Segal Consulting

update

Compliance News for Multiemployer Plans

April 19, 2018

Retirement and Health Plan Provisions in the Bipartisan Budget Act of 2018

Although many benefit-related issues discussed in the run-up to the federal budget were not included in the final law, the interim Bipartisan Budget Act of 2018 (the Act) includes several noteworthy employee benefit health and retirement plan provisions.[1] For group health plans covering Medicare retirees, the most significant changes are the accelerated closing of the coverage gap ("donut hole") in the Medicare Part D prescription drug program and further increases in the amount that certain high-income Medicare beneficiaries will have to pay for their Part D and Part B premiums. Significant provisions affecting retirement plans include an expanded ability to receive hardship distributions and the creation of a new joint congressional committee to address the funding crisis faced by some multiemployer pension plans.

This *Update* provides an overview of these and other noteworthy provisions in the Act.

New Law Highlights:

- A congressional committee is created to address the long-term solvency of multiemployer pension plans and the PBGC.
- 401(k) plan participants will have expanded ability to take hardship distributions.
- The coverage gap ("donut hole") in the Medicare Part D prescription drug program will close faster resulting in lower out-of-pocket costs for retirees.
- There are additional increases in the amount that certain high-income Medicare beneficiaries will have to pay for their Part D and Part B premiums.

Retirement Provisions

The Act was not as far-reaching as some had hoped it would be with regard to retirement-related issues. There are, however some important changes to note.

Congressional Committee to Address Multiemployer Plans

The Act created a Joint Select Committee on Solvency of Multiemployer Pension Plans (Select Committee) in Congress. The Select Committee is to report out recommendations and legislative language "that will significantly improve the solvency of multiemployer pension plans and the Pension Benefit Guaranty Corporation [PBGC]."

The report and language are due no later than November 30, 2018. Special rules limiting floor amendment apply to any legislative proposal. The Select Committee is composed of 16 members — eight from the House of Representatives and eight from the Senate, with an equal number from each party. The co-chairmen are Senators Orrin Hatch (R-Utah) and Sherrod Brown (D-Ohio). Any recommendations require a majority of each party's Select Committee members. The first meeting was held on March 14, 2018.[2]

November 30, 2018 is the deadline for the Select Committee's report and language.

[1] The Act was signed into law on February 9, 2018 as Public Law 115-123. It funded the federal government through March 23, 2018. The subsequently passed Consolidated Appropriations Act, 2018, which was signed into law on March 24, 2018 as Public Law 115-141, does not include any provisions affecting employee benefits. When Public Law 115-123 and Public Law 115-141 are available online, they will be accessible from the U.S. Government Printing office website.

[2] Recordings of the Joint Select Committee's hearings are on the Senate website.

Hardship Distributions

The Act made a number of changes to make it easier for participants in 401(k) plans to take hardship distributions.

- ***Six-Month Rule and Available Loans*** — The Act instructs the Treasury Department to revise its regulations on 401(k) hardship distributions to eliminate the requirement, in certain situations, that a participant who takes a hardship distribution may not make elective contributions for six months. The Act also appears to prevent plans from requiring participants to take all available plan loans before being eligible to take a hardship distribution. The changes apply for plan years beginning after December 31, 2018.

- ***Expansion of Sources for Hardship Distributions*** — The Act eliminates the requirement that hardship distributions can only be made from elective contributions. The Act allows hardship distributions from 401(k) plans to be made from qualified non-elective contributions (QNECs), qualified matching contributions (QMACs), and earnings on elective contributions, QNECS, and QMACs. This change is effective for plan years beginning after December 31, 2017.

Disaster Relief

The Act provides relief from certain plan loan and distribution limitations for victims of California wildfires in 2017, subject to specified conditions and limitations.

Implications of the Retirement Provisions for Plan Sponsors

Implementation of the changes to hardship distributions will require changes to administrative practice and could require plan amendments.

How Segal Can Help

Segal can help with the analysis, documents and communication of the needed changes.

Medicare Part D Provisions

The most important changes for group health plans covering Medicare retirees affect the Part D prescription drug coverage gap and the income-adjusted premiums paid by Medicare beneficiaries for Part D and Part B coverage.[3]

Donut Hole

The Act increases the amount that manufacturers of brand-name drugs must pay during 2019 and beyond when Medicare beneficiaries are in the coverage gap. Currently, manufacturers of brand-name drugs pay 50 percent of costs during the coverage gap. The Act increases that share to 70 percent starting in 2019.[4] It also closes the coverage gap one year earlier, at the end of 2018 instead of the end of 2019. Starting in 2019 (instead of 2020), Medicare beneficiaries will be responsible for 25 percent of their brand drug costs during the coverage gap — the same percentage that they must pay now before they reach the coverage gap. The Act does *not* affect payment for generic drugs during the coverage gap.

