Greater Binghamton Chamber of Commerce

35th ANNUAL LABOR & EMPLOYMENT LAW UPDATE

2024 Employee Benefits Update

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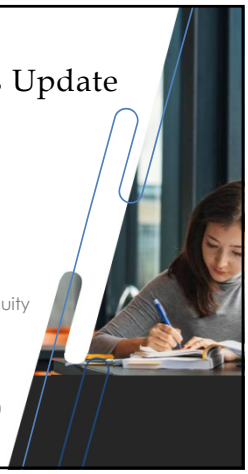
Agenda
2024 Employee Benefits Update

- 2024 Affordable Care Act Updates
- 2024 ACA Noncompliance Penalties
- Other Healthcare Developments
- Upcoming Compliance Deadlines
- Life and Disability EOI Reminder
- Mental Health Parity and Addiction Equity Act (MHPAEA) Developments
- SECURE 2.0 Highlights
- Retirement Plan Required Minimum Distribution (RMD) Relief for SECURE 2.0 Changes



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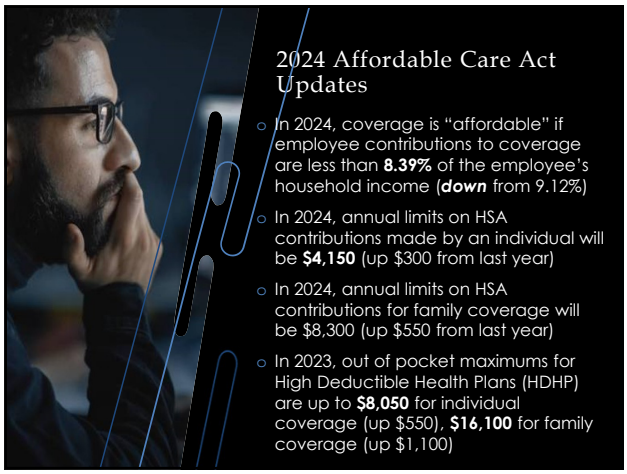

2024 Affordable Care Act Updates

- In 2024, coverage is "affordable" if employee contributions to coverage are less than **8.39%** of the employee's household income (***down*** from 9.12%)
- In 2024, annual limits on HSA contributions made by an individual will be **$4,150** (up $300 from last year)
- In 2024, annual limits on HSA contributions for family coverage will be $8,300 (up $550 from last year)
- In 2023, out of pocket maximums for High Deductible Health Plans (HDHP) are up to **$8,050** for individual coverage (up $550), **$16,100** for family coverage (up $1,100)

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2024 Affordable Care Act Updates

- In 2024, the employer mandate still requires employers with 50 or more FTEs to provide affordable, minimum value coverage [also referred to as "Minimum Essential Coverage" or (MEC)] to at least **95%** (unchanged) of their full-time employees (and dependents up to age 26)
- In order for a plan to qualify as "minimal value" for 2024 the plan must cover the cost of at least **60%** of covered health services provided by the plan (unchanged from 2023)

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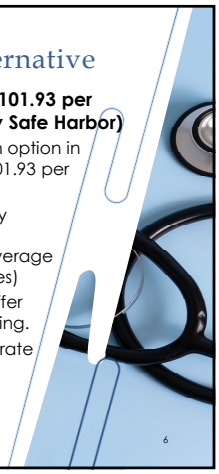
2024 ACA Affordability Alternative

2024 Lowest-Cost Plan is no more than $101.93 per month (Federal Poverty Line Affordability Safe Harbor)

Calendar year plans offering a medical plan option in 2024 that costs employees no more than $101.93 per month for employee-only coverage will

- automatically meet the ACA affordability standard under the Federal Poverty Line Affordability Safe Harbor that deems coverage affordable for all FTEs (Full-Time Employees)
- permit the employer to use Qualifying Offer method for streamlined ACA 1094 reporting.
  - For employees working in Alaska the rate is $127.31 per month, and the rate in Hawaii is $117.25 per month.



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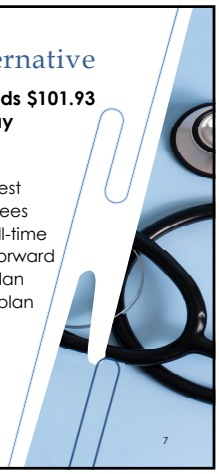
2024 ACA Affordability Alternative

When your 2024 Lowest-Cost Plan Exceeds $101.93 per month, consider using the Rate of Pay Affordability Safe Harbor

This approach applies an analysis of the lowest hourly rate of pay for hourly full-time employees and the lowest monthly salary for salaried full-time employees. While the calculation is straightforward and mostly routine now, employers should plan and prepare now to ensure they keep their plan "affordable" at the reduced rate of 8.39% for 2024.



