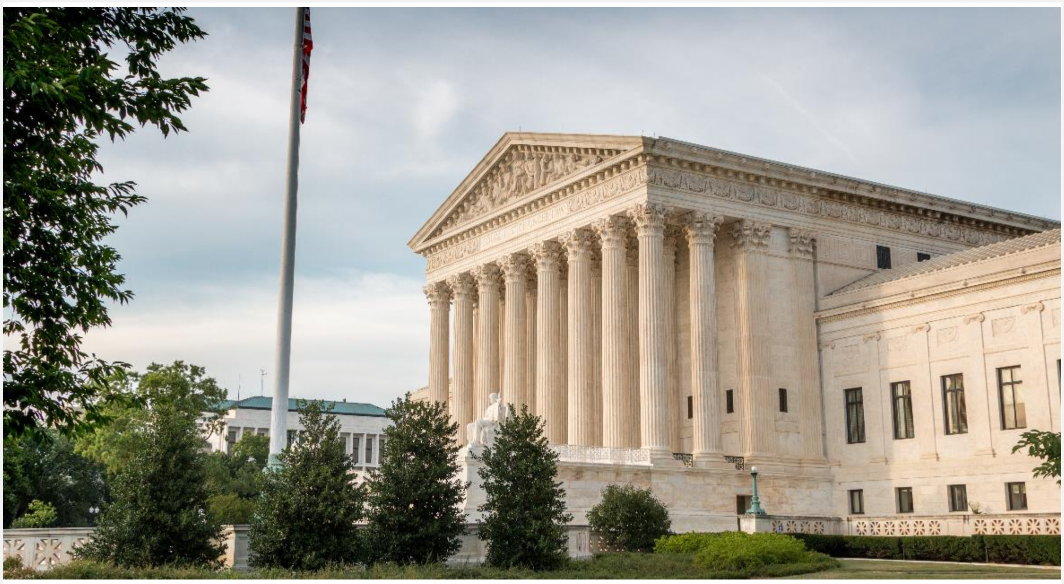
Rewards Policy Insider
2023-11



In this Issue:

IRS Announces Inflation-Adjusted HSA Limits for 2024

The IRS has issued Revenue Procedure 2023-23 to provide inflation-adjusted contribution and other limits relating to health savings accounts (HSAs) and high-deductible health plans (HDHPs). The Revenue Procedure also sets the maximum amount that can be made newly available in 2024 in an excepted benefit health reimbursement arrangement (HRA).

The updated HSA limits for 2024, as well as the limits in effect for 2023, are summarized in the following table:

	2023	2024
Maximum Contribution – Self Only	$3,850	**$4,150**
Maximum Contribution – Family	$7,750	**$8,300**
Age 55 Catch-up Contribution	$1,000	**$1,000**
HDHP Minimum Deductible – Self Only	$1,500	**$1,600**
HDHP Minimum Deductible – Family	$3,000	**$3,200**
HDHP Maximum OOP – Self Only	$7,500	**$8,050**
HDHP Maximum OOP – Family	$15,000	**$16,100**

Note that the $1,000 age 55 catch-up contribution limit is set by statute and is not subject to automatic annual adjustments for inflation.

Excepted Benefit HRAs

An excepted benefit HRA is a type of standalone HRA that can be used to reimburse certain out-of-pocket medical expenses, but not individual market health insurance premiums. Additionally, an excepted benefit HRA – unlike other HRAs – has a specific annual limit on how much employers can add to a participant's account. For 2024, the annual limit will be $2,100 – up from $1,950 for 2023.

The full text of Rev. Proc. 2023-23 is available here.

Pharmacy Benefit Managers Receiving Scrutiny from Both Congress and the States

Amidst the rising costs of prescription drugs, pharmacy benefit managers ("PBMs") have become the subject of scrutiny by federal and state policymakers for practices that some argue are contributing to that problem. As a result, there has been a spate of recent activity related to reviewing the role of PBMs in the health care industry.

What Are PBMs?

PBMs act as intermediaries between insurance providers and pharmaceutical manufacturers by managing prescription drug benefits on behalf of health insurance companies, self-insured employers, and government programs. PBMs oversee prescription drug claims, negotiate rebates with manufacturers, and determine drug formularies (i.e., the list of prescription drugs covered by a plan). Profits are partially generated through administrative fees charged for their services.

In addition, when negotiating rebates, PBMs decide how much to bill the health plan per prescription as well as the amount that the PBM will reimburse the pharmacy; the PBM may keep the difference – i.e., the "spread" – between those prices. This "spread pricing" practice has led to criticism that PBMs potentially have an incentive to favor drugs with better spreads even if other available alternatives would be better for plan participants.

Senate Finance Committee Weighs In

Several congressional committees are questioning the PBM business model. For example, Senate Finance Committee Chair Ron Wyden (D-OR) and Ranking Member Mike Crapo (R-ID) have expressed particular interest in PBMs in recent months. In March 2023, the Finance Committee held a hearing on the impacts of the prescription drug supply chain on patients and taxpayers. The following month, Senators Wyden and Crapo released a joint framework that the Committee will use to pursue legislation aimed at modernizing and enhancing federal prescription drug programs.

