

Understanding the important considerations in the Consolidated Appropriations Act, 2021 that impact healthcare programs

On December 27, 2020, President Trump signed the Consolidated Appropriations Act, 2021 (“CAA”) into law. The 5,593-page document includes the largest bundle of federal health care-related legislation since the Affordable Care Act.

Fidelity has identified four key aspects of the CAA that have important implications for plan sponsors of group health benefits. Many of the CAA’s health and welfare provisions require further clarification, but plan sponsors should start preparing for the immediate requirements and expect a number of additional regulations in 2021.

1 Immediate Opportunity to Amend Health and/or Dependent Care Flexible Spending Accounts (FSAs)

In light of the continuing COVID-19 pandemic, the CAA offers plan sponsors another opportunity to temporarily loosen the federal contribution and carry-over rules for FSAs.

Employers may choose to implement some, none, or all of these amendments at their discretion:

- Allow employees to modify their 2021 FSA election amounts on a prospective basis without regard to a change in status event
- Offer unlimited carryover of all unused FSA balances for plan years ending in 2020 or 2021
- Extend FSA grace periods up to 12 months for plan years ending in 2020 or 2021
- Allow spend-down of Health FSA balances for participants who ceased participation in calendar years 2020 or 2021

Potential Actions for Plan Sponsors:

- Examine current FSA balance and election data to determine whether any of these options may create meaningful opportunities for plan participants. Plan sponsors that wish to make any of these changes must formally amend their plan documents (which can be done on a retroactive basis)
- Review any potential amendments with benefits counsel and be prepared to draft plan amendment language
- Work with communication and administrative partners to support the roll-out of changes to plan participants

- Increase the Dependent Care FSA age limit for dependent children from age 13 to age 14 (limited to participants enrolled in the Dependent Care FSA as of January 31, 2020 and have unused balances)

2 New Health Care Cost Transparency Requirements Coming in 2022

Starting next year, the CAA will require plan sponsors to ensure employees have access to more cost information on healthcare services and prescription drugs covered under their group health plan. For plan years starting on or after January 1, 2022, plan sponsors must ensure members have access to a price comparison tool available online or by phone that lets them compare the cost of specific healthcare items and services across multiple providers. Even though this cost data primarily resides with health insurers, plan sponsors will ultimately be responsible for ensuring compliance with the new requirement.

Many details of this requirement remain unclear. In particular, at this point, it is unclear how the CAA's new transparency requirements interact with the November 2020 Final Transparency in Coverage Rule, which among other things established a similar requirement for plan sponsors to develop online cost transparency tools by 2023.

3 Brokers and Consultants Must Disclose Compensation to Plan Sponsors

The CAA amends ERISA Section 408(b)(2) by requiring consultants and brokers providing services to ERISA-covered group health plans to disclose all direct and indirect compensation they receive from insurance carriers and other vendors in excess of \$1,000. This new disclosure will give group health plan sponsors better visibility into commission-based revenue streams that can be lucrative for consultants and brokers. Plan sponsors will have a fiduciary responsibility to review the disclosures and ensure consultant/broker compensation is appropriate for the services provided. Brokers and consultants will be required to provide this new

Potential Actions for Plan Sponsors:

- Begin conversations with medical plan administrators and pharmacy benefit managers to understand how they plan to help plan sponsors comply with the new regulations beginning in 2022*
- Be prepared for vendors to pass on additional administrative costs associated with complying with new requirements*
- Carrier contracts may need to be amended to address compliance with the new regulations*

Potential Actions for Plan Sponsors:

- Reach out to your broker and consultant partners to understand their plans and timeline to comply with the new regulations once instructions are formalized.*
- Be prepared to update and amend broker and consultant contracts*

disclosure to plan sponsors in advance of signing or renewing any contracts on or after Dec. 27, 2021. More information on the template for this disclosure is expected in the coming months.

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Formalized Mental Health Parity Disclosure

Since the Mental Health Parity and Addiction Equity Act (MHPAEA) of 2008, plan sponsors have been required to ensure their medical plan designs cover mental health and substance-use disorders at the same benefit level as general medical/surgical services. The CAA will now require plan sponsors to submit a formalized written analysis that certifies their medical plans are compliant with the MHPAEA, including parity around non-quantitative treatment limitations. The analysis may start to be required as early as this year, but the government will need to clarify the details on how the analysis should be completed before plan sponsors can begin this work. Further clarification is expected in the coming months.

Potential Actions:

- Watch for additional instructions and be prepared to move quickly once instructions are provided*

ADDITIONAL PATIENT PROTECTIONS UNDER THE CAA

The CAA includes several additional requirements for insurers and providers that will help protect patients and give them greater access to health care cost and quality information. In particular:

- The CAA will prohibit “gag clauses” in contracts between providers and health insurers. Historically, gag clauses have prevented health plans from communicating certain provider-specific cost and quality data to patients. Eliminating gag clauses will allow health insurers to share cost information with patients more freely.
- Providers and health insurers will be required to offer an advanced Explanation of Benefits (EOB) to patients with pre-scheduled medical care. Providers and insurers will be required to work together and provide a good faith estimate of the patient’s expected out-of-pocket cost for the services provided in advance of receiving care.
- Building on existing state-based legislation, the CAA will create a federal prohibition on surprise medical billing. The law will prevent providers and group health plans from passing unanticipated out-of-network charges to patients visiting in-network facilities. The law will help protect patients by requiring providers and insurers to reach an agreement through a dispute resolution process. However, the law will not extend to ground ambulance services, which is unfortunately a very common sources of surprise medical bills.

Plan sponsors should begin conversations about the CAA's new transparency requirements immediately but also expect a steady stream of guidance on these new rules throughout 2021. Furthermore, watch for Congress to continue pushing for greater levels of health care payment transparency under the Biden administration. It will be critical for plan sponsors to stay informed of evolving guidance and be prepared to move quickly to keep pace with new regulations as they emerge over the next four years.

FOR MORE INFORMATION

For more information on this topic, please contact your Fidelity relationship manager, or email the Fidelity Workplace Consulting group at fidelityworkplaceconsulting@fmr.com.