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2024 ACA Noncompliance Penalties

The 4980H(a) penalty amount increases to $247.50 or an annualized amount of $2,970 per employee

- The IRS issues a 4980H(a) penalty when an organization fails to offer Minimum Essential Coverage (MEC) to at least 95% of its full-time employees for any month during the year and has at least one employee obtain a Premium Tax Credit (PTC) from a state or federal ACA health exchange

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2024 ACA Affordability Alternative

2023 4980H(a) Penalty Example

Acme Corporation employs 300 full-time employees. The company offers MEC to 250 of them, which is 83% of its workforce and below the ACA's 95% requirement. One employee, who did not receive an offer of MEC, signed up for coverage through the New York State of Health marketplace. New York State of Health then issued a premium tax credit (PTC) to the employee for all 12 months of the year.

When New York State of Health provided the employee with a PTC, it informed the IRS of the request. With PTC recipient information, the IRS then cross-references it with Acme Corporation's 1095-C filings for the applicable tax year and identifies how many full-time employees it had so that it can calculate and assess a 4980H(a) penalty. It only takes one employee to trigger the entire full-time workforce, less the standard 30 exemption.

As a result, Acme Corporation will be assessed a 4980H(a) penalty in the amount of $801,900.

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2024 ACA Noncompliance Penalties

Formula

Here's the calculation of the 4980H(a) penalty amount:

12 months x $247.50 = $2,970
$2,970 x (300-30) = $801,900

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2024 ACA Affordability Alternative

2023 4980H(b) Penalties

For the 2023 tax year, the 4980H(b) ACA penalty is $371.67 a month or $4,460 annualized, per employee. Unlike the 4980H(a) penalty the 4980H(b) penalty is assessed on a per violation basis.

The 4980H(b) penalty is assessed when an employer offers its full-time employees coverage that was either unaffordable, not Minimum Value, or both, AND had one of the employees receive a PTC from a state or federal health exchange.

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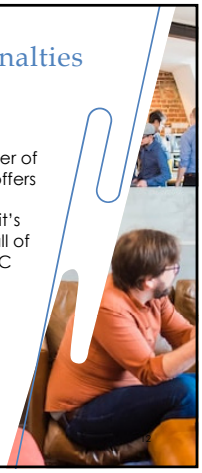
2024 ACA Noncompliance Penalties

2023 4980H(b) Penalties

Beta Corporation employs 100 ACA full-time employees. All 100 employees received an offer of coverage for the year, but as it turns out, the offers did not meet the IRS-mandated affordability threshold of 8.39% for the 2024 tax year. While it's true that the coverage was unaffordable for all of the employees, only 50 of them obtained a PTC from the state health exchange.

As a result, Beta Corporation would receive a 4980H(b) penalty in the amount of $223,000.



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2024 ACA Noncompliance Penalties

Here's the calculation of the 4980H(b) penalty amount:

Formula

$371.67 x 12 = $4,460

$4,460 x 50 = $223,000

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2024 ACA Noncompliance Penalties

- An employer will not be assessed both a 4980H(a) and 4980H(b) penalty for the same tax year. If an organization is found in violation of both ACA non-compliance requirements simultaneously, the greater penalty of the two will be assessed.
- Similar to previous years, the IRS issues 4980H(a) and 4980H(b) penalties via Letter 226J, which it is currently doing for the 2020 tax year. The IRS will start on the 2021 tax years shortly.
- As employers prepare their 2023 ACA filings and set their sights on the 2024 tax year, remember the developments relating to the IRS and healthcare in general this year.
  - The Inflation Reduction Act, gives the IRS $80 billion in funding for tax enforcement, including the ACA's Employer Mandate.
  - IRS is bringing on over 87,000 new tax examiners.
- The Inflation Reduction Act also extends reduced healthcare subsidies and PTCs through 2025
- Taken together, this means the potential for significant ACA penalty assessments.

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2024 ACA Noncompliance Penalties

Extension of Healthcare Subsidies and Premium Tax Credits

- The American Rescue Plan Act ("ARPA") became law on March 21, 2021 and extended eligibility for the ACA premium tax credits to individuals with incomes over 400% of the poverty line.
- ARPA also increased the ACA premium tax credits (PTC) for lower income individuals until December 31, 2022
- The Inflation Reduction Act extends the increased premium tax credit until December 31, 2025
  - This may increase the number of people who get the PTC
- As the PTC is the trigger for ACA penalties, this may increase the exposure of employers to penalties in 2023, 2024 and 2025

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Other Healthcare Developments

Surprise Billing Independent Dispute Review (IDR) Process Temporarily Halted

Tex. Med. Ass'n v. United States HHS, 2023 U.S. Dist. LEXIS 135310, (N.D. Tex. August 3, 2023), the court invalidated two portions of the regulations:

- the increased fee to participate in IDR for 2023 $350 (up from $50); and
- the batching rule that makes it more difficult to batch multiple, qualified IDR dispute items and services to be considered jointly as part of a single determination.

