Tulsa Employee Benefits Group 2025 Annual Update

September 24, 2025

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SECURE 2.0 GUIDANCE UPDATE

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Reminders Regarding Plan Amendments

- Plan amendments required – generally – by December 31, 2026 (same deadline for SECURE 1.0 and CARES Act).
- The delayed amendment deadline can be a blessing and a curse.
  - Maintain clear records of your design elections, their effective dates and the details of the elections.
  - Keep in mind that you might have a different recordkeeper when an amendment is needed.
  - Keep elections and amendments in mind when doing plan mergers.
- Beware of automatic vendor opt-ins.
- Keep amendment authority in mind.

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CATCH-UP CONTRIBUTIONS FINAL REGULATIONS

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Catch-up Contribution Final Regulations

- Final regulations released on September 16, 2025 that address:
  - Roth catch-up contribution requirement for participants with FICA wages in excess of $145,000 (as adjusted).
  - Additional catch-up contributions for participants age 60-63.
  - Increased contribution limits for SIMPLE IRA and SIMPLE 401(k) plans (not addressed in this presentation).

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ROTH CATCH-UP REQUIREMENT

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Roth Catch-up Contributions

- No further delay in Roth catch-up requirement.
- Final regulations are applicable beginning in 2027.
- For 2026, reasonable good-faith interpretation standard applies.
- The following slides have references to the final regulations but do not have a comprehensive discussion of all changes in the final regulations.

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Roth Catch-up Contributions

- General Rule: If, for the preceding calendar year, a catch-up eligible participant had FICA wages that exceeded $145,000 (as adjusted for cost of living), that participant's catch-up contributions for the current year must be Roth contributions.
- An individual with no FICA wages for the preceding year is not subject to the Roth catch-up requirement.
- Note that deferred compensation plans can result in FICA wages upon vesting, which may be earlier than payment.

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Roth Catch-up Contributions

- For purposes of determining a participant's FICA wages, the relevant employer is the participant's common law employer.
  - Change in final regulations: Plan may provide for aggregation of wages among one or more employers using common paymaster or one or more employers in a controlled group.
  - Final regulations include rules about how to count wages in the event of an asset purchase.
  - In a multiple employer plan, wages from one employer sponsoring the plan are not aggregated with the wages from another employer sponsoring the plan.

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Roth Catch-up Contributions

- The Roth catch-up wage threshold does not have to be prorated for the year of hire.
- Thus, a participant who worked for the employer for only part of the preceding calendar year would be subject to the Roth catch-up requirement in the current year only if the participant had wages exceeding the full Roth catch-up wage threshold from the employer for the preceding calendar year.

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Roth Catch-up Contributions

- If a participant who is subject to the Roth catch-up requirement is permitted to make Roth catch-up contributions, then all catch-up eligible participants must be permitted to make Roth catch-up contributions.
- For dual qualified Puerto Rico plans, the Roth catch-up requirement is deemed to be satisfied for years that begin before the date of any future amendment tot the Puerto Rico Code to provide for Roth contributions.

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Roth Catch-up Contributions

- A plan is not required to offer Roth contributions.
- If a plan does not offer Roth contributions:
  - A participant who is subject to the Roth catch-up requirement could not make catch-up contributions.
  - Other participants could still make catch-up contributions.
- Nondiscrimination issue to consider.

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Roth Catch-up Contributions

- A plan cannot avoid the Roth catch-up requirement by requiring that all catch-up contributions be made as designated Roth contributions.
- Thus, the only avenue for avoiding the requirement to monitor FICA wages is to eliminate all catch-up contributions.

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Roth Catch-up Contributions

- Deemed Roth Catch-up Election
  - A plan may provide that a participant who is subject to the Roth catch-up requirement is deemed to have designated any elective deferrals that are catch-up contributions as Roth contributions.
  - A deemed election can be used even if the plan requires a separate election for catch-up contributions or uses a single deferral election.
  - Final regulations confirm that a deemed election for a separate account can be irrevocable – even if the contributions are not technically catch-up contributions.

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Roth Catch-up Contributions

- Deemed Roth Catch-up Election
  - The plan must provide the effective opportunity to make a different election (e.g., to stop deferrals).
  - Final regulations provide extended time for deemed election to cease (generally, later of when the participant is no longer subject to the Roth catch-up requirement or the date that an amended Form W-2 is filed or furnished indicating that the employee is no longer subject to the requirement).

