How Does the One Big Beautiful Bill Impact Your Health & Welfare Plans?

Elizabeth Loh

The "One Big Beautiful Bill" Act (the "OBBB") was signed into law on July 4th. It includes several provisions that will impact health and welfare benefits. This article will cover the most important of those provisions, such as the creation of a new Trump Account, the expansion of Health Savings Account eligibility, permanent telehealth relief, and increased Dependent Care Flexible Spending Account limits. Plan sponsors will need to take these provisions into account in making health and welfare plan design decisions and ensuring legal compliance.

Telehealth Relief is Made Permanent

The OBBB makes telehealth relief permanent. Under this relief, telehealth benefits and other remote care services may be provided on a first-dollar basis without causing an individual to become Health Savings Account (HSA) ineligible. This relief applies to plan years beginning after December 31, 2024 (e.g., retroactive to January 1, 2025 for calendar year plans).

- The Internal Revenue Service (IRS) High Deductible Health Plan (HDHP) rules generally provide that if benefits are provided before an individual has met their minimum statutory HDHP deductible, such individual will become HSA-ineligible. However, to encourage the use of telehealth services during the COVID-19 pandemic, Congress enacted laws where HDHPs could provide telehealth and other remote care services on a first-dollar basis without impacting an individual's HSA eligibility. This telehealth relief expired in December of 2024. The OBBB now makes this telehealth and remote care services relief permanent, and will allow plan sponsors to design their plan such that telehealth and remote care services may be offered on a first-dollar basis without impacting HSA eligibility.
- *Design decisions*. Plan sponsors have several options regarding this relief. A plan sponsor can elect to (1) not adopt the telehealth relief, (2) make design changes on a prospective basis (e.g., mid-year, or at the start of the next plan year), or (3) adopt this telehealth relief retroactively (i.e., retroactively to January 1, 2025 for calendar year plans). If a plan sponsor decides to adopt this change, it will need to amend its plan documents and update its summary plan descriptions to describe this update. Further, if the change is adopted retroactively, the plan will need to re-adjudicate claims and receive confirmation from its insurance carrier(s) and/or third party administrators that these entities can implement the retroactive change.

Bronze and Catastrophic Exchange Plans are Considered *HDHPs*

Bronze and Catastrophic plans offered on the Health Insurance Marketplace (the "Exchange") will qualify as HSA-compatible HDHPs. Accordingly, if an individual enrolls in these types of individual Exchange plans, they will be eligible to make and receive HSA eligible contributions.

- IRS rules provide that an individual is HSA eligible if they meet certain criteria, including enrolling in an IRS qualifying HDHP. By including Bronze and Catastrophic Exchange plans as qualifying HDHP plans, the OBBB provides these plan participants with the new opportunity to make and receive HSA contributions.
- For most employers, this change will not impact the benefit plans that they sponsor. However, for an employer that maintains an Individual Coverage Health Reimbursement Arrangement (ICHRA), the employer may want to provide information to employees about their eligibility for an HSA if they enroll in Bronze and Catastrophic plans through the Exchange. An ICHRA allows employers to provide employees with tax-free dollars to buy their own health insurance plans. There are strict requirements that must be met for an employer to maintain an ICRA.

Direct Primary Care Arrangements Not Considered Disqualifying Coverage

Direct Primary Care Service (DPC) Arrangements are not considered disqualifying coverage for purposes of HSA eligibility. In other words, an individual can participate in a DPC arrangement without impacting their ability to make or receive HSA contributions. The DPC arrangement may only provide "primary care services" through a primary care practitioner, and the arrangement's fees must be limited to $150/month for individual coverage, and $300 for family coverage (indexed for inflation). Further, the OBBB clarifies that DPC "primary care services" will not include procedures that require the use of general anesthesia, prescription drugs (other than vaccines), or laboratory services not typically administered in an ambulatory primary care setting. These provisions are effective as of January 1, 2026.

