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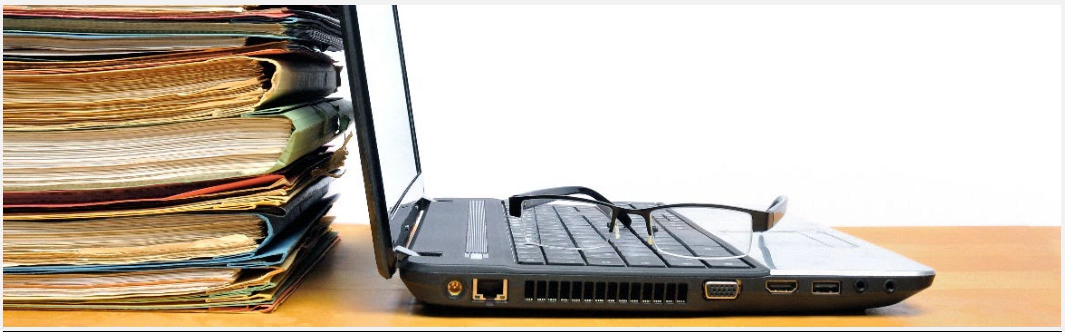

Rewards Policy Insider
2022-6

In this Issue:

Texas District Court Invalidates Part of Surprise Billing Rules

A U.S. federal district court judge on February 23, 2022, issued a ruling invalidating a portion of the Surprise Billing regulations relating to the independent dispute resolution (IDR) process for resolving disagreements between providers and health plans over reimbursement rates. As the Department of Labor has pointed out, the court's ruling does not affect any other aspect of the Surprise Billing rules, which remain in effect.

Overview

The case is one of several filed by providers challenging the IDR rules. In particular, at issue is the weight given the Qualifying Payment Amount (QPA) during the IDR process. In general, the QPA is an amount the plan determines based on the median amount the plan would have paid an in-network provider for the item or service at issue.

Basically, if the plan and provider cannot reach agreement on payment, the IDR process is initiated. Both the plan and provider must submit a proposed payment amount and an explanation to the arbitrator. The arbitrator then makes a decision, and the parties generally cannot challenge it in court.

The statute lists a variety of factors for the arbitrator to consider. The listed factors include the QPA; the level of training, experience, and quality and outcome measurements of the provider or facility; and the provider's or facility's (or the plan's or provider's) market share in the relevant geographic region, among others. Significantly, the statute does not indicate that any one of the listed factors should be given greater or less priority than any others.

The interim final regulations (IFR) implementing the IDR process, by comparison, directs the arbitrator to choose the offer closest to the QPA unless it is clearly demonstrated that the QPA is "materially different from the appropriate out-of-network rate." The provider community has filed several lawsuits (including this one) arguing this approach favors health plans and is inconsistent with the statute.

In this case, the district court judge agreed and invalidated the relevant part of the IFR.

Outlook

District court judges rarely have the final word on significant issues like this. An appeal is possible and, as noted, a number of similar cases are pending before different courts in other jurisdictions. Nonetheless, the court's reasoning in this case may prove influential in others.

Perhaps more important, soon after the district court issued its ruling, the Department of Labor published a memorandum indicating that it will be modifying any guidance that refers to the invalidated part of the IFR and providing training on the revised guidance for certified IDR entities and disputing parties. Beyond that, the agencies are still reviewing the decision and considering their options.

The memorandum also emphasizes that the district court's decision only impacts that one specific aspect of the IFR. The surprise billing rules remain in effect, as does all the rest of the regulatory and related guidance issued to date.

Rewards Policy Insider will continue to provide updates on this issue, as needed.

Treasury and IRS Publish Much Anticipated RMD Proposed Regulations

On February 24, 2022, in light of the SECURE Act's changes to the post-death required minimum distribution (RMD) rules as well as other changes, the Internal Revenue Service (IRS) and Treasury Department published proposed regulations under Internal Revenue Code ("Code") section 401(a)(9), which relate to RMDs from qualified plans and IRAs. If finalized, the proposed regulations would apply for determining RMDs for calendar years beginning on or after January 1, 2022.

Background

On December 20, 2019, Congress enacted the Setting Every Community Up for Retirement Enhancement (SECURE) Act, one of the most sweeping changes to laws relating to retirement plans in recent years. Among other changes, the SECURE Act increased the RMD age to 72 and amended the post-death RMD rules.

Under the SECURE Act, upon the death of an employee, a designated beneficiary is generally required to draw down his or her entire inherited interest within 10 years. There is an exception to the 10-year rule, however, for eligible designated beneficiaries (EDBs). In general, an EDB is an employee's designated beneficiary who, as of the date of the employee's death, is: (1) the employee's surviving spouse; (2) the employee's minor child; (3) disabled; (4) a chronically ill individual; or (5) an individual not otherwise described who is not more than 10 years younger than the employee.

