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HSA/HDHP Telehealth Safe Harbor Expires After Congress Fails to Pass Extension

A temporary safe harbor permitting HSA-compatible high-deductible health plans (HDHPs) to provide first-dollar coverage for telehealth services is not available for plan years beginning on and after January 1, 2025 because Congress failed to extend it during a flurry of eleventh-hour legislative activity that centered on avoiding a government shutdown. There is still a chance that Congress will revive the safe harbor, but it is too early to tell when that might happen – or whether such an extension would have any retroactive effect.

What Happened?

Facing a December 21, 2024 deadline to pass legislation to keep the government operating, Congressional leaders unveiled a bipartisan continuing resolution early in the week of December 17 that included government funding for an additional 3 months and a variety of other legislative provisions. Among the bill's legislative provisions were a 2-year extension of the HSA/HDHP telehealth safe harbor, a series of reforms targeted at pharmacy benefit managers (PBMs), and a variety of changes to the Medicare and Medicaid programs.

Before the House and Senate could vote on the compromise bill, a revolt led by some members of the House Republican conference forced House Speaker Mike Johnson back to the drawing board.

The final bill – which continues to fund the government through March 14, 2025 – did retain some Medicare and Medicaid provisions, including extensions of certain Medicare telehealth flexibilities through the end of March 2025. However, the extension of the HSA/HDHP telehealth safe harbor and PBM reforms were among the provisions that did not make the cut.

What's Next?

The fate of these provisions now lies in the hands of the new 119th Congress and the incoming Trump Administration. One of their first orders of business will be to address government funding for the remainder of the current fiscal year before the latest continuing resolution expires on March 14, 2025. Since they presumably will revisit the Medicare telehealth flexibilities at that time as well, they will also have another opportunity to address the HSA/HDHP telehealth safe harbor.

If not then, yet another opportunity could come with a broader tax bill that the new Congress is hoping to pass this year. In addition to the HSA/HDHP telehealth safe harbor, that bill could be a possible legislative vehicle for a variety of other HSA-related reforms that emerged during the last Congress.

As of now, this provision has not been extended and barring an extension and any retroactive effect this may have, this means that starting January 1, 2025, plans offering HDHPs with HSAs must ensure telehealth services that do not meet any exception, such as those for preventive care, are subject to the plan's cost sharing requirements. Plans that reimburse individuals in HDHPs for telehealth services before the individual meets their deductible would cause those individuals to be disqualified from contributing to an HSA for that plan year, and an impermissible contribution to an HSA is subject to a 6% excise tax.

Action items would be that employers need to amend their plan documents and draft and distribute a Summary of Material Modifications.

Congress Enacts ACA Reporting Relief

Even as hopes for a modest package of health reforms were dashed, the 118th Congress did manage to pass two bills that provide some ACA reporting relief during its final legislative days. The relief generally will be available for ACA reporting due in 2025.

The two bills at issue are H.R. 3797, the "Paperwork Burden Reduction Act," and H.R. 3801, the "Employer Reporting Improvement Act."

Background

In general, health insurance issuers and employers that sponsor self-insured group health plans must provide a notice of minimum essential coverage to covered individuals and to the IRS. This information is typically provided to individuals using the Form 1095-B, which must be provided by January 31 of each year. The purpose of this requirement is to help individuals avoid the ACA's tax penalty for those who fail to maintain minimum essential coverage, although the penalty was reduced to zero beginning in 2019.

Employers with more than 50 full-time employees ("Applicable Large Employers" or "ALEs") also are required to provide certain information to their full-time employees and the IRS about the health benefits they offer to them, if any. This information, which is used to facilitate IRS enforcement of the ACA's employer shared responsibility penalty, is reported on the Form 1095-C. These employers can also use the Form 1095-C in lieu of the 1095-B to provide individuals notice of minimum essential coverage.

Summary of Relief

The Paperwork Burden Reduction Act gives health insurance issuers and employers the option to only furnish the Form 1095-B (and the 1095-C, to the extent being used for this purpose) upon request, rather than automatically providing it directly to all covered individuals. In order to take advantage of this option, the insurer or employer must provide a notice to covered individuals of the right to request a Form 1095-B (or 1095-C). Once the request is made, the Form 1095-B generally will need to be furnished to the individual within 30 days.

