs can pay for COVID-19 related testing and treatment first-dollar (not subject to the deductible) without jeopardizing the HDHP’s status is no longer available. In addition, while the Notice does not change the exception that an HDHP can provide first-dollar coverage of preventive care services, the IRS concluded that screening (i.e., testing) for COVID-19 is not preventive care—absent a recommendation by the United States Preventive Services Task Force (USPSTF) that COVID-19 testing is recommended with an “A” or “B” rating.

- ✓ **Action Steps for Employers:** Employers should confirm that enrollment vendors, COBRA vendors, and claim and appeal administrators are ready for the end of the outbreak period as of July 10, 2023 and that employees are informed of these changes to the extent appropriate. Employers who sponsor an HDHP should also revisit the design of HDHP coverage for COVID-19 related services and coordinate the coverage review with their third-party administrator (“TPA”).

Flexible Spending Account Substantiation Rules

On April 28, 2023, the IRS Office of Chief Counsel issued a Chief Counsel Advice (“CCA”) outlining the requirements for claim substantiation for health and dependent care flexible spending accounts (“FSAs”). The CCA explored the existing rules through six common hypothetical situations, and in five concluded the substantiation was insufficient. The CCA emphasized the need for verification independent from the recipient of the reimbursement for each and every reimbursement (sampling is not allowed). Failure to satisfy the substantiation rules is not just an operational failure, each reimbursement also is wages subject to income and employment taxes.

- ✓ **Action Steps for Employers:** While the CCA did not introduce any new rules regarding claim substantiation, the CCA suggests claims substantiation may be an area of focus for IRS enforcement. To avoid adverse tax consequences, employers should examine their cafeteria plan compliance (including the written plan document requirement) and confirm that the operation of its FSAs (including use of debit cards) complies with IRS guidance on claims substantiation.

Litigation on Claim Denial Letters for Medical Benefits

The U.S. Court of Appeals for the Tenth Circuit ruled that United Behavioral Health, as the third-party claims fiduciary for an employer-sponsored group health plan, acted “arbitrarily and capriciously” under ERISA by not adequately engaging with the opinions of a participant’s physicians and in not providing its reasoning for the denial of medical benefits in its claim denial letters. *D.K. et al. v. United Behavioral Health et al.*, 2023 U.S. App. LEXIS 11794, 2023 WL 3443353 (10th Cir. May 15, 2023). The third-party claims administrator claimed its internal notes documented its consideration of the evidence provided, but the Tenth Circuit found it insufficient not to also include evidence of the consideration in the claim denial letter itself.

- ✓ **Action Steps for Employers:** Employers should seek assurances from their TPAs to the effect that their claims appeal procedures include adequate consideration of any evidence provided to support claims, and that consideration of such evidence is reflected in the TPA’s denial letters, and not solely in the TPA’s internal notes.

2024 Inflation-Adjusted Amounts for HSAs and Excepted Benefit HRAs

The IRS has released the 2024 inflation-adjusted numbers for both Health Savings Accounts (HSAs) and excepted benefit Health Reimbursement Arrangements (HRAs). For HSAs, the annual contribution limit for individual self-only coverage under a high deductible health plan has increased from \$3,850 to \$4,150, and the annual contribution limit for individuals with family coverage has gone up from \$7,750 to \$8,300. For excepted benefit HRAs, the maximum amount that can be made newly available for the plan year has increased from \$1,950 to \$2,100.

- ✓ **Action Steps for Employers:** In designing benefit offerings for 2024, employers should take into account these increased amounts for HSAs and excepted benefit HRAs.

Additional Information

For additional information about these health and welfare plan topics, or any other employee benefits matter, please contact any member of our Employee Benefits and Executive Compensation Group listed below.

1945 Old Gallows Road, Suite 650
Tysons Corner
Vienna, VA 22182
(703) 748-2690

1111 East Main Street, Suite 1605
Richmond, VA 23219
(804) 489-5500

Andrea I. O'Brien
aobrien@islerdare.com

Vi D. Nguyen
vnguyen@islerdare.com

Jeanne E. Floyd
jfloyd@islerdare.com

Grace H. Ristuccia
gristuccia@islerdare.com

Ashley F. Hedge
ahedge@islerdare.com

Jessica E. Kuester
jkuester@islerdare.com

Connect with us! 