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Roth Catch-up Contributions

- The required Roth contributions can be made at any time during the year.
- Example: If a participant hits the 402(g) limit for the year, prospective contributions must be Roth only to the extent the participant has not already made Roth contributions up to the catch-up limit.

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ROTH CATCH-UP CONTRIBUTIONS

- Correction options.
  - The proposed regulation describes two correction options that are in addition to the existing alternative to distribute excess contributions.
    - Final regulations clarify that the same correction must be used for all "similarly situated" participants.
  - Final regulations provide that correction not required if less than $250.
  - Final regulations include new detail regarding deadline for corrections.

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ROTH CATCH-UP CONTRIBUTIONS

- Correction options (cont'd).
  - To be eligible to use either of the additional correction methods:
    - The plan must apply the deemed election rule discussed above.
    - The plan must have in place practices and procedures designed to result in compliance.
      - Reliance on prior year Form W-2 for determining applicability of Roth catch-up requirement is a permitted practice.

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Roth Catch-up Contributions

- Correction options (cont'd).
  - Correction on Form W-2.
    - Transfer the catch-up contribution (adjusted for earnings and losses) from pre-tax account to Roth account.
    - Report the contribution (not adjusted for earnings and losses) as a Roth contribution on Form W-2 for the year of deferral.
    - Only available if the participant's Form W-2 for that year has not been filed or furnished to the participant.

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Roth Catch-up Contributions

- Correction options (cont'd).
  - Correction by in-plan Roth rollover.
    - Roll over the catch-up contribution (adjusted for earnings and losses) from the participant's pre-tax account to the participant's Roth account.
    - Report the amount of the in-plan Roth rollover (including earnings and losses) on Form 1099-R for the year of the rollover.

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INCREASED CATCH-UP LIMIT

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INCREASED CATCH-UP LIMIT

- General rule
  - For 2025, a catch-up eligible participant who would attain age 60, 61, 62, or 63 during the taxable year, the catch-up limit is $11,250.
  - $11,250 is 150% of the $7,500 regular catch-up limit for 2025.
  - For future years, the limit is adjusted for changes in the cost of living.

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Increased Catch-up Limit

- Increased catch-up limit is optional.
- If increased catch-up limit is available:
  - It must be available to all participants.
  - All plans within the controlled group must offer them.
  - Exceptions for collectively bargained employees and non-resident aliens.
- Potential flexibility on these universal availability requirements during 2026.

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INADVERTENT BENEFIT OVERPAYMENTS NOTICE 2024-77

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Inadvertent Benefit Overpayments
Notice 2024-77

- SECURE 2.0 added sections 414(aa) and 402(c)(12) to the Code providing rules on inadvertent benefit overpayments from employer-sponsored retirement plans.
- Code section 414(aa) includes special rules applicable to benefit overpayments.
- Code section 402(c)(12) addresses when an overpayment is eligible to be treated as an eligible rollover distribution.

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Inadvertent Benefit Overpayments
Notice 2024-77

- IRS Notice 2024-77 (October 15, 2024).
- "Inadvertent benefit overpayment" defined as a payment that:
  - exceeds the amount payable under the plan or a limit provided in the Code; or
  - is paid before it is eligible to be paid under the Code or the terms of the plan.
- Does not include overpayments made to disqualified persons under PT rules or owner-employees.
- Does not include payments made to correct qualification failures.

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Inadvertent Benefit Overpayments
Notice 2024-77

- Generally, the EPCRS requirement to obtain repayment of an inadvertent benefit overpayment does not apply – but exceptions noted in later slide.
- A plan sponsor may choose to seek repayment under EPCRS correction methods.
  - ERISA plans are subject to significant SECURE 2.0 restrictions.

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Inadvertent Benefit Overpayments
Notice 2024-77

- Rollover treatment:
  - If recoupment is not pursued, then amount rolled over is treated as an eligible rollover distribution (ERD) if the payment would otherwise have been an ERD.
  - If recoupment is sought and made, the repaid amount is treated as an ERD by both plans.
  - If recoupment is sought and not made, any unpaid amount is not treated as an ERD and plan sponsor must provide notice.

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Inadvertent Benefit Overpayments
Notice 2024-77

- Exceptions to general rule:
  - If overpayment due to 401(a)(17) or 415 violation and plan does not recoup, the plan sponsor (or another party) must make a corrective payment to the plan.
    - If 401(a)(17)/415 excess was rolled over and not returned, the plan sponsor must notify the individual that the amount not returned is not eligible for rollover.
  - If an overpayment due to a Code section 436 failure is not repaid, the plan sponsor or another party must make a corrective payment to the plan.