- Under a DPC arrangement, an individual pays a set fee (e.g., a monthly fee) to access primary care services from a primary care doctor (e.g., physical exams, vaccinations, urgent care, laboratory testing, etc.) Previously, these types of DPC services could not be offered on a first-dollar basis without impacting HSA eligibility (i.e., these services were considered disqualifying coverage). The OBBB changes the law to exclude DPC arrangements from being a form of disqualifying coverage; therefore, individuals may utilize DPC arrangements without impacting their HSA eligibility.
- Some employees prefer this model over traditional insurance—where they pay a flat monthly fee for access to a set range of services. An employer could choose to subsidize a DCP arrangement for its employees, and those employees would remain HSA-eligible.

Dependent Care Flexible Spending Account Limits Increased

The OBBB increases the Dependent Care Flexible Spending Account ("Dependent Care FSA") maximum annual exclusion to $7,500 ($3,750 for individuals married but filing separately). This increase applies to taxable years beginning after December 31, 2025.

- When Congress established the Dependent Care FSA cap in 1986, it did not index this amount for inflation. Accordingly, the Dependent Care FSA limit has been capped at $5,000 ($2,500 for individuals married but filing separately), and this is the first time in nearly 40 years that the Dependent Care FSA limit has increased (except for a brief increase during the COVID-19 pandemic). Given the current cost of dependent care, this Dependent Care FSA increase is welcome relief. If an employer adopts these increased Dependent

Care FSA limits, it will need to timely amend its Section 125 cafeteria plan document, and communicate these increased limits to its employees (e.g., during the open enrollment period, etc.)

- An important consideration is how this change will impact Dependent Care FSA nondiscrimination testing under Internal Revenue Code §129. One of those nondiscrimination tests that a Dependent Care FSA must pass is the 55% Average Benefits Test, which focuses on the average (per capita) benefit received by highly compensated employees (HCEs) as compared to the benefit received by non-HCEs. If the non-HCE average is not at least 55% of the HCE average, the HCEs are taxed on all Dependent Care FSA benefits received. In many cases, employers will cap the amount that HCEs can defer to pass this test. The challenge presented by the non-discrimination rules is not a reason to forgo adoption of these increased limits, but it would be prudent for an employer to consider the amount by which it may need to cap the deferrals of HCEs to pass testing, and include that limitation in communications to employees.

Student Loan Assistance Made Permanent

In 2020, Internal Revenue Code §127 was amended to allow employers to use their qualified educational assistance programs to help their employees pay their student loans. These provisions were initially intended to be temporary and only apply to employer payments made before January 1, 2026. The OBBB makes these student loan repayment provisions permanent (i.e., employers permanently have the ability to reimburse certain employee student loans through the employer's qualified educational assistance program).

- Because the student loan repayment provisions are now permanent, employers can now confidently incorporate them into their broader education assistance benefit strategy, rather than be concerned about when this law might sunset.

Increase in Qualified Educational Assistance Program Limits

The OBBB indexes the $5,250 qualified educational assistance program limit for inflation for taxable years beginning after 2026. This qualified educational assistance limit has been capped at $5,250 since 1986. This increase is welcome news, given the current cost of education.

- Employers should track the increased qualified educational assistance program limits and decide whether to increase their program limits. If the employer decides to adopt an increased limit, it should amend its qualified educational assistance program document for the new limit, and communicate it to plan participants.

Exclusion for Bicycle Commuting

Employers are allowed to reimburse certain employee transportation expenses (e.g., mass transit, parking expenses, etc.) on a tax-advantaged basis through their qualified transportation plans. Previously, eligible transportation expenses included qualifying bicycle commuter benefits (e.g., reasonable expenses for the purchase, improvement, repair or storage of a bicycle). However, the Tax Cuts and Jobs Act suspended this exclusion for bicycle commuting provisions for an eight-year period (i.e., for taxable years beginning after December 31, 2017 and before January 1, 2026). The OBBB permanently eliminates the tax exclusion for qualified bicycle commuting expenses.

- While not a widely used benefit, for some employers the bicycle commuter benefits was an important part of their "wellness initiatives" to encourage employees to exercise. Employers can continue to offer this benefit, albeit on a taxable basis.