HHS has suspended the IDR process pending further guidance; some in process claims are continuing and some parts of the system are slowly reopening

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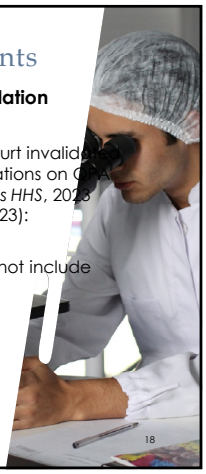
Other Healthcare Developments

Qualifying Payment Amount (QPA) Calculation in Interim Final Regulations Invalidated

In another piece of the same litigation the court invalidated additional provisions of the interim final regulations on QPA calculations in *Tex. Med. Ass'n v. United States HHS*, 2023 U.S. Dist. LEXIS 149393, (N.D. Tex. August 24, 2023):

- Contracted Rates: Issuers and plans when determining contracted rates cannot include "ghost rates" in calculating the QPA
  - rates for items and services that are not provided, and providers have no intention to provide.



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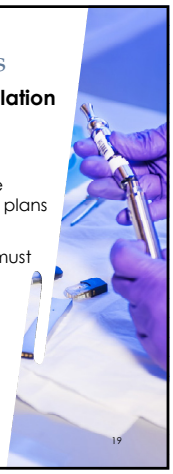
Other Healthcare Developments

Qualifying Payment Amount (QPA) Calculation in Interim Final Regulations Invalidated

(continued)

- Specialties: Median contacted rates must be calculated by provider specialty. Issuers and plans cannot include out-of-specialty rates.
- Total Maximum Payment: QPA calculations must include bonuses and incentives.
- Self-funded Plans: Cannot use the median contracted rates based on the TPA's or ASO's book of business.
- Air Ambulance: Single case agreements must be factored into QPA for air ambulance.



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Upcoming Compliance Deadlines

Medicare Creditable Coverage

- Medicare Part D notices (either creditable or non-creditable coverage) are due prior to October 15 (October 14th).
- Online disclosure to CMS is due no later than 60 days after the beginning date of the plan year (contract year, renewal year, etc.) and upon change of the plan's creditable coverage status.
  - Prescription drug cost reductions for Medicare enrollees through the Inflation Reduction Act may impact analysis of whether employer sponsored prescription drug coverage is creditable

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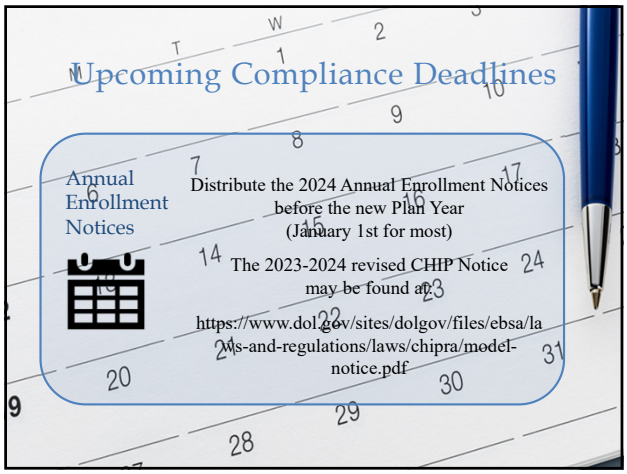
Upcoming Compliance Deadlines
Annual Enrollment Notices
Distribute the 2024 Annual Enrollment Notices before the new Plan Year (January 1st for most)
The 2023-2024 revised CHIP Notice may be found at:
https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/chipra/model-notice.pdf

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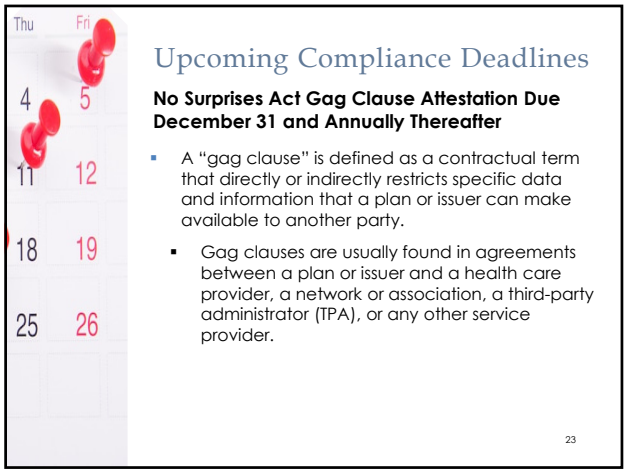
Upcoming Compliance Deadlines
No Surprises Act Gag Clause Attestation Due December 31 and Annually Thereafter
A "gag clause" is defined as a contractual term that directly or indirectly restricts specific data and information that a plan or issuer can make available to another party.
Gag clauses are usually found in agreements between a plan or issuer and a health care provider, a network or association, a third-party administrator (TPA), or any other service provider.
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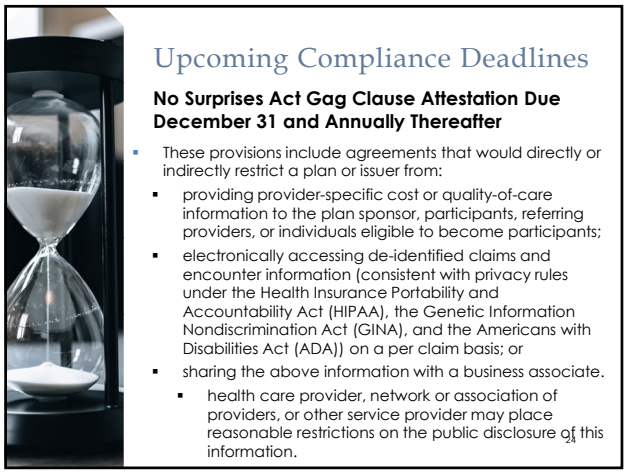
Upcoming Compliance Deadlines
No Surprises Act Gag Clause Attestation Due December 31 and Annually Thereafter
These provisions include agreements that would directly or indirectly restrict a plan or issuer from:
providing provider-specific cost or quality-of-care information to the plan sponsor, participants, referring providers, or individuals eligible to become participants;
electronically accessing de-identified claims and encounter information (consistent with privacy rules under the Health Insurance Portability and Accountability Act (HIPAA), the Genetic Information Nondiscrimination Act (GINA), and the Americans with Disabilities Act (ADA)) on a per claim basis; or
sharing the above information with a business associate.
health care provider, network or association of providers, or other service provider may place reasonable restrictions on the public disclosure of this information.
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Upcoming Compliance Deadlines

