

January 22, 2021

## Title: The Consolidated Appropriations Act (CAA) and its Impact on Employee Benefits

### Course Description:

- FSA Relief
- Federal Paid Leave
- PPP Expansion
- Employee Retention Tax Credit
- Mental Health Parity Compliance
- Surprise Billing
- Plan Disclosure Requirements
- Compensation Disclosure Requirements
- Top 5 Tips

### Course Outline:

(60 minutes)

#### Introduction (5 minutes)

- Overview of the presentation
- Setting Up the Discussion
- Key Considerations

#### Flexible Spending Account Relief (5 minutes)

- Designed to provide employers an option to limit excess year-end forfeitures
- Applies to both health FSAs and dependent care FSAs
- Employers may permit employees to:
  - **carryover** unused funds from 2020 to 2021 or 2021 to 2022
  - **-OR-**
  - extend a grace period for a plan year ending in 2020 or 2021 to 12 months
- If a health FSA account is under spent when an employee terminates in 2020 or 2021 → the employer may allow the employee to continue spending down the account through the end of the plan year (including any grace period)
- Midyear election changes may be permitted for plan years ending in 2021 without regard to any change in status
- Age limit for dependent care FSAs to allow unused funds to be spent
- Plan amendments not required until the end of the plan year following the year in which the change took effect

#### Federal Paid Leave Expansion (5 minutes)

- Optional expansion to the FFCRA paid leave program
- Federal government will now pay for otherwise qualifying leave through March 31, 2021 (program originally expired December 31, 2020)
- Otherwise applicable FFCRA rules apply if the employer wants to be reimbursed for the leave via the tax credit

### PPP Expansion (5 minutes)

- \$284 billion in additional funding
  - No taxes on PPP money
  - Simplified forgiveness process for loans under \$150,000
  - New Forgiveness Categories
    - Operational Expenditures (software that facilitates operations)
    - Property Damage Costs (resulting from public disturbances in 2020)
    - Supplier Costs (for essential goods that were contracted for in advance of the covered period)
    - Worker Protection Expenditures (expenses incurred following COVID-19 public-health guidance)
  - Apply to both existing loans and second draw loans
  - Second Draw Loans
  - Qualification Requirements
    - Must have fewer than 300 employees
    - Must demonstrate a reduction in gross receipts of at least 25% during any quarter of 2020 relative to the same quarter in 2019
  - Maximum Loan Amount
    - 2.5 times monthly payroll
    - but no more than \$2 million
- (3.5 times monthly payroll for restaurants and hospitality)

### Employee Retention Tax Credit (5 minutes)

- Much better option under new rules
- Can be used by PPP recipients (but not on the same money)
- Available to other cost of “working” employees for employers with up to 500 full-time employees (previously 100)
- Requires a decrease in gross receipts of 20% compared to the same quarter in 2019 (previously 50%)

### Mental Health Parity Compliance (5 minutes)

- Requires comparative analysis to demonstrate compliance with rules governing non-qualitative treatment limitations (NQLTs)
- Technically required by February 10, 2021

Analysis must:

- define each NQTL in the benefit to which applies
  - list the factors in evidentiary standards used to determine the application of each NQTL
  - provide analysis and conclusions showing that each NQTL, **as written and in operation**, complies with MHPAEA
- Government will publicly disclose findings of noncompliance

### **Surprise Billing (10 minutes)**

- Effective January 1, 2022
- “Surprise” medical bills no longer permitted relative to:
  - out-of-network emergency care
  - out-of-network nonemergency care in network facility without the patient’s informed consent
  - air ambulance services
- Where applicable, patients may only be charged the applicable in network cost-sharing amount
- Providers barred from charging excess to patients
- Negotiation is permitted between providers and health plans
- If the parties cannot agree, independent dispute resolution process (IDR)
- “Baseball”-style arbitration
- Arbitrator may consider:
  - the median contracted in network rate
  - the providers training and experience
  - the patient’s acuity and complexity of care
  - the facilities teaching status
  - case mix and scope of service
  - any demonstration of good faith effort or lack thereof to resolve the dispute
  - prior year contracted rates
  - other information brought forward by the parties

(barred from considering the providers usual customary billed charges and the rates paid by federal health care programs)

### **Plan Disclosure Requirements (5 minutes)**

- Applies to plan years beginning on or after January 1, 2022
- ID cards must show:
  - deductible
  - out-of-pocket maximums
  - phone number and web address for assistance finding in network providers
- Advanced Explanation of Benefits
- Required one to three days ahead of services
- Must include:
  - the applicable contracted rates for in network providers (or how to obtain pricing information for out-of-network providers)
  - the provider’s good faith estimate
  - good faith estimate of how much the plan will pay
  - good faith estimate of cost-sharing liability
  - good faith estimate of amounts incurred towards out-of-pocket maximum
  - a disclaimer if subject to medical management techniques
  - the disclaimer that the information provided is only an estimate
  - any other information deemed appropriate

- New annual federal disclosure
- Applies regardless of plan size
- Must include:
  - plan year
  - number of enrollees
  - each state in which plan is offered
  - 50 most prescribed brand-name drugs, and the total number of pay claims for each
  - 50 most costly prescription drugs, and the annual amount spent by the plan for each
  - 50 drugs cause the greatest increase in plan expenditures over the prior year, and the change amount for each
  - total spending broken down by:
    - type of cost (e.g., hospital cost, primary care, specialty care, prescription drugs, other medical costs)
    - spending on prescription drugs by plan and participants separately
  - average monthly premiums paid by employer and employees separately
  - for any drug rebates, fees, etc.
    - The amounts paid for each therapeutic class
    - the amount paid for each of the 25 drugs yielding highest amounts
    - any associated reductions in premiums or other costs

### **Compensation Disclosure Requirements (5 minutes)**

- Applies to contracts entered into on or after December 27, 2021
- \$1,000 or more in direct or indirect compensation
- Relative to compensation of service provider, its affiliates, or its subcontractors, disclosure must include:
  - a description of services
  - description of all direct compensation
  - description of all indirect compensation
    - description of relationships
    - service provided
    - identification of the payer
  - specific description of any compensation on a set transaction basis
  - any compensation expected to be received in connection with termination of the contract
- Disclosure must be made in advance of when the contract is made in the case of any changes

### **Questions & Answers (8 minutes)**

- Opportunity for participants to ask questions

### **Top 5 Tips (2 minutes)**

### **Learning Objectives:**

1. Agents will develop an understanding of CAA and its impact on Employee Benefits
2. Agents will learn the importance of incorporating additional discussion points into their meetings
3. Agents will learn the best-practices based on what we are seeing in the regulatory environment
4. Agents will understand the differences in what impact they can have on their client's lives