

Benefits Bulletin: Health & Welfare Plans – May 2022

MAY 9, 2022

Employer Group Health Plans and Abortion Coverage

Employers that sponsor self-insured group health plans for their employees are wondering if they should take any steps in light of the recent leaked draft Supreme Court opinion overturning *Roe v. Wade* and *Planned Parenthood of Southeastern Pennsylvania v. Casey*. If *Roe* and *Casey* are overturned, whether or not abortion is legal will be left up to each state and will be governed on a state-by-state basis.

An issue as politically charged as abortion could impact fiduciaries of group health plans. For example, fiduciaries of group health plans have a fiduciary duty to act within the best interest of their participants and beneficiaries. If the group health plan decides to cover or not cover abortion, or abortion-related services, how will such a decision be viewed from a fiduciary standpoint? It is possible that the United States Department of Labor, one of the entities that regulates group health plans, may issue further guidance addressing the fiduciary issue.

Employers that operate their businesses in multiple states will likely be faced with different coverage rules with respect to abortion coverage for their employees and their dependents, depending on where those employees and dependents live, work, and receive their health care. Because this issue garners strong opinions on both sides, whether the group health plan covers abortion and/or abortion-related services, and under what circumstances, could give rise to employee relations issues, including factoring into an employee's employment decision. Depending on whether the group health plan covers abortion or abortion-related services could also impact customers and whether they utilize or continue to utilize products and services provided by the company. In addition, publicly traded companies and their boards could face potential lawsuits from investors.

Some states already have laws that will spring into effect if the draft opinion is in fact the opinion issued by the Supreme Court. For example, in Texas, under a law passed last year, Texas would make abortion illegal, except in cases in which the mother is facing death or severe impairment, while in Illinois, abortions will remain legal. Navigating these different rules in different states will be very difficult from a plan administration standpoint.

We are currently working with employers in reviewing their group health plan coverages in a holistic way. If an employer would like to preserve the ability to offer current coverage, we are suggesting benefit amendments that

are more neutral in nature, rather than focusing on abortion coverage, per se. Please contact us or your Winston & Strawn attorney to discuss these issues further.

IRS Releases 2023 Inflation-Adjusted Amounts for HSAs, HDHPs, and HRAs

The IRS recently released [Rev. Proc 2022-24](#) listing the 2023 indexed amounts for health savings accounts (HSAs), high deductible health plans (HDHPs), and excepted-benefit health reimbursement arrangements (HRAs). The following table lists the current 2022 amounts and the new 2023 amounts:

APPLICABLE LIMIT	CALENDAR YEAR 2022		CALENDAR YEAR 2023	
	SELF-ONLY COVERAGE	FAMILY COVERAGE	SELF-ONLY COVERAGE	FAMILY COVERAGE
HSA Annual Contribution Limit	\$3,650	\$7,300	\$3,850	\$7,750
HDHP Minimum Annual Deductible	\$1,400	\$2,800	\$1,500	\$3,000
HDHP Out-of-Pocket Amount (Deductibles, co-payments, and other amounts, but not premiums)	\$7,050	\$14,100	\$7,500	\$15,000

The Revenue Procedure also provides that for plan years beginning in 2023, the maximum amount that may be made newly available for the plan year for an excepted-benefit HRA is \$1,950 (up from \$1,800 in 2022).

The 2023 adjustments are significantly higher than in prior years as they are based on the increase in the [CPI-U for the 12-month period ending March 31, 2022](#), which was 8.5% for all items before seasonal adjustment.

Winston Takeaway: It is a welcome change to have these 2023 limits so early in 2022. Employers should review these new limits while planning benefits for 2023 open enrollment. Please contact a Winston & Strawn Employee Benefits and Executive Compensation attorney with questions regarding these updates and how they may impact your benefit plans.

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