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IRS Announces Guidance Providing RMD Relief

This new guidance has two main purposes: (1) extends prior relief of regulations proposed in 2022 relating to required minimum distributions ("RMDs"); and (2)

provides relief under the rollover rules for certain distributions made in 2023 that were mischaracterized as RMDs due to a change in the law under the SECURE 2.0 Act of 2022 ("SECURE 2.0").

Background

In 2019, the SECURE Act amended the RMD rules under the Internal Revenue Code, which generally determine the minimum amount that must be withdrawn from a tax-qualified retirement plan or IRA. The date on which an employee is required to start taking their RMDs is called their required beginning date ("RBD"). The RMD rules generally require that, if an employee dies before his RMDs are required to begin, then the amount in his account must be distributed either (1) within five years after his death; or (2) over the life or life expectancy of his designated beneficiary. Under the RMD rules as modified by the SECURE Act, the 5-year period is increased to 10 years and applies regardless of whether the individual dies before his RBD – this is called the 10-year rule. If the beneficiary is a certain specified "eligible" designated beneficiary ("EDB") – for example, a deceased participant's surviving spouse or minor child – the 10-year rule is satisfied if the distributions are withdrawn over that beneficiary's lifetime or life expectancy.

In February 2022, the Internal Revenue Service ("IRS") published proposed regulations updating the RMD rules in light of the SECURE Act's changes. Regarding the 10-year rule, the proposed regulations explained that, if the 10-year rule applies, distributions from the account must continue *throughout* the 10-year period in two circumstances: (1) for any designated beneficiary if the employee dies after RMDs have already begun, and (2) following the death of an EDB who is "stretching" the benefits they inherited from an employee who died before their RBD. This interpretation was contrary to how many taxpayers thought the rules would apply – many had believed that the 10-year rule did not require annual distributions (and instead, for example, distributions could be taken towards the end of the 10-year period as long as the entire amount was withdrawn within 10 years). As a result, it appears likely that some taxpayers did not take RMDs in 2021 and 2022 because they believed they were not required. These proposed regulations, which have not yet been finalized, were intended to apply beginning with the 2022 distribution calendar year.

Later that same year, the IRS released Notice 2022-53, which, in response to the confusion, provided relief for failures in 2021 and 2022 to comply with the IRS's interpretation of the 10-year rule. Under that guidance, a defined contribution plan that did not make certain "specified" RMDs will not be treated as failing to satisfy the requirement to take RMDs merely because it did not make the required distribution. The Notice provided that, under these circumstances, the IRS will not impose the excise tax that usually applies for taxpayers that fail to take their RMD. (See Rewards Policy Insider 2022-23 for a full explanation of what RMDs qualify for the relief.) The Notice also provided that the final regulations will apply no earlier than the 2023 distribution calendar year, i.e., a one-year delay from the effective date outlined in the proposed regulations.

At the end of 2022, SECURE 2.0 made a further change to the RMD rules by increasing the RBD from age 72 to age 75 (which will take place in two phases over the span of about 10 years).

New IRS Guidance

On July 14, 2023, the IRS released Notice 2023-54, which provides two main types of relief: (1) relief similar to that provided in the 2022 Notice; and (2) relief relating to SECURE 2.0's changes to the RMD rules. First, the guidance extends the same relief provided in the 2022 Notice to apply to this year. Now, the relief applies to taxpayers that failed to take their RMD in 2021, 2022, *and* 2023. The guidance also specifies that final RMD regulations – whenever they are released – will apply for distribution calendar years beginning no earlier than 2024. This additional delay is welcome news for plans and taxpayers preparing for changes to the complicated RMD rules.

Second, the Notice addresses SECURE 2.0's change to the RBD by providing relief for individuals taking distributions from plans (and IRAs) that were characterized as RMDs but were not actually RMDs as a result of SECURE 2.0's change in the RBD. For distributions made between January 1st and July 31st, 2023 to a plan participant (or spouse) born in 1951 that would have been an RMD but for SECURE 2.0's change to the RBD, the Notice provides the following relief:

- *Eligible Rollover Distributions.* Certain types of rollovers, called eligible rollover distributions ("ERDs"), are subject to beneficial tax rules. For example, they are not included in gross income, and they are not subject to a tax that applies to early distributions from a plan. Under the Notice, an employer plan or plan administrator will not be considered to have failed to satisfy the various withholding, direct rollover, or notice requirements relating to ERDs merely because of a failure to treat the distributions described above as ERDs.
- *Indirect Rollovers from Plans.* Typically, there is a 60-day deadline for completing rollovers for employer plans. The Notice extends this rollover deadline to September 30, 2023 for any distributions described above. This will allow individuals who have mischaracterized RMDs to roll over the mischaracterized part of the distribution. (The Notice also provides IRA owners and surviving spouses similar relief.)

Agencies Issue Proposed Mental Health Parity Regulations

On the same day the Departments of Labor, Health and Human Services, and Treasury ("Agencies") issued their annual report to Congress on mental health parity, the Agencies published new proposed rules to codify and implement recent statutory changes and provide additional guidance on how to comply with parity requirements for non-quantifiable treatment limitations (NQTLs), as well as other aspects of the mental health parity law. Comments on the proposed regulations are due by October 2, 2023.

Background

In general, the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) requires group health plans that offer mental health and substance use (MH/SU) disorder benefits to provide such benefits on no less favorable terms than they provide medical and surgical (M/S) benefits. These parity requirements apply both with respect to a plan's quantifiable treatment limitations – e.g., cost-sharing requirements – and its NQTL's, such as prior authorization requirements and provider network composition. The Affordable Care Act of 2010 extended the mental health parity rules to the individual health insurance market, among other things.

