

## EMPLOYEE BENEFITS

## Inflation Reduction Act of 2022 May Indirectly Affect Group Health Plans

On August 16, 2022, the [Inflation Reduction Act of 2022 \(IRA\)](#) was signed into law by President Biden. While the Act generally focuses on reducing the federal deficit and various environmental measures, portions of the Act may indirectly impact employer-sponsored health plans.

### Extension of Advanced Premium Tax Credits (APTC) for Individuals Participating in the Health Care Marketplace (Exchange)

The parameters for qualifying for the APTC were temporarily expanded under the American Rescue Plan Act (ARPA) beyond 400% of the Federal Poverty Level (for 2021 and 2022). This expansion was extended through the end of the 2025 calendar year under the newly enacted Inflation Reduction Act (IRA). In addition, ARPA and IRA established increased income bands to establish the percentage of household income a taxpayer must pay towards medical premiums to qualify for the APTC. Because of the expansion, there may be greater potential for full-time employees to trigger an Employer Shared Responsibility Payment (play-or-pay penalty) if they forego employer-sponsored coverage or are not offered coverage through an Applicable Large Employer (ALE).

If the employer does not offer an employee minimum essential health coverage that is affordable and of minimum value and the employee goes to the Exchange and gets the Advanced Premium Tax Credit (APTC), the employer must pay a penalty under Internal Revenue Code (IRC) §4980H.

- IRC §4980H(A) Penalty: If the ALE (defined as an employer having 50 or more full-time and full-time equivalent employees on average during the previous calendar year) fails to offer substantially all (at least 95%) full-time employees at least minimum essential health coverage, a monthly penalty of \$229.17 (one-twelfth of \$2,750, times the total number of full-time employees minus the first 30) applies in 2022 to each month that at least one full-time employee obtains Marketplace coverage and qualifies for the APTC.
- IRC §4980H(B) Penalty: If an ALE offers minimum essential health coverage to substantially all full-time employees, but the offer of coverage to one or more full-time employees is unaffordable or does not constitute minimum value, such full-time employees who waive the group health plan, enroll in the Marketplace plan and qualify for the APTC will trigger this penalty. For 2022, the monthly employer shared responsibility payment is one-twelfth of \$4,120 (which equates to \$343.33 for each month each eligible full-time employee goes to the Exchange and gets subsidized coverage) times the number of employees qualifying for the APTC.
- The affordability threshold and penalties are indexed each year for inflation.

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While the expansion of the parameters for qualifying for the APTC makes it more likely that employees will qualify for the APTC based on their annual household income, the expansion does not affect whether an employer's coverage is considered affordable. Employers who offer coverage where the lowest cost employee-only option meets one of the affordability safe harbors are still considered to have offered affordable coverage. **The expansion does not change the affordability safe harbors or how they are calculated.**

## HDHP Safe Harbor for Insulin-Related Expenses

The IRA provides a group health plan will not fail to be a high-deductible health plan (HDHP) because it provides benefits for "selected insulin products" prior to the covered individual's satisfaction of the minimum deductible. This provision within the IRA codifies and expands previous guidance set forth under [IRS Notice 2019-45](#), which defined insulin for a person with diabetes as a preventive care item/service for purposes of determining whether a plan qualifies as an HDHP. The IRA expands the guidance provided in IRS Notice 2019-45 by providing that an HDHP may provide coverage for "selected insulin products" prior to satisfaction of the minimum annual deductible for any covered individual, not only those with diabetes. Under the IRA, "selected insulin products" includes any dosage form (e.g., inhaler, vial or pump) of any different type of insulin (e.g., rapid/short/intermediate/long-acting/ultra long-acting and premixed).

As a result of this provision of the IRA, which is effective for plan years beginning on or after December 31, 2022, an otherwise HSA-eligible participant will be able to receive select insulin products under an HDHP (at little or no cost) prior to meeting the minimum deductible without jeopardizing that individual's ability to contribute to their HSA. However, note that the IRA does not mandate an HDHP to include such pre-deductible coverage for select insulin products. Insurance carriers and plan sponsors may choose whether to amend their plans to provide such benefits.

## Medicare and Medicaid Prescription Drug Coverage

The IRA redefines fair market pricing for Medicare and Medicaid programs, imposes requirements on drug manufacturers beginning in 2023 and specifies requirements for rebates when average prices of certain drugs outpace inflation. In addition, the IRA caps Medicare Part D beneficiary cost-sharing for insulin and related products. No deductibles may be applied to insulin products, and cost-sharing for insulin will be capped starting in 2023. Beginning in 2025, annual out-of-pocket prescription drug costs for Medicare Part D programs will be capped at \$2,000.

The IRA does not include comparable cost reductions for private plans, and there is a potential concern that drug manufacturers may recover any lost revenue by shifting those costs to individual and group health plans. In addition, the changes to Medicare Part D benefits could impact the expected amount of paid claims under the standard Medicare Rx drug benefit. If that occurs, the IRA will indirectly impact whether employer-provided prescription drug coverage is considered creditable coverage. One test to determine whether an employer's coverage is creditable is to measure whether the expected amount of paid claims under the employer's prescription drug coverage is at least as much as the expected amount of paid claims under the standard Medicare prescription drug benefit.

**Regulations and further guidance will be forthcoming.**



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