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Inadvertent Benefit Overpayments
Notice 2024-77

- A plan sponsor cannot amend to increase benefits to cure an overpayment if the amount would result in a 401(a)(17), 415 or 436 violation.
- The notice is effective October 15, 2024. For periods before that date, a taxpayer may rely on a good faith, reasonable interpretation of Code sections 414(aa) and 402(c)(12).

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STUDENT LOAN MATCHING CONTRIBUTIONS NOTICE 2024-63

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STUDENT LOAN MATCHING CONTRIBUTIONS NOTICE 2024-63

- IRS Notice 2024-63 (August 19, 2024).
- To be treated as incurred by an employee, the employee must have a legal obligation to make the loan payment.
  - A cosigner has a legal obligation but a guarantor only has a legal obligation if the primary borrower defaults.
- A plan cannot limit matches to only certain loans, such as loans for an employee's own education, a particular degree program or attendance at a particular school.

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Student Loan Matching Contributions
Notice 2024-63

- Generally, a plan cannot exclude employees from qualified student loan payments (QSLPs) if they are eligible for deferrals, and vice versa.
  - Limited exceptions under the Code section 410(b) disaggregation rules (collectively bargained plans; QSLOBs).

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Student Loan Matching Contributions
Notice 2024-63

- Only loan payments that were made during a plan year are eligible for a QSLP match for that plan year.
- Notice provides details about how separate ADP testing can be performed.
- A QSLP match feature may be added as a mid-year change to a safe harbor plan, provided the notice and election opportunity conditions are satisfied.

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Student Loan Matching Contributions
Notice 2024-63

- Employee must certify that a loan payment is a QSLP.
  - Amount and date of loan payment
  - That the payment was made by the employee
  - That the loan is a qualified education loan and was used to pay expenses of the employee, employee's spouse or employee's dependent
  - That the loan was incurred by the employee
- Details provided regarding the manner in which certification can be obtained; multiple options.
- Plan can rely on annual certification but can require verification if per reasonable procedures.

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Student Loan Matching Contributions
Notice 2024-63

- Plan may establish a single QSLP match claim deadline for a plan year or multiple deadlines; must be reasonable.
  - Annual deadline that is 3 months after end of plan year is example of a reasonable deadline.
- QSLP matches may be contributed at a different frequency than other matches but must be not less frequently than annually.

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STUDENT LOAN MATCHING CONTRIBUTIONS NOTICE 2024-63

- A match based on an incorrect certification does not have to be corrected but can be if correction is made for all similar situations.
- Plans are not required to provide for matches on a rolling basis as claims are submitted; can instead make all matches at same time in a plan year.

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LONG-TERM PART-TIME EMPLOYEES

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LONG-TERM PART-TIME EMPLOYEES

- SECURE 1.0 rule:
  - 401(k) plans required to permit elective deferrals for employees who complete at least 500 hours of service in 3 consecutive 12-month periods.
  - Only years after 2020 must be counted for the 3-year requirement, so January 1, 2024 would be the first time that eligibility is required under this rule.
  - Matching and nonelective contributions not required.
  - Did not apply to 403(b) plans or collectively bargained plans.

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LONG-TERM PART-TIME EMPLOYEES

- SECURE 2.0 modifications:
  - For plan years beginning after December 31, 2024, employees who complete at least 500 hours of service in 2 consecutive 12-month periods must be eligible for deferrals.
  - The long-term part-time rules are added to ERISA, which means that 403(b) plans covered by ERISA are subject to the rule as described in SECURE 2.0.
    - Under the ERISA rule, service before 2023 is disregarded.

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LONG-TERM PART-TIME EMPLOYEES

- SECURE 2.0 modifications (cont'd):
  - Only service on or after January 1, 2021 must be counted for purposes of counting vesting service under a 401(k) plan. (For these employees, vesting service must be counted for employees who work 500 hours in a 12-month period.)

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LONG-TERM PART-TIME EMPLOYEES

- IRS released proposed regulations on November 24, 2023.
- Apply to plan years beginning on or after 1/1/24, and permit reliance prior to publication of final rules.
- Good faith interpretation standard not provided.

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Long-Term Part-Time Employees
IRS Notice 2024-73

- Issued on October 3, 2024.
- Provides guidance on the eligibility rules for LTPT employees in 403(b) plans subject to ERISA, including how the new rules relate to the universal availability requirement.
- Confirms that SECURE 2.0's LTPT employee requirements do not apply to 403(b) plans that are exempt from ERISA.