New Accounts Available for Dependent Child Expenses

The OBBB has created a new account—the Trump Account__to be used for the benefit of dependent children (i.e., individuals under the age of 18). Employers, parents and other entities, such as charitable institutions, may make contributions to the Trump Account (Account) beginning on July 4, 2026. The aggregate amount of contributions that may be made to a beneficiary's Account in a calendar year is $5,000 (indexed for cost-of-living adjustments). Accounts must be invested in "eligible investments" (i.e., mutual funds or exchange traded funds which track the returns of a qualified index such as the Standard and Poor's 500 stock market index). Distributions from these Accounts may begin when the account beneficiary turns age 18. It appears distributions from an Account are to be treated like other traditional IRA distributions. That is, once the beneficiary is eligible to take distributions from the Account (i.e., when the beneficiary turns age 18), they will owe taxes on any such taxable distributions. Further, it also appears that a 10% additional tax would apply to taxable distributions made from the Account before age 59 ½, unless an exception applies (e.g., the distribution is for educational expenses, a first-time home purchase, etc.) More guidance on this topic would be welcome.

Pilot Program. The OBBB provides for a pilot program where the government will provide a seed contribution in the amount of $1,000 per Account for a child who is born during the 4-year period of January 1, 2025 through December 31, 2028. The child must be a U.S. citizen and have a social security number. The government's seed contribution of $1,000 will not count against the Account's maximum $5,000 aggregate contribution limit.

Benefit may be provided as an employer benefit. Employers may also contribute to these Accounts on behalf of their employees. Employers may contribute up to $2,500 to an employee Account, and this amount is excludible from employee gross income. This $2,500 amount is aggregated against the Account holder's maximum $5,000 limit. It is not clear whether the $2,500 limit is an annual limit or a one-time limit with respect to an individual employee. Again, more guidance on this issue is needed.

To establish the Accounts as an employee benefit, the employer will need to create a separate written plan document which provides that employer contributions are to be used exclusively to fund Accounts of employees or dependents of such employees. The Account is not an ERISA-covered plan. However, when offered as an employer benefit, it is subject to the nondiscrimination rules under Internal Revenue Code §129(d), which are the same rules that apply to a Dependent Care FSA plan. This means employers cannot discriminate in favor of HCEs, which in 2026 is generally those who earned in excess of $160,000 in the prior plan year (plus officers and more-than-5% owners). Lastly, an employer would need to communicate the availability and terms of the program to all eligible employees.

- As currently written, there is no option for employees to contribute to the Account through payroll on a pre-tax basis. This may impact employee enthusiasm for making contributions to an Account.
- The mechanics of how an employer is to implement these Accounts is unclear. We hope additional regulatory guidance will be issued to provide greater clarity in this regard.

If you have any questions regarding how the OBBB impacts your health and welfare plans, please contact us.

PUBLICATION INFO:

The Trucker Huss Benefits Report is published monthly to provide our clients and friends with information on recent legal developments and other current issues in employee benefits. Back issues of the Benefits Report are posted on the Trucker Huss website (www.truckerhuss.com (https://www.truckerhuss.com))

Editor: Nicholas J. White, nwhite@truckerhuss.com (mailto:nwhite@truckerhuss.com)

In response to IRS rules of practice, we inform you that any federal tax information contained in this writing cannot be used for the purpose of avoiding tax-related penalties or promoting, marketing or recommending to another party any tax-related matters in this Benefits Report.

SAN FRANCSICO

135 Main Street, 9th Floor
San Francisco, California 94105-1815

LOS ANGELES

15760 Ventura Blvd, Suite 910
Los Angeles, California 91436-3019

PORTLAND

329 NE Couch St., Suite 200
Portland, Oregon 97232-1332

Tel: (415) 788-3111
Fax: (415) 421-2017
Email: info@truckerhuss.com (mailto:info@truckerhuss.com)
Website: www.truckerhuss.com (https://www.truckerhuss.com)