No Surprises Act Gag Clause Attestation Due December 31 and Annually Thereafter

- All group health plans (including fully-insured, level funded, self-insured, and grandfathered plans) attest annually that they do not have any agreements that include these types of provisions
  - The first of these attestations will be due on December 31 and will cover the period from December 27, 2020 (or, if later, the effective date of the plan or insurance coverage) through the date of attestation.
  - Plans and insurers must submit the attestation online through the CMS Health Insurance Oversight System
    - Detailed instructions regarding the attestation submission process, and a user manual with step-by-step instructions for submitting the attestation through a portal available

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Upcoming Compliance Deadlines

No Surprises Act Gag Clause Attestation Due December 31 and Annually Thereafter *(continued)*

- The attestation requirement does not apply to excepted benefits (such as standalone dental or vision plans), health reimbursement arrangements (HRAs), or other account-based plans (such as FSAs) but may include Employee Assistance Plans (EAPs)
  - Fully-insured plans must confirm with their carriers that they will comply with the requirement.
    - If a carrier submits the attestation on behalf of a fully-insured plan, the plan will be considered compliant with this requirement.
  - Self-insured plans may satisfy the requirement by entering into a written agreement with a TPA to submit the attestation on the plan's behalf, although ultimately the plan sponsor is responsible for compliance.
    - Self-insured plans should request verification that the attestation was successfully submitted

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Life and Disability: EOI Reminder

Confirm Evidence of Insurability (EOI) Approval Before Collecting /Deducting Premiums

Employers should review their enrollment procedures to ensure that EOI has been approved by life and disability insurers before premiums for the increases are collected from employees / withheld from the employees' pay.

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Life and Disability: EOI Reminder

Prudential Life Department of Labor Settlement

The settlement prohibits Prudential from denying claims based on the failure to submit EOI if it has accepted at least three months of premiums for coverage and requires Prudential to notify employers not to collect premiums until EOI has been approved.

In addition, the settlement provides existing participants additional protections to ensure that coverage is not denied more than a year after they started paying premiums based on insurability, or based on evidence that they were no longer insurable after they first began making premium payments.

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Life and Disability: EOI Reminder

Prudential Life Department of Labor Settlement

Prudential Financial agreed to reprocess denied claims dating back to June 2019 and provide benefits for the claims previously denied based solely on lack of evidence of insurability.

The settlement also says that after receiving the notice, employers may be liable to the beneficiaries of the policy if the employer collects premiums for an employee or eligible dependent before confirming EOI approval.

The settlement also says that receiving the notice, employers may be liable to the beneficiaries of the policy if the employer collects premiums for an employee or eligible dependent before confirming EOI approval.

- Press release: US Department of Labor reaches settlement with Prudential Insurance Company of America to revise life insurance practices that denied claims | U.S. Department of Labor (dol.gov)
- Settlement Agreement: SOL20230649.pdf (dol.gov)

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Mental Health Parity and Addiction Equity Act (MHPAEA Developments)

- On July 25 the Departments of Labor, Treasury, and Health and Human Services issued a proposed rule on requirements related to the Mental Health Parity and Addiction Equity Act (MHPAEA).
- The Proposed Rule, if finalized in its current form, will impose significant new compliance obligations on group health plans and health insurance issuers and would be effective for plan years beginning on or after January 1, 2025.
- The focus of the Proposed Rule is on nonquantitative treatment limitations (NQTLs) under MHPAEA. Along with the Proposed Rule, the departments issued a technical release (TR) related to the Proposed Rule's data collection requirements, a report to Congress, an enforcement fact sheet, and an MHPAEA guidance compendium.

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Mental Health Parity and Addiction Equity Act (MHPAEA Developments)

NQTLs Must Meet Three Requirements

- An NQTL that applies to mental health or substance use disorder (MH/SUD) benefits can be no more restrictive than the predominant NQTL that applies to substantially all medical/surgical (Med/Surg) benefits within the same MHPAEA benefit classification.
  - borrows the mathematical "substantially all/predominant test" that currently exists for financial requirements and quantitative treatment limitations (collectively QTLs) under the 2013 MHPAEA final rule.

