Inflation Reduction Act's Health Care Provisions Could Affect Employers

Drug coverage and marketplace subsidies might put pressure on employer plans

By Stephen Miller, CEBS
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This article has been updated.

The climate spending and tax legislation President Joe Biden signed into law on Aug. 16 contains provisions that could affect employers that sponsor group health plans. Also, the legislation's increase in IRS auditors could impact employer-sponsored retirement plans.

The House passed the legislation, which Democrats named the Inflation Reduction Act (IRA), with a party-line vote on Aug. 12 following earlier Senate passage.

Below are some of the provisions that group health plan sponsors should keep in mind.

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Prescription Drug Costs

The IRA seeks to reduce the cost of prescription drugs under Medicare Part D by allowing the Centers for Medicare & Medicaid Services to negotiate lower costs with pharmaceutical companies. It also caps insulin costs under Medicare Part B, among other provisions.

"Because all the bill's drug pricing reforms apply only to Medicare, however, the legislation is raising worries that it could ... result in significant cost-shifting to commercial market plans, meaning higher drug prices and costs for the millions of Americans and their families who get their health coverage through employer-sponsored plans," wrote Geoff Manville and Dorian Z. Smith (https://www.mercer.us/our-thinking/healthcare/major-medicare-drug-price-reforms-to-become-law.html), partners in HR consultancy Mercer's law and policy group in Washington, D.C., and New York City, respectively.

Others also expressed concerns that lower payments for drugs purchased through Medicare could result in higher costs for non-Medicare plans. "We are alarmed that employer plan cross-subsidization will be expected once again to shoulder additional costs and make up for any perceived shortfall in prescription revenues by drug manufacturers," the Washington, D.C.-based Business Group on Health, which represents large employers, said in a statement.

The group added that "transparency, market-based reforms and other policy approaches would best serve all stakeholders. We therefore encourage employer plan sponsors to work with their service providers early to ensure fair treatment in light of the government's action and potential cost-shifting."

New HDHP Insulin Safe Harbor

Effective for plan years beginning on or after Dec. 31, 2022, high-deductible health plans "will be permitted to cover insulin for a broader range of uses (https://ogletree.com/insights/new-[illegible]-inflation-reduction-act-of-2022/) [illegible] before, prior to satisfaction of the deductible, without adversely affecting a participant's eligibility to contribute to a health savings account (HSA)," wrote Kristine M. Bingman, an attorney in the Portland, Ore., office of law firm Olgetree Deakins.

The IRA allows an HDHP to cover "selected insulin products" prior to the deductible, without regard to whether the individual has been diagnosed with diabetes, Bingman noted. It defines "selected insulin products" as any dosage form (including vial, pump, or inhaler) of any type of insulin (rapid-acting, short-acting, intermediate-acting, long-acting, ultra long-acting, and premixed).

Extension of Higher ACA Plan Subsidies

For people who buy health insurance on the ACA marketplace through HealthCare.gov or a state-run exchange, the 2021 American Rescue Plan Act expanded access to federal subsidies through 2022 by eliminating the subsidy cutoff if a purchaser earned more than 400 percent of the federal poverty limit. For these purchasers, premium tax credits (PTCs), which gradually decrease as income rises, lower the cost of ACA plan premium contributions for silver (midlevel) health plans to no more than 8.5 percent of an individual or family's income.

The IRA expands these higher subsidies through 2025.

"While there are many benefits to extending the enhanced PTC subsidies, there are some potential consequences for employers," wrote Robert Sheen (https://acatimes.com/inflation-reduction-act-to-extend-enhanced-aca-subsidies/), founder and president of Trusaic, a regulatory compliance software company based in Los Angeles.

Employees' receipt of PTCs is a trigger for the IRS to identify organizations that fail to comply with the ACA's employer shared-responsibility mandate, which requires employers with 50 or more full-time or equivalent employees to offer affordable, ACA-compliant coverage to employees. "With PTCs being more accessible for the next three years, we can anticipate more penalties as a result," Sheen noted.

"Every time an employee receives a PTC from a state or federal health exchange, the tax information is relayed to the IRS," he explained. "The information is then cross-referenced with an employee's 1095-C information. After examining the information, the IRS can determine if an employer extended affordable, sufficient coverage to its employees and subsequently assess an IRS penalty via Letter 226J."

Sheen advised that "with penalties increasing, employers should verify their ACA filings prior to reporting the information to both the IRS and any state governments."

The ICHRA Option

With the expansion of enhanced PTC subsidies until 2025, it becomes more likely that the higher subsidies will eventually be made permanent, health care policy experts say. One consequence could be to make ACA marketplace plans a more appealing health care option for employers. Employers then could opt to forgo group health plans and meet the ACA's coverage requirements by funding individual coverage health reimbursement arrangements (ICHRAs) (https://www.healthcare.gov/small-businesses/learn-more/individual-coverage-hra/), which allow employees to purchase their own coverage on ACA exchanges.

"The extension of the subsidies isn't a major win so much as it's a continuation of the status quo. But in this case, the status quo is a potentially strong growth trajectory for both regular ACA marketplace plan enrollments and ICHRA expansion," said Shandon Fowler, vice president for product marketing at Waltham, Mass.-based Alegeus, a maker of software for administering health care benefits accounts.

He noted that there are areas of the country where ACA public marketplace plans are competitive with group health plans on cost and are comparable on coverage.

While the overall numbers of employers offering ICHRAs is still small in comparison to group health plans, he noted, "they're trending in the rig[illegible] direction. The Inflation Reduction Act's extension of the expanded subsidies will keep that trajectory on a strong growth course, in our view."

More Retirement Plan Audits?

The IRA includes almost $80 billion in new funding for the IRS, of which almost $46 billion is allocated to enforcement.

"What is not clear at this juncture is how much of that massive amount of new funding will trickle down to the tax-exempt and government entities division, which has oversight over retirement plans [and] the employers that sponsor retirement plans," wrote Christine Roberts (https://eforerisa.com/2022/08/10/will-new-irs-funding-increase-plan-audits/), an employee benefits attorney with Mullen & Henzell in Santa Barbara, Calif., in a blog post.

She observed, "It seems hard to imagine that some portion of the enforcement budget won't ultimately increase plan audit activity."

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IRS Sets 2023 Health Plan Premium Affordability Threshold at 9.12% of Pay (www.shrm.org/ResourcesAndTools/hr-topics/benefits/Pages/IRS-sets-2023-health-plan-premium-affordability-threshold.aspx), *SHRM Online*, August 2022