The Consolidated Appropriations Act, 2021 ("CAA, 2021") amended the MHPAEA to expressly require group health plans to prepare a comparative analysis of the design and application of any NQTL's, and to share these comparative analyses with appropriate Federal and state regulators upon request. Additionally, CAA, 2021 requires the Agencies to submit an annual report on its NQTL comparative analyses reviews to Congress.

Most recently, the Consolidated Appropriations Act, 2023 ("CAA, 2023") eliminated the ability of self-funded, non-Federal governmental plan sponsors to opt-out of the MHPAEA's requirements.

Overview of Proposed Regulations

According to the preamble to the proposed regulations, the proposals would:

- Make clear that MHPAEA requires that individuals can access their MH/SU benefits in parity with M/S benefits;
- Provide specific examples that make clear:
    - that plans and issuers cannot use more restrictive prior authorization and other medical management techniques for MU/SU benefits
    - standards related to network composition for MH/SU benefits
    - factors to determine out-of-network reimbursement rates for MH/SU providers
- require plans and issuers to collect and evaluate outcomes data and take action to address material differences in access to MH/SU benefits as compared to M/S benefits, with a specific focus on ensuring that there are not any material differences in access as a result of the application of their network composition standards;
- codify the comparative analyses requirement, including evaluating standards related to network composition, out-of-network reimbursement rates, and prior authorization NQTLs; and
- implement the sunset provision for self-funded, non-Federal governmental plan elections to opt-out of MHPAEA.

With regard to evaluating outcomes data relating to network composition, the Department of Labor also published Technical Release 2023-01P to solicit comments on suggested principles it would use to develop specific data collection requirements. Comments on the Technical Release are also due by October 2, 2023.

MHPAEA Annual Report to Congress

As noted, the Agencies coordinated the publication of the proposed regulations and Technical Release with the delivery of their annual report to Congress on the MHPAEA. As was the case with the 2022 report to Congress, the 2023 report details the Agencies' MHPAEA enforcement efforts, including the results of their reviews of different plan sponsors' NQTL comparative analyses.

The report indicates that most of the comparative analyses they reviewed continue to be deficient in a variety of ways and lists the most common problems encountered. At the top of that list was a failure to be prepared or even have a comparative analysis. The report also noted that the common deficiencies outlined in the 2022 report continue to persist. These include:

- failure to identify the benefits, classifications, or plan terms to which the NQTL applies;
- failure to describe in sufficient detail how the NQTL was designed or how it is applied in practice;
- failure to identify or define in sufficient detail the factors, sources, and evidentiary standards used in designing and applying the NQTL;
- failure to analyze in sufficient detail the stringency with which factors, sources, and evidentiary standards are applied; and
- failure to demonstrate parity compliance of NQTLs as written and in operation.

House Committees Report Telehealth Bills

The popularity of telehealth surged during the COVID-19 pandemic and does not appear to be receding even as the pandemic-related national and public health emergencies end. So far this summer, each of the three committees with significant health policy-related jurisdiction in the House of Representatives have approved bills to permanently codify certain pandemic-related telehealth policies.

Telehealth as an "Excepted Benefit"

On July 19, 2023, the House Committee on Energy and Commerce favorably reported an amended version of H.R. 824, the Telehealth Benefit Expansion for Workers Act. The House Committee on Education and the Workforce reported a different version of the bill in June.

In general, the version of H.R. 824 reported by the Energy and Commerce Committee would give employers an option to provide a standalone telehealth plan as an "excepted benefit" only to those employees who are not otherwise offered health insurance. Essentially it would codify the special relief the Departments of Health and Human Services, Labor, and Treasury provided early in the pandemic to permit large employers to offer telehealth and remote care only plans to employees (and their dependents) who are otherwise not eligible for any other group health plan offered by the employer. That special relief was tied to the COVID-19 public health emergency, which officially ended on May 11, 2023.

In response to concerns that H.R. 824 could open the door to some employers using standalone telehealth benefits to circumvent certain legal requirements, the reported bill would specifically require standalone telehealth benefit plans

to comply with the mental health parity rules, the ban on preexisting conditions, the HIPAA nondiscrimination rules, and the prohibition on rescissions. These rules typically do not apply to "excepted benefits."

The bill also would impose a notice requirement to ensure participants are aware that the standalone telehealth benefits plan is not subject to all the same requirements that apply to comprehensive group health plans.

High-Deductible Health Plans and HSAs

The Committee on Ways and Means also has jurisdiction over H.R. 824, but it has not acted on the bill yet. However, earlier this summer it did approve a separate telehealth bill that would address the ability of HSA-compatible high-deductible health plans (HDHPs) to continue providing below-the-deductible coverage for telehealth benefits.

Pursuant to a temporary rule currently in effect for plan years beginning before January 1, 2025, HSA-compatible HDHPs are permitted to provide first dollar coverage for telehealth benefits. H.R. 1843 ("The Telehealth Expansion Act of 2023"), as approved by the Ways and Means Committee, would permanently extend this special telehealth exception.

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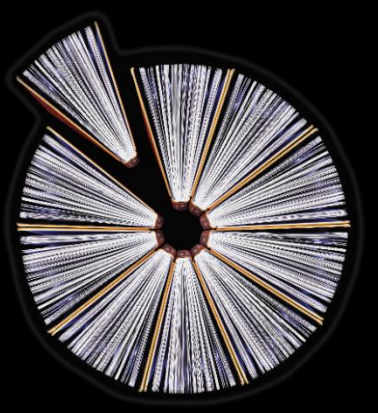

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