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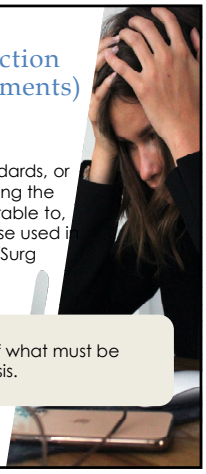
Mental Health Parity and Addiction Equity Act (MHPAEA Developments)

NQTLs Must Meet Three Requirements

- The processes, strategies, evidentiary standards, or other factors used in designing and applying the NQTL to MH/SUD benefits must be comparable to, and applied no more stringently than, those used in designing and applying the NQTL to Med/Surg benefits within the same MHPAEA benefit classification.

Current view by the regulatory agencies of what must be established in an NQTL comparative analysis.



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Mental Health Parity and Addiction Equity Act (MHPAEA Developments)

- Require the use of outcomes data in analyzing NQTLs.
  - extensive collection of data, such as claims denials, for an NQTL and then compare data outcomes for both MH/SUD and Med/Surg benefits.
  - A "material difference" in outcomes represents a "strong indicator" of an NQTL violation, and certain actions would need to be taken and documented:
    - Additional unique data collection requirements for the "network composition" NQTL
    - material differences in the data would go beyond a strong indicator of an MHPAEA violation but would establish that there was an actual violation
    - The TR goes into detail regarding the extensive data that plans would need to collect to establish parity/comparability for the network composition NQTL.

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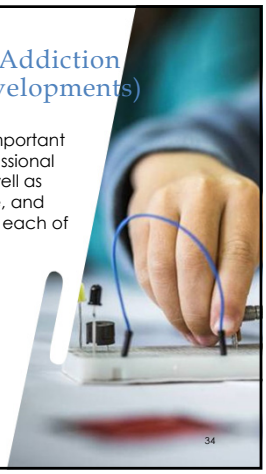
Mental Health Parity and Addiction Equity Act (MHPAEA Developments)

- The Proposed Rule does contain important exceptions for "independent professional medical or clinical standards" as well as standards to prevent "fraud, waste, and abuse." Those exceptions apply to each of these 3 NQTL requirements.



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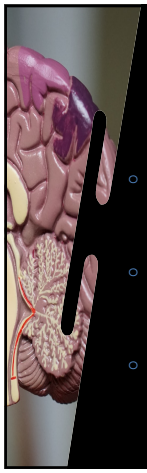

Mental Health Parity and Addiction Equity Act (MHPAEA Developments)

Meaningful Benefits in Each Benefit Classification

- The 2013 MHPAEA final rule provides that if a plan provides MH/SUD benefits in one of the MHPAEA benefit classifications, it must provide MH/SUD benefits in all MHPAEA benefit classifications.
- The Proposed Rule would amend and expand this requirement to require that a plan provide "meaningful benefits" in each classification compared to Med/Surg benefits.
- The Proposed Rule contains two examples providing clarification of this "meaningful benefits" requirement.

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Mental Health Parity and Addiction Equity Act (MHPAEA Developments)

Content of an NQTL Comparative Analysis

The Consolidated Appropriations Act, 2021 (CAA 2021) required each plan to have a written NQTL comparative analysis with **5 elements**:

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Mental Health Parity and Addiction Equity Act (MHPAEA Developments)

Content of an NQTL Comparative Analysis

The Consolidated Appropriations Act, 2021 (CAA 2021) required each plan to have a written NQTL comparative analysis with 5 elements:

1. Identification	the identification of NQTLs and the MH/SUD and Med/Surg benefits the NQTLs apply to;
2. Factors	the factors used to determine application of the NQTLs;
3. Evidentiary Standards	the evidentiary standards used to develop the factors;

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Mental Health Parity and Addiction Equity Act (MHPAEA Developments)

The Consolidated Appropriations Act, 2021 (CAA 2021) required each plan to have a written NQTL comparative analysis with five elements: *(continue)*

4. Analysis	an analysis of processes, strategies, evidentiary standards, and factors demonstrating comparability; and
5. Findings/ Conclusions	specific findings and conclusions.

The Proposed Rule reorganizes and expands on these elements incorporating a demonstration of the three requirements for NQTLs as part of the comparative analysis

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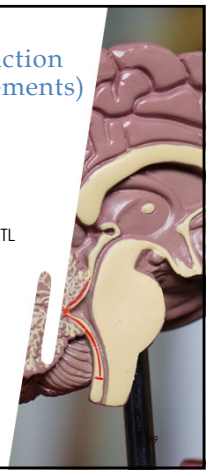
Mental Health Parity and Addiction Equity Act (MHPAEA Developments)

Other Provisions

- The Proposed Rule provides further detail on actions the departments may take if they find an NQTL comparative analysis lacking:
  - Require that the plan eliminate the NQTL as it applies to MH/SUD benefits.
  - Specific time periods are provided for responding to a department's initial request for an NQTL comparative analysis and follow-up requests.



