

# Employee Benefits Update: Recent Legislation and Regulations Impose New Obligations on Plan Administrators and Plan Sponsors

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Congress's passage of the Consolidated Appropriations Act ("CAA") imposes a series of new recordkeeping and disclosure obligations on plan sponsors, as well as extending and expanding upon COVID-19 related relief. Less than one month into this year, the Department of Labor has also issued regulations and guidance relating to pension plans. Below is a summary of these new requirements.

## CHANGES RELATED TO GROUP HEALTH PLANS

**Reports on Pharmacy Benefits.** The CAA requires group health plans to report certain information related to drug costs for this plan year to the Departments of Health and Human Services, Labor, and the Treasury by December 27, 2021. Subsequent annual reports will be due by June 1st. In addition to general plan information, group health plans must report: a) the 50 most frequently dispensed prescription drugs with the total number of claims for each; b) the 50 most costly prescription drugs with the total annual amount spent for each; c) total spending on healthcare broken down by type of costs (hospital, provider, and clinical service costs) for primary and specialty care; d) average monthly premium (employer and employee); and e) detailed information related to rebates and compensation by drug manufacturers and their impact on premiums and out-of-pocket costs. The HHS plans to compile the information it receives from group health plans into a publicly available report that group health plans can use to compare drug costs. Plan sponsors should coordinate with TPAs and other service providers to ensure that procedures are in place to gather the required information.

**Remove Gag Clauses from Contracts with Providers/TPAs.** Group Health Plans, health plan insurers and issuers of health insurance coverage are now prohibited from entering into contracts with providers (including networks of providers) or TPAs that restrict the plan from disclosing provider-specific cost and quality-of-care information; accessing de-identified claim information; or sharing such information with a HIPAA business associate. This change is effective immediately. Self-insured employers that administer their own plans should review any current contracts with providers or networks of providers to confirm compliance.

**Mental Health Parity.** Group Health Plans with nonquantitative treatment limitations for mental health and substance abuse benefits must conduct an analysis comparing these limitations to medical and surgical benefits. The IRS, DOL, and HHS will issue a compliance program document to assist with this requirement.

**No Surprises Act.** Effective for plan years on or after January 1, 2022, the No Surprises Act is designed to protect patients from unexpected medical bills from non-network providers in circumstances where the patients have no control over who provides the care (for example, air ambulance transport or other non-network emergency services). The Act covers a broad range of issues. Generally, non-network providers cannot balance bill unless there is advance notice and consent, and Group Health Plans must cover non-network emergency services subject to cost-sharing rules and accelerated dispute resolution procedures. Group Health Plans also must provide advance explanations of benefits for certain scheduled services; include plan deductibles, out-of-pocket limits, and consumer assistance information on participant ID cards; maintain a price comparison tool for participants; maintain an updated list of network providers; and provide 90 days of continued, in-network care for individuals undergoing treatment for serious or complex conditions even after their provider leaves the network. Additional guidance on the No Surprises Act will be issued in July.

**Extending Flexibility Regarding FSA Rules.** The CAA extends the FSA flexibility offered in response to the COVID-19 pandemic. Employers that sponsor flexible spending arrangements may permit the carryover of unused funds from the 2020 plan year into the 2021 plan year, and from 2021 into 2022; extend grace periods to a full 12 months; permit employees to spend down balances through the plan year even if the employee has ceased participation; and permit prospective election changes. None of these provisions are required, but an employer may amend its FSA rules if it chooses.

## CHANGES RELATED TO PENSION PLANS

**Disaster Distributions and Loans.** The CAA permits, but does not require, plan sponsors to relax the rules relating to distributions, loans and repayments from defined contribution plans through June 25, 2021 for participants who resided in a qualified disaster area (as reported by FEMA) and sustained an economic loss because of the disaster. It is important to note that a COVID-19 state of emergency, standing alone, is not a qualified disaster. Participants can take a distribution from a defined contribution plan up to \$100,000 without the 10% early withdrawal penalty; take the distribution over a three-year period; and replace the amount into the plan within three years of the distribution. Participants can take a loan up to the lesser of \$100,000 or 100% of their vested balance with an extended repayment period where applicable.

**New Guidance Regarding Missing Participants.** The DOL has issued helpful guidance for plan administrators relating to finding missing plan participants — which has been a focus of recent DOL audits. The guidance clarifies that plan administrators should have a detailed, written policy for finding missing participants and document the steps taken to comply with the policy. Such a policy should require the review and updating of participant contact information at regular intervals (not just when a problem occurs) and document any returned envelopes and uncashed checks. Further, the DOL has identified the following steps for plan administrators to find missing participants: 1) attempt social media contact; 2) use a death search if a participant is unresponsive for a long

period; 3) contact former fellow employees who worked with the participant; 4) publish a list of missing participants on the employer's intranet, if applicable; 5) contact the local union for missing former union employees; 6) register missing participants on the National Registry of Unclaimed Retirement Benefits or pension registries with privacy protection. Given the DOL's recent focus on the missing participant issue, plan administrators should take immediate steps to implement a policy that complies with the DOL guidance.

Please feel free to contact us should you have questions regarding this article.

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