COMPLIANCE **ALERT**

Inflation Reduction Act Indirectly Impacts Employer-Sponsored Health Plans

August 18, 2022

Action Required:

- Consult with trusted advisors to understand how these new rules impact your health and welfare plans.

On August 16, President Biden signed the Inflation Reduction Act of 2022 into law. While the new legislation largely focuses on climate change mitigation and deficit reduction, several provisions make significant changes to current healthcare laws and will likely indirectly impact employer-sponsored health and welfare plans.

What provisions of the Act have the biggest impact on employers and sponsors of health and welfare plans?

- **Enhanced ACA Premium Tax Credits.** The premium tax credit rules adopted in the American Rescue Plan Act that were more favorable to individuals than pre-existing ACA rules will now remain in effect through 2025.
- **Medicare Prescription Drug Cost Reductions.** Because the new Medicare rules do not mandate comparable reductions for private health plans, these reduced costs may result in insurers increasing costs for employer-sponsored plans and participants to make up lost revenue.
- **Insulin-Related HDHP Safe Harbor.** Plans will not lose their HDHP status by failing to have a deductible for certain insulin products.

What should employers and plan sponsors do next?

Employers and plan sponsors should consider the potential indirect impacts.

For example, the expanded eligibility for premium tax credits on an ACA Exchange could increase applicable large employers' employer shared responsibility penalty exposure if they're not offering affordable, minimum-value coverage to all full-time employees.

Additionally, the Act's improvement to Medicare Part D drug coverage may affect the analysis of whether employer-sponsored prescription drug coverage is "creditable."

Consult with your Corporate Synergies Account Manager to understand how these new rules impact your health and welfare plans. ■

↓ Full Explanation Follows ↓

Inflation Reduction Act Indirectly Impacts Employer-Sponsored Health Plans

On August 16, President Biden signed the [Inflation Reduction Act of 2022] (the "Act") into law. While the new legislation largely focuses on climate change mitigation and deficit reduction, several provisions make significant changes to current healthcare laws and will likely impact employer-sponsored health and welfare plans, even if indirectly.

How does the Act change the law?

While the Act generally incorporates many of the drug pricing concepts proposed in earlier budget reconciliation measures offered by congressional Democrats, including the Build Back Better Act last year, the Act's final provisions show a scaled-back version of these prior proposals.

The Act changes existing healthcare laws by:

(1) extending temporary expanded health insurance premium tax credits for Affordable Care Act (ACA) Exchange plans through 2025;

(2) establishing a new program for Medicare to directly negotiate prices with pharmaceutical manufacturers for certain high-spend Medicare drugs, and imposing stiff penalties for companies that refuse to comply;

(3) requiring manufacturers to pay rebates on drugs reimbursed under Medicare Parts B or D for which average prices increase faster than inflation;

(4) improving the Medicare Part D benefit, including establishing an annual out-of-pocket cap for beneficiary cost-sharing on prescription drugs and eliminating patient cost-sharing in the catastrophic phase;

(5) delaying the effective date of the November 2020 Anti-Kickback Statute's final regulation removing safe harbor protection for prescription drug rebates until 2032;

(6) expanding access to vaccines for adults in the Medicaid program by eliminating cost-sharing and offering a temporary 1% increase in federal Medicaid matching funds for states that already cover adult vaccine administration without cost sharing;

(7) incentivizing development and use of biosimilars by, among other provisions, temporarily increasing the Medicare Part B add-on payment for certain qualifying biosimilars[1]; and

(8) expanding a safe harbor under the Internal Revenue Code (Code) to allow high deductible health plans (HDHPs) to provide insulin on a no-deductible basis without adversely affecting health savings account (HSA) eligibility.

What provisions of the Act have the biggest impact on employers and sponsors of health and welfare plans?

What follows is a summary of the provisions that are likely to have the biggest impact on employers and plan sponsors:

Enhanced ACA Premium Tax Credits. The premium tax credit rules adopted in the [American Rescue Plan Act (ARPA)] that were more favorable to individuals than pre-existing ACA rules will now remain in effect through 2025.

As background, the ACA created a refundable premium tax credit, which is available on a sliding-scale basis for individuals and families who are enrolled in an Exchange plan and who are not eligible for other qualifying coverage or affordable employer-sponsored health insurance plans providing minimum value. The ACA limits the tax credit to taxpayers with household income between 100% and 400% of the federal poverty line who purchase insurance through an Exchange.

The COVID relief provisions in ARPA expanded the ACA premium tax credit for taxable years 2021 and 2022 by eliminating the upper income limit for eligibility and increased the amount of the premium tax credit by decreasing, in all income bands, the percentage of household income that individuals must contribute for Exchange coverage. The adjusted percentage ranges from zero to 8.5%. Indexing was to have resumed in 2023, with the percentage set to range from 1.92% to 9.12%. The new law supersedes the previously released indexing adjustments, which instead will continue to range from zero to 8.5% through 2025.

[1]The Act will temporarily increase the Medicare Part B add-on payment for certain biosimilars from 6% to 8% of the reference product's Medicare Average Sales Prices ("ASP") from October 1, 2022 through the end of 2027. Additionally, for new biosimilars furnished on or after July 1, 2024, the Act changes the initial period payment rate to be the lesser of the biosimilar's wholesale acquisition cost plus 3% or 106% of the reference product's ASP.

Medicare Prescription Drug Cost Reductions. Several cost reduction-related rules in the Act will benefit enrollees in Medicare Part D prescription drug coverage. For the first time, the Secretary of the Department of Health and Human Services (HHS) will be required to negotiate certain Medicare drug prices with manufacturers beginning in 2026. Beginning in 2023, cost-sharing for insulin will be capped at $35 per month and manufacturers will be required to pay Medicare a rebate if average prices of certain drugs increase faster than inflation. Additionally, annual Part D out-of-pocket prescription drug costs will be capped at $2,000 starting in 2025.

It should be noted that because the Act's new Medicare rules do not mandate comparable prescription drug cost reductions for private health plans, there are concerns that reduced costs for Medicare enrollees will result in insurers imposing increased costs for employer-sponsored plans and participants as price increases are shifted to private plans to make up for lost revenue.

Insulin-Related HDHP Safe Harbor. The Act amends Code § 223 to provide that plans will not lose their HDHP status by reason of failing to have a deductible for certain insulin products. This provision is effective for plan years beginning after December 31, 2022, and it codifies and expands previous IRS guidance that allows HDHPs to provide insulin on a no-deductible or low-deductible basis under specified circumstances without adversely affecting HSA eligibility.

What should employers and plan sponsors do next?

Although the Act does not directly affect employer-sponsored health and welfare plans, employers and plan sponsors should not lose sight of the potential indirect impacts. For example, under the ACA, because applicable large employers (ALEs) potentially face employer shared responsibility ("Employer Mandate") penalties if full-time employees receive premium tax credits on an ACA Exchange, expanded eligibility for the credits under the Act could increase ALEs' Employer Mandate penalty exposure if they're not offering affordable, minimum-value coverage to all full-time employees. Additionally, the Act's improvement to Medicare Part D drug coverage may affect the analysis of whether employer-sponsored prescription drug coverage is "creditable" (see our recent E-Alert on this requirement here). Your Corporate Synergies Account Manager can assist your organization with understanding how these new rules impact your health and welfare plans. ■

If you have any additional questions, please call your Corporate Synergies Account Manager or 866.CSG.1719.