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December 31, 2024

High Deductible Health Plan Users Get Coal in Their Stockings

On Saturday, December 21, 2024, the President signed the American Relief Act of 2025 (the "Act") to temporarily fund the federal government through March 14, 2025. The Act was noticeably lacking provisions in previous proposals, including extending the safe harbor that allows high deductible health plans ("HDHPs") to provide telehealth services without a deductible. That safe harbor will now expire on December 31, 2024.

Telehealth Safe Harbor

As detailed in our prior Client Alert, the Consolidated Appropriations Act, 2023 temporarily extended the safe harbor first set forth in the CARES Act that allows high deductible health plans to provide telehealth services without a deductible. Without this safe harbor, participants in HDHPs who receive telehealth services without a deductible would be disqualified from contributing to a health savings account ("HSA").

There is bipartisan interest in making the telehealth safe harbor permanent in 2025, and Kutak Rock continues to monitor any progress in the next Congress, but no legislation will be adopted before the end of the year.

Implications For Plan Sponsors and Participants

Starting January 1, 2025, plans offering HDHPs with HSAs must ensure telehealth services that do not meet any exception, such as those for preventive care, are subject to the plan's cost-sharing requirements. Plans that reimburse individuals in HDHPs for telehealth services before the individual meets their deductible would cause those individuals to be disqualified from contributing to an HSA for that plan year. Any impermissible contributions to an HSA are subject to a 6% excise tax.

Next Steps

To address the expiration of the telehealth safe harbor, plan sponsors should:

- Amend plan documents to reflect the changes to cost-sharing requirements.
- Draft and disburse summaries of material modification describing the changes.
- Ensure claims administrators are aware of and properly implementing the new requirements.
- Educate participants on the consequences of contributing to an HSA if the high deductible health plan inadvertently covers telehealth services prior to the deductible.

If you have questions about the telehealth changes or the related compliance obligations created by the expiration of the safe harbor, please contact a member of Kutak Rock's Employee Benefits and Executive Compensation practice group.