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Regulatory Update

Cadillac Tax Repealed and Other Benefits Changes Contained in the End-of-Year Spending Bill Passed by Congress

Issue Date: December 2019

Congress has passed the Further Consolidated Appropriations Act, 2020 (the spending bill). The massive bill funding the federal government incudes important provisions related to employer sponsored health and welfare plans. Most importantly, the spending bill repeals a number of ACA-related taxes, including the so-called "Cadillac Tax" on high-cost health plans, the health insurance tax (HIT) that applies to health insurance companies, and the medical device tax. However, not all of the changes will be seen as good news by employers. The bill also extends the Patient-Centered Outcomes Research Institute (PCORI) fee, which had been scheduled to expire this year, until 2029.

Cadillac Tax Repeal

The Affordable Care Act (ACA) created an excise tax applicable to high-cost health plans, commonly called the Cadillac Tax. Employers who sponsor health plans that have an annual cost that exceed an amount defined by the law would pay a 40% tax on the excess plan costs. The tax was originally scheduled to take effect in 2018, but Congress has delayed the tax until 2022. There has been bipartisan support for the repeal of the Cadillac tax for years, but due to the budget impact of a full repeal, Congress had chosen, until now, to only delay the tax. Now the spending bill formally repeals the tax.

Health Insurance Tax Repeal

The Health Insurance Providers Fee, also known as the health insurance tax (HIT), was enacted as part of the ACA. The tax applies only to health insurance companies, not directly to employers. However, the insurance industry estimates that the HIT adds between 1.5% and 3% to fully insured health plan premiums. The HIT had been suspended but is scheduled to go back into effect for 2020. The spending bill repeals the HIT effective in 2021, so the tax will still be levied on carriers for one more year.

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scheduled to go back into effect for 2020. The spending bill repeals the HIT effective in 2021, so the tax will still be levied on carriers for one more year.

Extension of PCORI Fee

Another provision of the spending bill extends the PCORI fee until 2029. The fee is paid by health insurance carriers and self-insured employers. The PCORI fee was scheduled to expire for health plans with plan years ending after Sept. 30, 2019. Now employers and carriers will be required to pay the fee for another 10 years. Additional changes that were supported by employer groups were included in the bill, including how revenue generated by the PCORI fee money is spent and the focus of the research funded by the fee.

Employers who sponsor self-insured health plans pay the fee annually using quarterly excise tax Form 720. It must be paid no later than July 31 of the year following the last day of the plan year. Health insurance carriers pay the fee directly in the case of fully-insured plans, so employers offering only fully-insured group health plans do not have to do anything, but the fee would be included in their plan rates.

The PCORI fee is indexed annually to a spending amount defined in the law. The current fee, applicable to plan years ending prior to October 1, 2019, is $2.45 per participant. Because of the extension, the IRS is expected to issue new guidance on fees for plan years ending after the original expiration date of the fee. For example, self-insured employers with calendar year plans, who thought they were done with the PCORI fee, will now be again required to file and pay the next fee no later than July 31, 2020.

Other Provisions Related to Employee Benefits

The spending bill also repeals the medical device tax. Although not directly related to employer sponsored plans, it was expected that this tax would increase the cost to a plan when it is reimbursing claims related to medical devices.

Notably, the spending bill does not include anything to address the issue of surprise medical bills. Members of Congress recently announced a compromise designed to address the problem of certain kinds of surprise medical bills, including air ambulance bills and bills related to emergency services. The legislation is aggressively opposed by some provider organizations, especially some venture capital–funded physician service companies. It was expected that this legislation would be included in the spending bill, but it was not. Employers still hope that Congress will take up this important issue separately.

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Summary

Employers will obviously be happy to learn of the demise of the Cadillac tax and the HIT. On the other hand, most will be disappointed to learn of the extension of the PCORI fee. Even though the PCORI fee represents a small amount of money relative to the cost of a health plans, it is just one more administrative issue employee benefit managers of self-insured plans must deal with.