
Congress Passes Inflation Reduction Act of 2022

August 2022

President Biden is expected to sign into law the Inflation Reduction Act of 2022 (the Act), which was passed by Congress on August 12, 2022. While the Act addresses tax policy, climate change, and other provisions, it also includes certain health provisions that will impact employers and employer group health plans.

This Aon bulletin discusses the following:

- **Medicare Drug Pricing.** The Act enables the Department of Health and Human Services (HHS) to negotiate Medicare prescription drug prices with drug manufacturers and caps the cost of insulin for Medicare beneficiaries.
- **Drug Manufacturer Rebate Payments to Medicare.** The Act requires drug manufacturers to pay rebates to Medicare if they charge certain prescription drug prices higher than the cost of inflation.
- **Cost of Insulin.** The Act includes a \$35 monthly cap on out-of-pocket (OOP) spending on insulin for Medicare beneficiaries.
- **Medicare Part D Prescription Drug Cap.** The Act establishes an annual OOP spending cap of \$2000 for Medicare beneficiaries.
- **Part D Reinsurance Subsidy Reduced.** The Act reduces the federal government's reinsurance subsidy from 80 percent to 20 percent starting in 2025.
- **Part D Premium Stabilization.** The increase in the base Medicare Part D premium is limited to 6 percent annually from 2024 through 2029.
- **Extension of Affordable Care Act (ACA) Premium Tax Credits.** The Act extends the expanded ACA premium tax credits until 2025.
- **High-Deductible Health Plan (HDHP) Safe Harbor for Insulin Coverage.** The Act codifies that an HDHP that does not impose a deductible for insulin-related products can still be treated as an HDHP.
- **Impact on Employer Group Health Plans.** This Aon bulletin addresses these health-related provisions and any potential impacts on employer-sponsored health plans.

Negotiating With Medicare. The Act enables HHS to negotiate with drug manufacturers on the price of certain prescription drugs in the Medicare program. Under the Act, HHS will establish a Drug Price Negotiation Program to negotiate a maximum price for certain drugs beginning in 2026. HHS will identify 50 prescription drugs with the highest spend under Part B and separately, another 50 under Part D without competition that have been on the market for seven years, along with biologics that have been on the market for 11 years. From that list, HHS will select up to 10 negotiation-eligible drugs for 2026. The number of selected negotiation-eligible prescription drugs increases to 15 in 2027 and 2028 and to 20 in 2029.

HHS must publish the initial list of negotiation-eligible drugs by September 1, 2023. Certain drugs will be excluded from consideration, such as orphan drugs (e.g., drugs that are indicated for only one rare disease or condition), biological products that are derived from human whole blood or plasma, and low-spend Medicare prescription drugs. Drug manufacturers that do not negotiate with HHS will be subject to excise taxes and civil penalties.

The Act does not include an earlier provision that would have allowed the negotiated prices to apply to drug purchasers in the commercial market, including for drugs included in employer-sponsored plans. That provision was struck from the Act under the Senate's budget reconciliation rules.

Drug Manufacturer Rebate Payments to Medicare. Prescription drug manufacturers must rebate to HHS the difference in profits above the cost of inflation on certain Medicare Part B and Part D prescription drugs if manufacturers raise the cost of those drugs above the rate of inflation. If the rebates are not paid, manufacturers could face a civil monetary penalty of at least 125 percent of the rebate amount. The Act allows the Secretary of the HHS to reduce or waive rebates if the rebate may result in a shortage during a severe supply chain disruption. Due to the Senate's budget reconciliation rules, the Act does not contain an earlier provision that would have included commercial market prices in the calculation of the rebates.

Cost of Insulin. Starting in 2023, the Act imposes a \$35 monthly cap on OOP spending on insulin for Medicare beneficiaries. Again, due to the Senate's budget reconciliation rules, the insulin cap does not apply to private payers such as employer-sponsored health plans. Therefore, the \$35 monthly cap for insulin applies only to Medicare beneficiaries.

Medicare Part D Prescription Drug Cap. Currently, an annual OOP spending threshold (\$7,050 in 2022) applies before a Medicare beneficiary reaches the "catastrophic phase" of Part D coverage, after which a Medicare beneficiary pays a small amount of coinsurance. Starting in 2024, the Act repeals the coinsurance amount. Starting in 2025, the Act imposes an annual cap of \$2,000 on the amount a Medicare beneficiary must pay OOP for Medicare Part D prescription drugs. The cap will increase with the annual percentage increase in average per capita expenditures for covered Medicare Part D drugs in the United States.

Reinsurance Subsidy Reduced. Under current law, the federal government subsidizes 80 percent of costs above the annual OOP spending threshold for Part D plans. Beginning in 2025, this subsidy will be reduced to 20 percent for certain new "applicable drugs" subsidized by manufacturers and 40 percent for all other drugs.

Part D Premium Stabilization. The Act limits the base Medicare Part D premium to increases of no more than 6 percent per year for 2024 through 2029.

Extension of ACA Premium Tax Credits. Under the ACA, premium tax credits were available only for taxpayers with household incomes between 100 percent and 400 percent of the federal poverty level (FPL). For 2021 and 2022, the American Rescue Plan Act expanded eligibility for the premium tax credit to those with household incomes above 400 percent of the FPL and increased the amount of subsidies for those below that threshold. The Act extends these provisions through 2025.

HDHP Safe Harbor for Insulin Coverage. The Act amends Section 223 of the Internal Revenue Code effective for plan years beginning after December 31, 2022, to codify that a group health plan will not fail to be treated as an HDHP for failing to impose a deductible for insulin-related products including any dosage form of any type of insulin.

Impact on Employer Group Health Plans

The Senate's budget reconciliation rules resulted in the removal of several health care provisions that would have directly affected most employer group health plans. Commentators have noted, however, that once Medicare is able to negotiate with drug manufacturers for lower prescription drug prices, drug manufacturers may attempt to make up the difference by shifting costs to employer-sponsored plans. Commentators have also opined that, had the Act included the cost of prescription drugs in the commercial market in the rebate calculation, the Act would have created an additional incentive to reduce employer costs in that market. Other provisions in the Act may impact Part D plans sponsored by employers, such as employer group waiver plans.

Resources

The full text of the Inflation Reduction Act of 2022 is available [here](#).



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