The IRS already offered this option with respect to the Form 1095-B, but not the 1095-C. Thus, the Paperwork Burden Reduction Act codifies and expands upon the IRS's relief. The statutory change applies beginning with Forms 1095-B and 1095-C for 2024, meaning that health insurance issuers and employers can begin taking advantage of it immediately.

The Employer Reporting Improvement Act (ERIA) similarly codifies previous IRS guidance permitting health insurance issuers and employers to use the individual's date-of-birth instead of their taxpayer information number (TIN) on the Form 1095-B (and 1095-C, when reporting minimum essential coverage) if the TIN is not available.

Additionally, the ERIA provides that health insurers and employers can continue to provide the Forms 1095-B and 1095-C electronically to anyone who has previously consented to electronic receipt unless and until such individual affirmatively revokes consent in writing.

Finally, the ERIA extends from 30 days to 90 days the amount of time to respond to an IRS notice of proposed assessment of an ACA employer shared responsibility penalty. It also establishes a 6-year statute of limitation on the assessment of such penalties.

Like the Paperwork Burden Reduction Act, the changes made by the ERIA generally are effective immediately.

PBGC Alerts Pension Plan Sponsors to Accelerated Premium Filing Deadline for 2025 Plan Years

The Pension Benefit Guaranty Corporation (PBGC) on January 6 issued [Technical Update Number 25-1] to remind pension plan sponsors of an accelerated premium filing deadline for 2025 plan years. Due to a provision in the Bipartisan Budget Act of 2015 (BBA 2015), premiums for plan years beginning in 2025 generally are due one month earlier than otherwise would be the case based on existing PBGC regulations.

Background

In general, the "Normal Premium Due Date" is the 15th day of the 10th calendar month that begins on or after the first day of that plan year (or October 15 for calendar year plans).

There are special exceptions for certain situations, such as for a new plan that is adopted and effective less than 90 days before the Normal Premium Due Date.

Revised Due Dates for 2025 Plan Years

Section 502 of the BBA 2015 provides a special premium due date solely for plan years beginning in 2025. Under this special rule, the premium filing due date for all plans is the 15th day of the 9th calendar month that begins on or after the first day of the plan year. In other words, for calendar year plans the due date will be September 15, 2025 instead of October 15, 2025.

The BBA 2015 provision supersedes not only the Normal Premium Due Date rule for 2025 plan years, but also any otherwise applicable special due date rules.

The premium filing due dates for plan years beginning in 2025 will be as follows:

Date Plan Year Begins	Due Date
1/1/2025	9/15/2025
1/2/2025 - 2/1/2025	10/15/2025
2/2/2025 - 3/1/2025	11/17/2025*
3/2/2025 - 4/1/2025	12/15/2025
4/2/2025 - 5/1/2025	1/15/2026
5/2/2025 - 6/1/2025	2/16/2026*
6/2/2025 - 7/1/2025	3/16/2026*
7/2/2025 - 8/1/2025	4/15/2026
8/2/2025 - 9/1/2025	5/15/2026
9/2/2025 - 10/1/2025	6/15/2026
10/2/2025 - 11/1/2025	7/15/2026
11/2/2025 - 12/1/2025	8/17/2026
12/2/2025 - 12/31/2025	9/15/2026

*The 15th day of the ninth month beginning on or after the first day of the plan year falls on a weekend or federal holiday.

Why the Change?

The one-year accelerated premium due date was enacted more for reasons of legislative procedure than policy. Nonetheless, it is the law for 2025 unless it is changed by Congress. For now at least, plan sponsors should prepare to pay their PBGC premiums one month earlier than normal.

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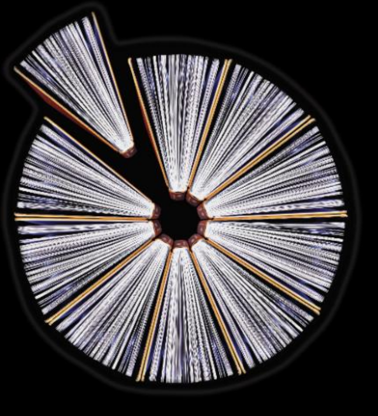

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