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Long-Term Part-Time Employees
IRS Notice 2024-73

- The 20 hour per week exclusion from universal availability (referred to in the Notice as the part-time employe exclusion) is based on service and is subject to LTPT rules.
  - The exclusion can continue to apply to employees who are not LTPT employees (important clarification due to universal availability requirements).
- Student employee exclusion is based on a classification rather than on service. So a 403(b) plan can continue to exclude a student employee from making elective deferrals regardless of LTPT status.

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Long-Term Part-Time Employees
IRS Notice 2024-73

- Requests comments and states that the IRS intends to issue proposed regulations on the eligibility rules for LTPT employees in ERISA-covered 403(b) plans.
- The notice states that the final regulations on LTPT employees under 401(k) plans that the IRS intends to issue will apply no earlier than plan years beginning on or after January 1, 2026.

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Long-Term Part-Time Employee Rule
Practical Considerations for 401(k) Plans

- LTPT employees may already need to be eligible to defer.
- Does the plan design avoid the need for LTPT analysis?
- If you have LTPTs, are they eligible only for deferrals or for all contributions?
- What communications are required?
- How is your recordkeeper helping to monitor?
- What is the approach for coverage/nondiscrimination testing?
- Remember 2025 change from 3 years to 2 years.

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401(A)(9) REGULATIONS

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401(A)(9) REGULATIONS

- Final and proposed regulations issued in July 2024.
- Final regulations are applicable for distributions made, and for distribution calendar years beginning, on or after January 1, 2025.
- Confirm that "at least as rapidly" rule applies when employee dies after RMDs have commenced. Full distribution required by end of 10-year period after employee's death.
- Final and proposed regulations address SECURE 2.0 provision regarding spousal beneficiary election to use the uniform lifetime table.

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401(A)(9) REGULATIONS

- If plan will use a default that is different from default under the regulations, plan must specify default that applies when participant does not make an election.
  - For example, if eligible designated beneficiaries have a choice about whether to apply 10-year rule or life expectancy rule.
- A plan may also provide that a particular distribution method will apply to certain categories of eligible designated beneficiaries or an election is only available to certain categories of eligible designated beneficiaries.

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401(A)(9) REGULATIONS

- Additional SECURE 2.0 provisions addressed, such as:
  - Updated "applicable age" for required beginning date.
  - Changes related to annuities (increasing payments; partial annuitization).
  - Reduction in excise tax.
  - QLAC changes.
  - The age of majority is 21 for eligible designated beneficiaries.

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401(a)(9) Regulations
Surviving Spouse

- Background: Before SECURE 2.0, for a surviving spouse of an employee who died before their RBD:
  - Distributions to the spouse were not required to commence before the date the decedent would have attained RMD age; and
  - If the spouse died before such distributions are required to commence, the spouse is treated as the employee for purposes of the post-death RMD rules.
- SECURE 2.0 refers to a spouse election of such treatment, and also provides that the uniform lifetime table will apply for determining the distribution period of the spouse's RMDs.

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401(a)(9) Regulations
Surviving Spouse

- The final 401(a)(9) regulations provide that a plan may include a provision under which the surviving spouse may elect to use the uniform lifetime table.
  - The preamble to the regulations states that the original two rules apply automatically, thus an election is not required for those rules to apply.

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401(a)(9) Regulations
Surviving Spouse

- The proposed regulations further address the uniform lifetime table issue.
  - A spouse is deemed to elect to use the uniform lifetime table if the employees dies before RBD.
  - If the employees dies on or after RBD, the spouse is not deemed to elect to use the uniform lifetime table but the plan may apply it as a default.
  - Use of uniform lifetime table is not available if RMDs were required to start before 2024.
  - Preamble confirms that the election to use the uniform lifetime table does not result in the spouse being treated as the employee for other purposes, such as the 10% early distribution penalty tax.

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401(a)(9) Regulations

- In Announcement 2025-2, the IRS delayed the applicability date of most of the proposed regulations from 2025 to 2026. Taxpayers must apply a reasonable, good-faith interpretation of the statute.

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Welfare Benefit Plans

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One Big Beautiful Bill Act

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One Big Beautiful Bill Act
HDHPs: Telehealth Coverage

- The Act makes permanent the flexibility for HDHPs to cover telehealth and other remote care services prior to a participant's satisfaction of the HDHP deductible.
  - Originally permitted in the CARES Act and extended by Consolidated Appropriations Act
- This allows first dollar telehealth coverage without jeopardizing a HDHP participant's eligibility to contribute to an HSA.
- The CAA extension expired at the end of the 2024 plan year.
- The Act's provision is effective for plan years beginning after December 31, 2024.