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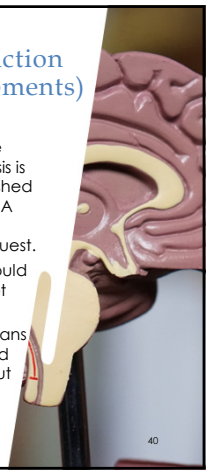
Mental Health Parity and Addiction Equity Act (MHPAEA Developments)

Other Provisions

- For ERISA-covered plans, the Proposed Rule provides that the NQTL comparative analysis is an instrument under which a plan is established or operated under Section 104(b)(4) of ERISA and must be provided to participants and beneficiaries within 30 days of a written request.
  - If not provided, the Plan Administrator could face up to a $110 per day penalty for not providing that comparative analysis.
- Previously, state and local governmental plans could opt out of MHPAEA. The Consolidated Appropriations Act, 2023 ended that opt-out and provided a sunset timetable.
  - The Proposed Rule would implement those sunset provisions



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Secure 2.0 Highlights

- Mandatory Automatic Enrollment Feature beginning in 2025
- Long-Term Part-Time Participation Rules Enhanced
- Optional Retirement Plan Emergency Savings Accounts beginning in 2024
- Saver's Match Tax Credit Contributions
- Contribution Rule Changes
- Distribution Rule Changes
- RMD Rule Changes
- Plan Administration Rule Changes
- 403(b) Plan Rule Changes

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Secure 2.0 Highlights

Mandatory Automatic Enrollment Feature beginning in 2025

- 401(k) and 403(b) plans with salary reduction arrangements established after December 29, 2022 must have an automatic enrollment feature similar to an Eligible Automatic Contribution Arrangement (EACA), including notices and rights to cancel and withdraw automatic contributions within the first 90 days
- Default elective deferral contribution that is invested in the plan's Qualified Default Investment Alternative (QDIA)
- 3% initial deferral that increases 1% per year until a cap that must be at least 10% but not more than 15%
  - Except for safe harbor 401(k) plans, the cap for EACA plans is 10% until January 1, 2025
- Does not apply to single–employer plans established before December 29, 2022, SIMPLE 401(k) plans, governmental plans, church plans or employers that have been in existence less than 3 years or have less than 10 employees

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Secure 2.0 Highlights

Long-Term Part-Time Participation Rules Enhanced

- SECURE 1.0 requires cash-or-deferred arrangements to enroll part time employees who are at least 21 and have 3 consecutives years of service of 500 hours or more and requires that 500 hour years of service for these employees count for vesting purposes
- SECURE 2.0 shortens the period of service to 2 years
- SECURE 2.0 applies this rule to 403(b) plans
- SECURE 2.0 has a transition rule: no 12 month service period before 2023 counts for eligibility and no pre-2021 service counts toward vesting

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Secure 2.0 Highlights

Optional Retirement Plan Emergency Savings Accounts beginning in 2024

- Only available to non-highly compensated employees
- Must be held as cash, an interest-bearing deposit, or a stable value investments
- Balance capped at $2,500 (indexed for inflation)
- Once cap is reached, contributions either cease or are redirected to the plan's designated Roth account
- Participants allowed up to 4 fee-free withdrawals per year
- Upon termination, this account must be either distributed as cash to the participant or rolled over to the plan's designated Roth account

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Secure 2.0 Highlights

Saver's Match Tax Credit Contribution

- Beginning in 2027 the Saver's Tax Credit that employees can apply individually on their federal income tax returns is replaced with a tax credit contribution
- Contribution is 50% of contribution to applicable plans: 401(k), 403(b), eligible 457(b) plans and Individual Retirement Accounts (IRAs) up to $2,000
- Contribution phased out depending on income and filing status
- Funded through a nonrefundable federal income tax credit
- Tax credit contributions treated as elective deferrals/voluntary contributions
- Tax credit contributions disregarded for contribution limits and some discrimination testing

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Secure 2.0 Highlights

Contribution Rule Changes

- Beginning in 2025, higher catch-up contribution limits apply for those turning 60, 61, 62 or 63 during the year
  - For non-SIMPLE plans, the limit is $10,000 (indexed for inflation) or 150% of the regular catch-up limit for 2024
  - For SIMPLE Plans, the limit is $5,000 (indexed for inflation) or 150% of the regular SIMPLE plan limit for 2025
  - For IRAs, the $1,000 catch-up limitation for be indexed for inflation after 2023
- Catch-up contributions by those with wages over $145,000 (indexed for inflation) must be directed to a designated Roth account
- Beginning in 2024, employers can make matching contributions based on repayment of qualified student loans
  - Does not apply to loan repayments that, when aggregated with elective deferrals, exceeds the 402(g) limit for that year
  - Match must (1) apply exclusively to all participants eligible for matching contributions on elective deferrals and (2) be at the same matching rate and subject to the same vesting rules as the regular match on elective deferrals

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Secure 2.0 Highlights

Contribution Rule Changes

- Fully-vested employer matching contributions and non-elective contributions may now be directed to a designated Roth account (after applicable withholding)