The Affordable Care Act made significant changes to the Medicare program, including for Medicare beneficiaries enrolled in a Part D prescription drug plan (PDP). Based on these changes, coverage of brand and generic drugs in the coverage gap has been increasing annually, with seniors paying less out of pocket each year until the coverage gap is eliminated. The Affordable Care Act eliminated the coverage gap for brand and generic drugs in 2020. The Bipartisan Budget Act of 2018 eliminates it for brand-name drugs in 2019, by reducing the percentage individuals will pay in 2019 for brand-name drugs to 25 percent, as shown in the table on the next page.

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[3] Part B generally covers physician and outpatient services.

[4] Medicare beneficiaries will pay 25 percent and the Part D plan will pay 5 percent.

Individual's Responsibility for Prescription Drug Costs in the Coverage Gap		
Year	Brand-Name Drugs	Generic Drugs*
2017	40%	51%
2018	35%	44%
2019	25%	37%
2020	25%	25%

* These percentages are unchanged.

Biosimilars

According to the Food and Drug Administration (FDA), a biosimilar is a biological product that is highly similar to and has no clinically meaningful differences from an existing FDA-approved reference product. Beginning in 2019, biosimilars will be included in the same manner as other brand-name drugs in the Part D coverage gap discount program.

Income-Adjusted Premiums

The Act increases Medicare Part B and D income-based premiums for individuals with adjusted gross income of at least $500,000 (or $750,000 for married couples filing jointly) starting in 2019. Before the Act, individuals at these income levels were treated the same as individuals with incomes of at least $160,000 (or $320,000 for couples). The Act will create a new income-based band. Individuals in this new income band (at least $500,000 for individuals or $750,000 for couples) will have to pay higher premiums.

Additional Medicare Changes

The Act includes the Creating High-Quality Results and Outcomes Necessary to Improve Chronic (CHRONIC) Care Act, which implements Medicare changes such as expanding the ability of Medicare Advantage plans to offer telehealth services. Other Medicare changes include expanded coverage for physical therapy, speech-language pathology and occupational therapy and increased payment rates for certain Medicare providers.

Other Health Provisions

Other provisions affecting the health care system more broadly include:

- Funding for the Children's Health Insurance Program (CHIP)[5] for an additional four years, through fiscal year 2027;
- Two years of funding for community health centers serving low-income patients;
- Funding for treatment of mental health problems and opioid addiction;
- Repeal of the Medicare Independent Payment Advisory Board, which was created by the Affordable Care Act and charged with controlling Medicare spending, but which has not met (or had any members appointed to it) because Medicare spending has not reached certain triggering thresholds;
- Disaster aid funding including two years of federal reimbursements for Puerto Rico's Medicaid program; and
- Funding for the National Institutes of Health.

[5] CHIP provides coverage to almost nine million children who are not eligible for other sources of coverage, such as Medicaid or employer-sponsored insurance.

Implications of the Health Provisions for Plan Sponsors

Plan sponsors that provide coverage through a Part D Employer Group Waiver Plan (EGWP) should expect these changes to have a positive impact on plan costs. In 2018, the coverage gap included a brand discount program where the beneficiaries paid 35 percent, the plan paid 15 percent, and the manufacturer covered 50 percent of brand drug costs. Under this law, both the beneficiary and the plan will pay less in 2019, one year earlier than originally proposed. In addition, to the extent that biosimilars are available, they will be included in the discount program.

The Act's Part D changes will help reduce plan costs.

How Segal Can Help

Segal works with plan sponsors to address issues related to Medicare Part D, including quantifying the savings associated with introducing an insured or self-insured EGWP over the amount received from the retiree drug subsidy (RDS).

In addition, we help plan sponsors select Medicare Advantage plans that offer the best fit based on their current and future objectives. With our guidance, you can make informed decisions about which vendors offer the best value and the most competitive premium rates or self-funded financial terms.

Disaster Relief

The Act provides relief from certain plan loan and distribution limitations for victims of California wildfires in 2017, subject to specified conditions and limitations.

Questions?

To discuss this guidance, contact your Segal consultant or the Segal office nearest you.

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