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One Big Beautiful Bill Act
HDHPs: Telehealth Coverage

- Design considerations:
  - Whether to implement this provision if not already adopted.
  - If previously utilized, whether to implement on a prospective basis or retroactively to the first day of the first plan year beginning after December 31, 2024.
- Design decisions will need to be reflected in plan documents and vendor procedures.
- Participants will need to be notified.
- Does SBC address and, if so, is advance notice needed with respect to a mid-year change?

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One Big Beautiful Bill Act
HDHPs: Direct Primary Care

- A "direct primary care service arrangement" (DPCSA) will not be treated as a health plan that would disqualify an individual from eligibility to make HSA contributions.
- Expenses for DPCSA coverage are excluded from being treated as "payment for insurance," thus DPCSA coverage fees can be paid from HSA accounts.
- Effective for months beginning after December 31, 2025.

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One Big Beautiful Bill Act
HDHPs: Direct Primary Care

- Direct primary care service arrangement:
  - Limited to "primary care services provided by primary care practitioners."
  - Sole compensation must be fixed periodic fee.
  - Aggregate fees for all DPCSAs for an individual may not exceed $150 per month ($300 if DPCSA covers more than one individual).

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One Big Beautiful Bill Act
HDHPs: Exchange Coverage

- The term "high deductible health plan" is amended to include Bronze and catastrophic plans available as individual coverage through an Exchange.
- Effective for months beginning after December 31, 2025.

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One Big Beautiful Bill Act
Dependent Care FSA Limit

- Maximum dependent care FSA contribution increased from $5,000 to $7,500, effective January 1, 2026.
  - New limit is not indexed for inflation.
- Design considerations:
  - Whether to implement the increase.
  - Impact on nondiscrimination testing.
- Design decisions will need to be reflected in plan documents and vendor procedures.
- Participants will need to be notified.

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Group Health Plan Litigation Update

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PRESCRIPTION DRUG/PBM LITIGATION

- Lewandowski v. Johnson & Johnson, et al.:
  - Proposed class action filed against J&J and its Benefits Committee alleging multiple counts of fiduciary wrong-doing in relation to J&J's management of its PBM contract.
  - The complaint focuses mostly on drug pricing and PBM fees.
  - The PBM (ESI) is not named as a defendant.

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PRESCRIPTION DRUG/PBM LITIGATION

- Lewandowski v. Johnson & Johnson – District court dismissed for lack of standing January 24, 2025; amended complaint filed March 10, 2025.
  - 3 elements necessary to establish Article III standing:
    - A concrete injury (court found plaintiff's claim of increased costs of plan premiums was speculative).
    - Injury that is caused by the defendant (court found higher out of pocket costs establishes a concrete injury).
    - Injury is redressable by a court order (court found that a court order could not address the injury at issue due to plaintiff reaching her out of pocket maximum each year).

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PRESCRIPTION DRUG/PBM LITIGATION

- Navarro v. Wells Fargo (complaint filed July 30, 2024; district court dismissed for lack of standing March 24, 2025; amended complaint filed May 8, 2025)
- Stern v. JP Morgan Chase & Co (complaint filed March 13, 2025)
  - JP Morgan complaint includes a new theory of harm: plaintiffs allege that JP Morgan engaged in prohibited transactions in connection with the conflicts inherent in its business initiatives in the health care industry (Haven Health project)
- All 3 lawsuits are brought by the same plaintiffs' firms; similar complaints. Standing is a significant hurdle.

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Other Group Health Plan Litigation

Holland v. Elevance Health, No. 2:24-cv-00332-LEW (D. Me. April 9, 2025)

- A putative class against Elevance Health (f/k/a Anthem) asserting a claim of disability discrimination related to plan exclusion for weight loss drugs, including GLP-1s.
- The named plaintiff alleged that obesity is a disability and the plan exclusion unlawfully discriminated against her based on ACA Section 1557.
  - Section 1557 makes it unlawful for any health care provider that receives funding from the Federal government to refuse to treat an individual – or to otherwise discriminate against the individual – based on race, color, national origin, sex, age or disability.
- The court granted defendant's motion to dismiss primarily because the plan exclusion applied to everyone (i.e., there was no discrimination).
- Also consider other theories of discrimination – ADA, for example.