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Secure 2.0 Highlights

Distribution Rule Changes

- Beginning in 2024, mandatory cash-out limit rises from $5,000 to $7,000
- Rules restricting distributions under Code Section 401(a) are relaxed/new exceptions from the early withdrawal penalty that may otherwise apply to individuals under age 59 ½ [Code Section 72(t)] with different effective dates:
  - Includes:
    - Unforeseeable or immediate financial need for certain personal/family emergency expenses
    - Distributions to firefighters
    - Hardship withdrawals
    - Distributions from pension-linked emergency savings accounts
    - Distributions to victims of domestic abuse

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Secure 2.0 Highlights

Distribution Rule Changes

- Includes: *(continue)*
  - Distributions to individuals with a terminal illness
  - Distributions to qualified public safety employees from governmental plans
  - Distributions to forensic security employees providing for the care, custody and control of forensic patients
  - Distributions and loan relief for qualified disaster recovery expenses
  - Cost of qualifying long-term care insurance or coverage
- Repayment period for qualified birth or adoption expenses limited to 3 years (effective immediately)
  - Any such distributions made prior to December 29, 2022 must be repaid by December 31, 2025

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Secure 2.0 Highlights

RMD Rule Changes

- Required Beginning Date (RBD) age increased to 73 for those born between January 1, 1951 and December 31, 1959 or age 75 for those born in or after 1960
- Beginning in 2024, designated Roth accounts in defined contribution, 403(b) plans and eligible 457(b) plans are excluded from the RMD rules prior to the participant's death
  - Distributions required prior to 2024 but payable in 2024 are not covered
- Beginning in 2024, surviving spouses who are the sole beneficiary of a participant who dies before their RBD:
  - Must elect to have these special rules apply instead of the SECURE 1.0 Act Eligible Designated Beneficiary Rules
  - RMD amounts for the spouse will be determined as if the spouse were the participant (i.e., applying the Uniform Lifetime Table for life expectancy rather than the Single Life Table)

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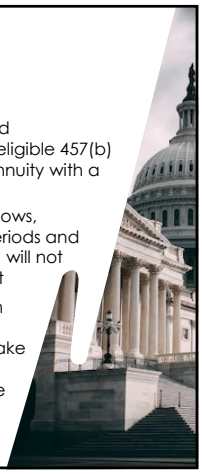
Secure 2.0 Highlights

RMD Rule Changes

- Beginning in 2023, the RMD rules for defined contribution plans, 403(a) or 403(b) plans, eligible 457(b) plans and IRAs may be satisfied by a life annuity with a steady stream of payments
  - Certain annuity features (cash-out windows, accelerated payments for 12-month periods and certain benefits that increase with time) will not cause an annuity to fail this requirement
  - For partial annuitization of account plan benefits, an election is allowed to determine RMD amounts for a year to take into account annuities purchase (and distributions taken from them) during the relevant year



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Secure 2.0 Highlights

RMD Rule Changes

- Beginning in 2023, the RMD rules for defined contribution plans, 403(a) or 403(b) plans, eligible 457(b) plans and IRAs may be satisfied by a life annuity with a steady stream of payments *(continued)*
  - Loosening the requirements for Qualifying Longevity Annuity contracts (QLACS) whose cost many be disregarded for determining RMDs by:
    - Eliminating the limit on QLAC purchases at 25% of the individual account level and raising the dollar cap from $125,000 to $200,000 (indexed for inflation)
    - Modifying the treatment for divorced beneficiaries
    - Allowing for a 90-day recission period
- This excise tax for RMD failures is reduced from 50% to 25% and may be further reduced to 10% if a return reflecting the excise tax is filled within a correction window.

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Secure 2.0 Highlights

Plan Administrator Rules Changes

- Notice Requirements
- Beginning in 2024, top-heavy tests may exclude employees not meeting the Code section 410(a)(1) requirements (other than paragraph (B)
- De minimis participation incentives allowed as long as plan assets are not used
- Greater flexibility for plan fiduciaries correcting overpayments
- Expansion of the Employee Plan Compliance Resolution System (EPCRS)
  - Makes permanent a current temporary special correction method for certain elective deferral failures relating to automatic enrollment or automatic contribution escalation features

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Secure 2.0 Highlights

Plan Administrator Rules Changes

- Eliminates the time limit for self-correcting eligible inadvertent failures (unless failure is first identified by the IRS or if an identified failure is not corrected in a reasonable amount of time
- Coordinates EPCRS with the DOL's Voluntary Fiduciary Correction Program for applicable inadvertent failures involving plan loans
- EPCRS to be expanded to cover IRAs (at least for RMD failures and distributions from inherited IRAs wrongly assumed to be eligible for rollover)
- Benefit accrual increase amendment deadline extended to the sponsor's tax filing date (including extensions)
- Relaxed disclosure rules for unenrolled participants

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Secure 2.0 Highlights

403(b) Plan Rule Changes

- After 2023, new rules for multiple-employer 403(b) plans similar to those enacted by SECURE 1.0 for multiple-employer 401(k) plans
  - Permits investments in group trusts that meet the requirements of Revenue Ruling 81-100 (or any successor guidance)
  - Beginning in 2024, permits hardship withdrawals from elective deferrals, matching contributions and QNECs
    - Participants not required to take a plan loan (if available)
    - Participants may self-certify for eligibility

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Retirement Plan Required Minimum Distribution (RMD) Relief for Secure 2.0 Changes

The Internal Revenue Service ("IRS") issued Notice 2023-54 ("Notice") that provides relief from Code Sec. 401(a)(9) required minimum distribution ("RMD") compliance for certain 2023 lifetime and post-death distributions to participants and beneficiaries under individual retirement accounts ("IRAs") and employer plans.

