



Compliance Services

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Congress's COVID-19 package includes additional burdens, benefits for group health plans

Embedded in Congress's year-end massive omnibus spending bill is not only welcome COVID-19 relief but a veritable kitchen sink of employee benefits-related provisions, rules that will have a profound impact particularly on group medical plans.

The legislation, referred to as the Consolidated Appropriations Act, 2021 (CAA), delivers long-awaited and long-debated surprise billing prohibitions, additional pandemic-related relief for healthcare and dependent care flexible spending accounts, and extensions of employer tax benefits for providing paid sick and family leave. But it also imposes upon employers a variety of healthcare transparency and disclosure obligations that, in many cases, will require the employer to promptly enlist the help of insurers, pharmacy benefit managers, third-party claim payers and others.

Below is a brief summary of the CAA's key provisions and, in the appendices, a more detailed explanation of these key elements of the law. We will also explore these new rules in our webcast, *COVID Relief and the Kitchen Sink: A Guide to the Benefits and HR Aspects of the CAA*. Register for the webcast [here](#).

Overview of the benefits-related aspects of the CAA

No surprises

As frequently happens with massive appropriations bills like this, Congress bolted to the CAA's framework a number of other pieces of draft legislation Congress had on its shelf. Perhaps the most significant of these was a bill called the No Surprises Act, which provides long-awaited federal protections for healthcare consumers against surprise medical bills. The surprise billing rules will apply to employer group plans starting with the first plan year beginning on or after Jan. 1, 2022. Regulations implementing the law are due this summer.

The Act's protections go beyond limits on when a patient may be balance billed by an out-of-network (OON) hospital or other healthcare provider. They also establish several new requirements that will require group health plan sponsors to update their notices and disclosures and work with their service providers to ensure

new requirements are met, including rules that in some cases will draw employers into mandatory and binding arbitration with OON providers.

For details on the surprise billing law, see [Appendix A](#).

Congress flexes cafeteria plan rules

Employees who had made healthcare or dependent care flexible spending account (FSA) elections for 2020 and who were unable to spend down those account balances because of coronavirus-related closures and shelter-in-place orders have been clamoring for relief so they would not forfeit year-end account balances. With the IRS slow to grant that relief, Congress stepped in, adding to the CAA several important accommodations employers may, but are not required to, extend to their 2020 FSA participants.

For employers offering 2.5-month grace period under their healthcare and/or dependent care FSAs, the CAA allows them to extend that grace period to the end of the FSA plan year ending in 2021 (and extend the grace period for 2021 plan year-end residual balances all the way to the end of the plan year ending in 2022).

For employers not offering a grace period but permitting employees to carry over up to \$550 from their 2020 healthcare FSA year-end balance into 2021, they may uncap the carryover amount for the FSA plan years ending in 2021 and 2022. This special two-year carryover rule also applies to dependent care FSAs.

In addition, but only for plan years ending in 2021, employers may allow employees to modify their healthcare and dependent care FSA elections without regard to the usual "change in status" triggers required to change such amounts. This will be particularly beneficial for employees who made FSA elections for 2021 assuming they would be forfeiting year-end 2020 balances.

For details on the accommodations provided for FSAs, including rules for dependents who have aged out, and for terminated employees, see [Appendix B](#).

Through the looking glass: New transparency rules ... a lot of them

Apparently, Congress was not content with the Trump administration's recently final [transparency regulations](#) for group health plans, rules that come on line in phases beginning next year. Congress included in the CAA a host of new transparency and disclosure obligations affecting employers and their group health plans.

Lockton comment: Some of the CAA's transparency rules are wholly independent of the Trump administration regulations, but some overlap with those regulations. How the overlapping sets of rules will be integrated will be "interesting" to watch as the year unfolds ("interesting" at least to Lockton's Compliance Services and Government Relations divisions).

In general, legislation takes precedence over a regulation, at least if the law and the regulation are contradictory. In this case, the two sets of overlapping rules do not seem to contradict each other, so it is likely that they will be construed and applied as complementary to each other. How that plays out from a practical, administrative perspective will hopefully gain clarity as the CAA's rules are interpreted by federal regulatory agencies.

The new rules include:

- New disclosure obligations for group health plan enrollment cards.
- Similar to the Trump Administration transparency regulations, an obligation on medical plans to provide information about benefits (in response to inquiries from providers or enrollees, in advance of their treatment), information sufficient to allow enrollees to determine cost-sharing responsibility for a variety of healthcare services, an obligation to frequently update provider network information, and a mere 24-hour window in which to respond to questions about network providers.
- A new obligation on plans to report to federal authorities detailed pharmacy benefit costs for the 50 most common and most costly prescription drugs utilized under the plan, as well as other prescription drug-related information.
- Disclosures regarding limits on balance billing by OON providers.

For details on the CAA's new transparency rules, see [Appendix C](#).

Overview of the HR-related aspects of the CAA

The CAA did not extend the mandate, imposed by prior COVID-19 relief bills, that governmental employers and private employers with fewer than 500 employees provide emergency paid sick leave (EPSL) or emergency paid family leave (EFMLEA) to employees on account of school and day care provider closures, or COVID-19 illness in the family. That mandate to supply such paid leave expired on Dec. 31, 2020. However, the CAA *does* extend to March 31, 2021, the payroll tax credits that had been available to employers who supplied such paid leave.

Lockton comment: In other words, while governmental employers and private employers with fewer than 500 employees are no longer *required* to provide the paid leave mandated under earlier legislation, an employer subject to the original mandate that voluntarily provides such leave can continue to claim tax credits to offset the cost of providing that leave, through March 31, 2021.

Employers to which the tax credits continue to apply should decide how they are going to deal with leaves of absence in 2021 and communicate the decision to employees. One option is to continue to allow employees to use any unused, available leave mandated by prior legislation, at least through March 31, 2021, to correspond with the extension of the tax credit.

Lockton comment: An unresolved question is whether employers are eligible for the tax credit if they choose to provide additional leave to employees who previously exhausted the mandated paid leave in 2020. Given that the CAA only extends the tax credit, it is unlikely additional leave would qualify for the tax credit. The best practice, if the employer is willing to provide additional leave in early 2021 and wants to claim the tax credits for the cost of that leave, would be to allow employees with unused leave (under the prior legislation) as of Dec. 31, 2020, to use that leave in 2021, at least through March.

Another option for employers is to only allow the continuation of EPSL into 2021. This is a much shorter period of paid leave (10 workdays) than that provided under the EFMLEA (10 additional weeks). Continuing to provide EPSL may encourage employees who can't afford to take unpaid leave to stay home after contracting or being exposed to COVID-19, which benefits all employees in the workplace.

Of course, employers subject to state or local COVID-19-related leave laws should ensure that they comply with such laws.

Student loan repayment by employers

Another minor aspect of the CAA worth noting is that it extended for five more years, through 2025, the ability of employers to provide tax-free payments on employees' student loan debts. Earlier COVID-19 relief legislation amended the Tax Code's existing rules regarding an employer's tax-free educational assistance (tuition, books, fees, etc.) to an employee to allow employers to treat their repayment of student loans (incurred by the employee to educate the employee) as nontaxable educational assistance.

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