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Other Group Health Plan Litigation

Lange v. Houston County, GA, No. 22:13626 (11th Cir. Sep. 9, 2025):

- County health plan excluded drugs for sex change surgery and services and supplies for a sex change and/or the reversal of a sex change.
- Participant sued for disparate treatment because of sex under Title VII of the Civil Rights Act.
- District court held that the exclusion facially discriminates because of sex as a matter of law.
- Citing U.S. v. Skirmetti, the 11th Circuit held that the exclusion was not facially discriminatory under Title VII.
- The court did not rule on whether transgender status is a protected classification.

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Other Group Health Plan Litigation

Smoker Surcharge Litigation

- More than a dozen participant lawsuits have been filed against companies that impose tobacco usage penalties. Targets have included Walmart, Target and PepsiCo and Whole Foods Market.
- Pursuant to HIPAA's nondiscrimination rules, a health plan may impose a smoker surcharge only if workers are given a reasonable alternative to avoid paying the penalty, such as participation in a smoking cessation program that complies with certain requirements.
- In general, the lawsuits allege that employers failed to adequately provide employees with an alternative method for avoiding the surcharge.
- Some employers have agreed to class-wide settlements, including Bass Pro Group's $4.95 million settlement.

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Oklahoma PBM Legislation PCMA v. Mulready

- On August 15, 2023, the 10th Circuit Court of Appeals held that Oklahoma's PBM legislation (originally passed in 2019 (HB 2632) and amended in 2022 (SB 737)) was preempted by ERISA with respect to the access standards, discount prohibition, any willing provider provision, and provider probation prohibition as applied to ERISA plans.
- On June 30, 2025, the U.S. Supreme Court announced that it would not review that decision, thus concluding the litigation with respect to this legislation.
- Note: Other PBM legislation regulating cost rather than plan design has survived preemption challenges. See Kentucky's analysis of preemption litigation in Kentucky Department of Insurance Bulletin 2025-03.

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HIPAA

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HIPAA Reproductive Health Care Regulations

- Purl v. United States Department of Health and Human Services, 2025 WL 1708137 (N.D. Texas June 18, 2025).
  - Challenge to HIPAA final regulation regarding disclosure of PHI related to reproductive health care.
  - Medical provider who often treats child-abuse victims and often receives requests for PHI from Texas protective services related to suspected child abuse challenged the regulation to confirm the provider's ability to comply with mandatory reporting requirements and protective services' requests.
  - Court granted a preliminary injunction with respect to the provider in December 2024.

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HIPAA Reproductive Health Care Regulations

- Purl v. United States Department of Health and Human Services, 2025 WL 1708137 (N.D. Texas June 18, 2025).
  - In June decision, court vacated the regulation nationwide, on the basis that :
    - the regulation unlawfully limits state public health laws;
    - the regulation unlawfully defines "person" to exclude unborn children and narrows the definition of "public health"; and
    - HHS acted outside of its statutory authority.
  - Unlikely that Trump administration will challenge the decision.

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HIPAA Reproductive Health Care Regulations

- Purl v. United States Department of Health and Human Services, 2025 WL 1708137 (N.D. Texas June 18, 2025).
  - Changes to the privacy notice rules regarding substance use disorder records were left in place.
  - Action item: Notice of Privacy Practices must be updated by February 16, 2026.

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Proposed HIPAA Security Rule

- A proposed rule issued by OCR on December 27, 2024, (90 Fed. Reg. 898, January 6, 2025) would significantly amend HIPAA's existing Security Rule and require regulated entities to take a number of actions aimed at heightening the protection of ePHI, including to:
  - Develop and maintain a technology asset inventory and network map that illustrates the flow of ePHI (updated at least once every 12 months or upon the implementation of any related changes);
  - Adhere to heightened and defined standards for conducting a written risk analysis;
  - Conduct a Security Rule compliance audit at least every 12 months;

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Proposed HIPAA Security Rule

- Proposed rule requirements (cont'd):
  - Require that business associates verify at least once every 12 months that they have deployed technical safeguards required by the Security Rule;
  - Encrypt ePHI at rest and in transit (with limited exceptions); and
  - Use multi-factor authentication (with limited exceptions).
- Group health plans would be required to include in their plan documents certain provisions that would bind their plan sponsors to many of the Security Rule's standards.