Note that the proposed regulations, like the existing Code section 401(a)(9) regulations, generally uses the term "employees" to refer to active plan participants, retirees, and IRA owners. This summary of the proposed regulations follows that same convention.

Overview of Proposed Regulations

The proposed rules are a major overhaul of the current regulations. Below is a high-level overview of some of the changes in the proposal.

- At-least-as-rapidly rule. Under the proposed regulations, the "at-least-as-rapidly" rule—which generally provides that if an employee dies after distributions have begun in accordance with certain "lifetime" RMD rules, the remaining portion must be distributed at least as rapidly as the method of distribution currently being used—continues to apply in all cases where the decedent dies on or after their required beginning date (RBD). This is despite the fact that according to the SECURE Act, the 10-year rule described above applies whether or not distributions have begun under the lifetime RMD rules. The proposed regulations interpret this SECURE Act provision as requiring that both the at-least-as-rapidly rule and the 10-year rule must be satisfied in cases where the decedent dies with a designated beneficiary, other than an EDB, on or after their RBD.

- QLACs. The proposed regulations modify the rules for qualifying longevity annuity contracts (QLACs) to allow such contracts to provide a cash surrender value prior to the employee's RBD. Under the current regulations, QLACs can never provide a cash surrender value, commutation benefit, or similar feature. According to the preamble of the proposed regulations, this change is meant to facilitate the use of QLACs in target date funds.
- Multiple beneficiaries. The proposed regulations provide that, if an employee has more than one designated beneficiary and one of them is not an EDB, then for purposes of Code section 401(a)(9), the employee generally is treated as not having an EDB. Exceptions apply in the case of minors and certain trusts involving disabled or chronically ill beneficiaries. Similar to rules under the current regulations, an exception also applies if the employee's interest in the plan or IRA is divided into separate accounts for each beneficiary.
- Trusts named as beneficiaries. The proposed regulations generally retain the see-through trust concept in the current regulations, which permits certain beneficiaries of a trust to be treated as beneficiaries of an employee for RMD purposes. The proposed regulations expand the existing provisions to address additional scenarios. According to the IRS and Treasury, the goal of this expansion is to address issues that have been raised in previous comment letters and private letter ruling requests.

The IRS is accepting comments on the proposed regulations, which are available here, through May 25, 2022.

Bill Introduced to Require Automatic Reenrollment for Automatic Contribution Arrangements

New proposed Senate and House bills would require employers to periodically reenroll employees who previously opted out of employer-sponsored automatic contribution arrangements.

Auto Reenroll Act of 2022

On February 18, 2022, Senator Tim Kaine (D-VA) and Representative Kathy Manning (D-NC) introduced legislation to increase employee participation in employer-sponsored retirement plans.

Specifically, the Auto Reenroll Act of 2022 would amend provisions of ERISA and the Internal Revenue Code that apply to arrangements called eligible automatic contribution arrangements (EACAs) and qualified automatic contribution arrangements (QACAs). An EACA is a type of automatic contribution arrangement that must uniformly apply the plan's default automatic contribution percentage to all employees, after providing them with a required notice. A QACA is a type of automatic enrollment arrangement that meets certain safe harbor provisions and is therefore exempt from certain nondiscrimination tests.

Under the bill, arrangements that take effect after December 31, 2024 would be treated as meeting the QACA or EACA requirements only if, at least every three plan years, the employer re-enrolls each non-participating employee who is eligible to participate. The employee may then opt out again if he or she so chooses.

Outlook

A press release published by Senator Kaine's office states that only 51% of private sector workers participate in employer-sponsored retirement plans. The press release also notes that when given the opportunity to automatically enroll in a retirement plan when they start their job, many employees initially decide to opt out. The bill is designed to prompt those types of employees to reconsider after a three-year period—presumably after their careers have progressed and financial situations have changed—which would lead to increased savings for retirement and encourage more workers taking advantage of employer matching.

Senator Kaine is a member of the Senate Health, Education, Labor and Pensions Committee, and Representative Manning is a member of the House Education and Labor Committee. Both committees may play a role in comprehensive retirement legislation that Congress may act on sometime this year, and Senator Kaine and Representative Manning could attempt to add the Auto Reenroll Act to that bill as part of the legislative process.

Rewards Policy Insider will provide updates on the status of this proposal, as well as comprehensive retirement security legislation, as warranted.

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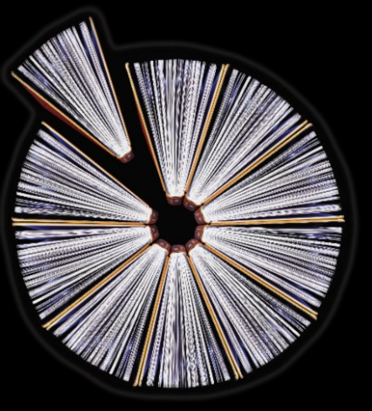

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