The framework identifies a list of key challenges that the Committee believes require policy solutions, including misaligned incentives that drive up prices and costs, such as high administrative fees and rebate-based compensation for PBMs and other entities in the drug supply chain. Another key challenge outlined in the framework is insufficient transparency in the supply chain, which Senators Wyden and Crapo say hinders patients and plans from making informed choices. The Committee plans to pursue bipartisan legislative solutions, such as potentially de-linking PBM compensation from drug prices.

Additionally, the House Committee on Oversight and Accountability recently launched an investigation of PBM's allegedly "anticompetitive tactics."

Bills Introduced Targeting PBMs

A wave of PBM-related bills have also been introduced in both the House and Senate this year. These bills include:

- The Pharmacy Benefit Manager Transparency Act (S. 127), which would prohibit "spread pricing" (discussed above) and give the Federal Trade Commission ("FTC") oversight authority over PBMs. The Senate Committee on Commerce, Science, and Transportation approved the bill in March 2023.
- The Prescription Pricing for the People Act (S. 113), which would direct the FTC to issue a report addressing PBM charging practices and any trends regarding the state of competition in the health care supply chain.
- The Drug Price Transparency in Medicaid Act (H.R. 1613 and S. 1038), which would prohibit "spread pricing" for payment arrangements with PBMs in Medicaid programs.

These bills – and the Senate Finance Committee's framework – are a clear sign that Congress is interested in regulating PBMs in some capacity and increasing transparency surrounding the PBM business model, which could shake up the existing PBM model and the American health care system more broadly in the process. It is also notable that many of these bills have bipartisan support.

State Activity

Regardless of when or whether Congress acts, many states have already taken concrete steps to regulate PBMs. Last year, at least 12 states enacted laws targeting PBMs.

It appears that trend will continue this year. In Florida, for example, Governor Ron DeSantis recently signed a law to increase the regulation of PBMs that operate within the state. Starting on July 1, 2023, the Florida Office of Insurance Regulation ("OIR") will have increased authority to license, monitor, and examine PBMs. PBMs will also have to submit information to the OIR – including information about the PBM's ownership interests – in order to obtain a certificate necessary to operate in Florida.

Bipartisan Group Introduces 403(b) Investment Expansion Bill

A group of bipartisan House members recently introduced the Retirement Fairness for Charities and Educational Institutions Act, a bill that would expand investment options for 403(b) plans – retirement plans that may be offered by charities and public schools – by allowing such plans to invest in collective investment trusts.

Background

Under current law, 403(b) plans may not invest in collective investment trusts ("CITs"). CITs are pooled investment vehicles which, because of their pooled nature, allow the creation of larger and more diversified investments. Federal securities laws include registration exemptions for collective trust funds and insurance company separate accounts consisting solely of certain retirement plan assets, such as 401(k) plans, but these exemptions have limited application to 403(b) plans. In effect, this means that many retirement plans, such as 401(k) plans and governmental 457(b) plans, are permitted to invest in CITs, while 403(b) plans do not have that option.

The SECURE 2.0 Act of 2022 ("SECURE 2.0"), which was enacted in December 2022, amended the Internal Revenue Code to permit 403(b) accounts to invest in CITs. However, the law did not amend the registration exemptions in the relevant federal securities laws to allow 403(b) plans to invest in CITs, which is a necessary step to make the tax changes operable. (A prior version of SECURE 2.0 did include these necessary changes, but they were left out of the final version of the bill.)

Bill Overview

On May 2, 2023, Representative Frank Lucas (R-OK), with cosponsors Rep. Josh Gottheimer (D-NJ), Rep. Andy Barr (R-KY), and Rep. Bill Foster (D-IL), introduced the Retirement Fairness for Charities and Educational Institutions Act (H.R. 3063). The bill would amend the federal securities laws to allow ERISA-covered 403(b) plans to invest in CITs. This would essentially complete the partial changes made by SECURE 2.0, thereby allowing 403(b) plans to invest in CITs.

Proponents of the bill say that this change in the law would lead to less expensive investments for employees of charities and public educational institutions who have 403(b) plans because CITs generally have lower administrative and regulatory requirements compared to mutual funds. Supporters also say that a CIT investment option will afford 403(b) plan participants more investment flexibility.

Looking Forward

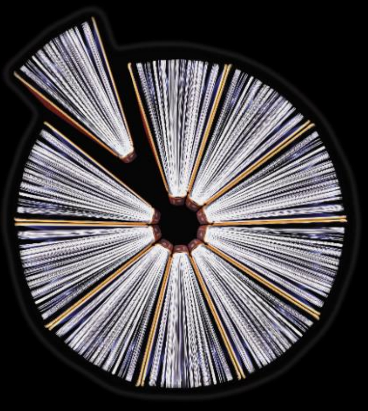
The bill was referred to the House Committee on Financial Services, which could reportedly consider the bill in a Committee markup toward the end of May. Rep. Lucas, along with the three original cosponsors, are all members of that Committee.

Visit the Archive

All previous issues of the Rewards Policy Insider are archived on Deloitte.com and can be accessed here.

Don't forget to bookmark the page for quick and easy reference!

Upcoming editions will continue to be sent via email and will be added to the site on a regular basis.



Get in touch

Subscribe/Unsubscribe