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Updated Security Risk Assessment Tool

- DHHS released an updated Security Risk Assessment Tool on September 10, 2025.
- Designed for small and medium health care providers.
- https://www.healthit.gov/topic/privacy-security-and-hipaa/security-risk-assessment-tool

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Mental Health Parity

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Mental Health Parity

- Mental Health Parity and Addiction Equality Act (MHPAEA) generally requires group health plans to ensure that any financial requirements ("QTLs," such as copays) and treatment limitations ("NQTLs," such as visit limits) that apply to mental health and substance use disorder (MH/SUD) benefits are no more restrictive than the predominant requirements and limitations that apply to substantially all medical/surgical (M/S) benefits in a benefit classification.
- MHPAEA also prohibits separate QTLs or NQTLs that apply only to MH/SUD benefits.
- CAA 2021 amended MHPAEA by expressly requiring plans to perform and document NQTL comparative analysis.

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Final MHPAEA Rule

- Issued in September 2024; generally effective for plan years beginning on or after January 1, 2025 though many significant provisions will not apply until plan years beginning on or after January 1, 2026.
- Plans must provide "meaningful benefits" for treatment of a particular condition in each benefit classification.
- Enhanced requirements relating to NQTL comparative analyses, including plan fiduciary certification as to prudence of selection and oversight fo service providers.

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FINAL MHPAEA RULE

- On January 17, 2025, the ERISA Industry Committee (ERIC) filed suit in the U.S. District Court for the District of Columbia challenging certain provisions of the 2024 Final Rule on multiple grounds, including on the grounds that they are arbitrary and capricious and contrary to law.
- On May 9, 2025, DHHS, Treasury, and Labor (the "Departments") filed a motion for abeyance of the lawsuit pending the Departments' reconsideration of the Final Rule.

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FINAL MHPAEA RULE

- On May 15, 2025, DHHS, Treasury, and Labor (the "Departments") issued a statement that the Departments will not enforce the 2024 Final Rule or otherwise pursue enforcement actions based on a failure to comply that occurs prior to a final decision in the ERIC litigation, plus an additional 18 months.
- The relief applies only with respect to those portions of the 2024 Final Rule that are new in relation to the 2013 Final Rule.
- HHS encourages states that are the primary enforcers of MHPAEA with respect to insurers to adopt a similar approach.

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2024 MHPAEA Report to Congress

- Similar deficiencies to 2023 report with respect to NQTL comparative analyses – primarily a lack of meaningful analysis regarding factors considered in design and application of NQTL.
- Key focus areas identified:
  - NQTLs Relating to Network Adequacy and Network Composition. Ex: network standards.
  - Impermissible Exclusions of Key Treatments for MH/SUD. Ex: ABA Therapy for ASD, nutritional counseling for eating disorders and medication-assisted treatment for opioid use disorder.

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2024 MHPAEA Report to Congress

- Avoid barriers to access mental health benefits by these three methods (where the same requirement does not apply to medical and surgical benefits):
  - Prior authorization (enforcement priority along with concurrent review requirements).
  - Gatekeeping – for example, requiring participants to use EAPs before they can access MH/SUD benefits.
  - Telehealth visits with MH/SUD providers.

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2024 MHPAEA Report to Congress

- The 2024 MHPAEA Report includes a copy of a Settlement Agreement between the Employee Benefits Security Administration (EBSA) and a Taft-Hartley Fund utilizing the Cigna network.
- EBSA identified the following MHPAEA failures:
  - Use of different, non-comparable processes and evidentiary standards to evaluate the adequacy of its M/S and MH/SUD networks.
  - Different, non-comparable responses to identified deficiencies in its M/S and MH/SUD networks.
  - Failure to produce statutorily sufficient NQTL comparative analysis.

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ACA Section 1557

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1557 Final Regulations

- Section 1557 of the ACA prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in specified health programs or activities, including those that receive Federal financial assistance.
- Final regulation issued in May 2024 to be effective January 1, 2025 remains enjoined.
  - Prohibited benefit design that limit coverage based on a person's sex at birth, gender identification, or gender otherwise recorded.

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Additional 1557 Developments

- On June 30, 2025, the United States Supreme Court vacated and remanded a Fourth Circuit decision affirming that exclusion of coverage for gender-affirming care by state health plans and Medicaid programs violated Section 1557.
- The cases covered by the decision are remanded to the Fourth Circuit for consideration in light of United States v. Skirmetti (which upheld a state's ban on puberty blockers and hormone therapy for transgender teenagers). Kadel v. Folwell; Anderson v. Crouch, No. 22-1721, No. 22-1927 (4th Cir. 2024), cert. granted, No. 24-90 (U.S. 2025).