- Generally follows similar prior guidance (Notice 2020-51 and Notice 2022-53.)

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Retirement Plan Required Minimum Distribution (RMD) Relief for Secure 2.0 Changes

Summary:

- The pending RMD regulations (for all plan types) will not be effective before the 2024 distribution calendar year
- Relief for errors with respect to the Setting Every Community Up for Retirement Enhancement ("SECURE") 2.0 "required beginning date" change, including:
  - extending the 60-day indirect rollover period through September 30, 2023
  - relief from the one-per-12-month IRA indirect rollover limitation, and
  - plan sponsor relief for noncompliance with Code Secs. 401(a)(31), 402(f), and 3405(c) withholding; and
- No 2023 RMD payments need to be made for beneficiaries receiving "specified RMD" payments ("at least as rapidly" rule relief).

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Retirement Plan Required Minimum Distribution (RMD) Relief for Secure 2.0 Changes

Delayed Effective Date of Final Regulations

- the final RMD regulations and related provisions will apply no earlier than the 2024 distribution calendar year instead of the previously announced 2023 plan year (via Notice 2022-53).
  - The proposed regulations were issued before the SECURE 2.0 Act and must be reviewed/updated for the law changes, and
  - Without clear guidance (and model amendments), compliance is a challenge.

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Retirement Plan Required Minimum Distribution (RMD) Relief for Secure 2.0 Changes

Changes to Required Beginning Date for Participants Born in 1951 (and are turning 72 this year)

- For qualified plans, a distribution made between January 1, 2023, and July 31, 2023, that would otherwise have been an RMD but for the changes made by the SECURE 2.0 Act is not required to be treated as an eligible rollover distribution under Code Secs. 401(a)(31), 402(f), and 3405(c).
- For payments made during this period to participants born in 1951 (or such participant's surviving spouse), this relief gives plan sponsors and recordkeepers the ability to retain the initial distribution and withholding treatment for mistaken RMD payments without concern about plan qualification, Code Sec.402(f) notice penalties, or under-withholding of federal income taxes.
- For plan participants (and their surviving spouses) who have already received distributions in 2023, the 60-day indirect rollover period was extended through September 30, 2023

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Retirement Plan Required Minimum Distribution (RMD) Relief for Secure 2.0 Changes

Changes to Required Beginning Date for Participants Born in 1951 (and are turning 72 this year)

- For Individual Retirement Account (IRA) owners (and their surviving spouses) who took an RMD between January 1, 2023, and July 31, 2023, the 60-day indirect rollover period was extended through September 30, 2023

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Retirement Plan Required Minimum Distribution (RMD) Relief for Secure 2.0 Changes

Relief for a "Specified RMD" to Comply with the 10-year Rule

- **Defined Contribution Plans that Do Not Make Specified RMDs for 2023.**
  - A defined contribution plan that fails to make a "specified RMD" will not be treated as having failed to satisfy Code Sec. 401(a)(9) merely because it does not make that distribution.
    - No qualification failure, and no need for plan sponsors to make voluntary correction program ("VCP") filings or self-correct, or otherwise provide participants with an explanation to assist with "reasonable cause" relief from the 25% excise tax penalty via Form 5329.
- **Participant/Beneficiary Relief From 25% Excise Tax in 2023**
  - The IRS will not assert that an excise tax is due under Code Sec. 4974 to the extent a taxpayer does not take a specified RMD for 2023.

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Retirement Plan Required Minimum Distribution (RMD) Relief for Secure 2.0 Changes

Relief for a "Specified RMD" to Comply with the 10-year Rule

- **A "Specified RMD" is any distribution that, under the proposed regulations, would be required to be made pursuant to Code Sec. 401(a)(9) in 2023 under a defined contribution plan or IRA that is subject to the rules of 401(a)(9)(H) for the year in which the employee/IRA owner (or designated beneficiary) died if that payment would be required to be made to:**
  - a designated beneficiary of an employee under the plan (or IRA owner) if (1) the employee (or IRA owner) died in 2020, 2021, or 2022 and on or after the employee's (or IRA owner's) required beginning date, and (2) the designated beneficiary is not taking lifetime or life expectancy payments pursuant to Code Sec. 401(a)(9)(B)(iii); or
  - a beneficiary of an "eligible designated beneficiary" (including a designated beneficiary who is treated as an eligible designated beneficiary pursuant to section 401(b)(5) of the SECURE Act) if (1) the eligible designated beneficiary died in 2020, 2021, or 2022, and (2) that eligible designated beneficiary was taking lifetime or life expectancy payments pursuant to Code Sec. 401(a)(9)(B)(iii).

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Questions

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Thank you
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