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Additional 1557 Developments

- In February 2025, HHS rescinded a 2022 OCR Notice and Guidance which provided that Section 1557 prohibits discrimination based on gender identity in federally-funded plans. https://www.hhs.gov/sites/default/files/ocr-rescission-february-20-2025-notice-guidance.pdf
- In May 2025, HHS rescinded May 2021 guidance in which HHS announced that it would interpret and enforce Section 1557's prohibition on discrimination on the basis of sex to include: (1) discrimination on the basis of sexual orientation; and (2) discrimination on the basis of gender identity. 90 Fed. Reg. 20393 (May 14, 2025).

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Additional 1557 Developments

- On August 15, 2025, the Office of Personnel Management informed insurers participating in the Federal Employees Health Benefits or Postal Service Health Benefits programs that "chemical and surgical modification of an individual's sex traits" will no longer be covered under those programs.

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Affordable Care Act

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ACA Employer Reporting Requirements

- Effective December 23, 2024, the Employer Reporting Improvement Act and the Paperwork Burden Reduction Act codify and enhance existing regulatory guidance and are intended to ease employer reporting obligations and provide employers with certain penalty-related relief.
- Key components of these new rules include:
  - Alternative manner of furnishing ACA statements
  - Consents to electronic ACA forms are now deemed evergreen
  - MEC Reporting Relief: Taxpayer Identification Numbers (TINs)
  - Extended Period of Time to Respond to Letter 266J
  - Six Year statute of limitations now applies to 4980H penalty assessments

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ACA Employer Reporting Requirements

- This legislation permits Forms 1095-C to be provided only upon request subject to requirements regarding posting of a notice and responding to requests.
- IRS Notice 2025-15 provides guidance on how to utilize this relief.
- Keep in mind:
  - State law reporting requirements similar to the federal ACA's (Mass, CA, NJ, RI, VT and DC) must be evaluated independently from the new ACA reporting guidance.
  - Unless a state says otherwise, the new federal statutes generally have no bearing on an employer's obligations under state law.

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ACA Preventive Coverage: Braidwood

- In March 2023, the Northern District of Texas imposed a nationwide injunction of the ACA requirement to cover U.S. Preventive Services Task Force (USPSTF) recommended preventive services with "A" or "B" ratings issued on or after March 23, 2010, on the basis that the appointment process for Task Force members was unconstitutional.
- In July 2024, the 5th Circuit Court of Appeals allowed the injunction to continue with respect to the plaintiffs, but vacated the nationwide injunction.
- In June 2025, the United States Supreme Court reversed these decisions, concluding that the Task Force operates under proper constitutional authority.

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ACA Employer Mandate: Faulk

- Faulk Company, Inc. v. Becerra, No. 4:24-cv-00609-P (N.D. Tex. April 10, 2025):
  - The ACA requires that HHS certify that one or more full-time employees was enrolled in a qualified health plan before employer mandate penalties can be proposed. However, IRS letter 226-J purports to serve as that certification.
  - An employer that was assessed $205,000 in penalties challenged this process, arguing that HHS – not the IRS – must provide the certification and that the letter lacked proper notice of potential liability and the right to appeal.
  - The court agreed with the employer's position and (i) required the IRS to refund the penalty amount; and (ii) set aside the HHS regulation giving the IRS the authority to certify that an employer had on or more employees enrolled in a qualified health plan.
  - The government has given notice of appeal.

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ACA Reminders

- ACA employer mandate (pay or play rules) still applicable.
- Revenue Procedure 2025-26 – Penalty Increases for 2026
  - 4980H(a) (95% rule): $3,340 per employee
  - 4980H(b): $5,010 per employee
- Affordability percentage increased to 9.96% for plan years beginning in 2026 (2025 was 9.02%)
  - Confirm use of safe harbors if applicable

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ACA Reminders

- 2026 Out-of-pocket limits: Individual: $10,600; Family: $21,200 (defined as anything other than self-only).
- Reminder: DOL FAQ 60 confirms that cost-sharing for services furnished by a "nonparticipating" provider for NSA purposes is not subject to the ACA OOP limit, but cautions that a direct or indirect contractual relationship with a provider will cause the provider to be "participating" for NSA and "in-network" for ACA OOP. https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-60

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QUESTIONS?

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The foregoing presentation is a summary of certain legislation, guidance, and litigation. As with any summary, some details are omitted.

This summary should not be relied upon for legal or tax advice for particular situations.

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