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EMPLOYEE BENEFITS LAW

Legal Developments Impacting Health & Welfare Plans

2025 Year-End Update

1. The Department of Labor (DOL), Department of Health and Human Services (HHS), and the U.S. Treasury (the Departments) announced they would not enforce the **Mental Health Parity and Addiction Equity Act (MHPAEA) regulations** finalized in 2024 (including the new discriminatory factor, fiduciary certification, and meaningful benefit requirements).

   However, the MHPAEA itself and the original (2013) MHPAEA regulations remain in effect and continue to be enforced, including the NQTL comparative analysis requirement. In its January 1, 2025 report, the DOL reaffirmed the six "priority" areas in which health plans continue to struggle with compliance:

   - prior authorization for inpatient services;
   - concurrent review for inpatient and outpatient services;
   - standards for provider admission to a network, including reimbursement rates;
   - out-of-network reimbursement rates and methodology;
   - impermissible exclusions of key treatments for mental health conditions and substance use disorders; and
   - adequacy standards of key mental health and substance use disorder treatments and provider networks.

2. Every year, group health plans and insurance issuers must verify that their provider network contracts, among other requirements, **do not contain "gag" clauses** restricting the plan's access to cost and claim information. In January 2025, the Departments, alongside the U.S. Office of Personnel Management, issued guidance clarifying applicability of this requirement to downstream agreements; providing examples of impermissible gag clauses; and explaining annual attestation procedures when a plan is aware of a gag clause.

3. Coverage of gender-affirming care by health plans has continued to evolve as courts have grappled with how to apply **Section 1557 of the Affordable Care Act (ACA) and Title VII** (plus, in cases involving a government entity, the Equal Protection Clause). As we've reported in prior years, courts have ruled that gender-affirming care exclusions discriminate "on the basis of sex" under the Supreme Court decision in *United States v. Bostock*. In 2025 decisions were mixed following the Supreme Court's decision in *United States v. Skrmetti*,[1] with some courts applying *Skrmetti* to find gender-affirming care exclusions were not

[1] *United States v. Skrmetti*, 605 U.S. 495 (2025) (holding, in an Equal Protection Clause challenge, that a gender-affirming care exclusion was permissible).

prohibited, while others distinguish *Skrmetti* to conclude such exclusions are impermissibly discriminatory.[2]

4. Pursuant to a new Executive Order promoting **expanded access to and reduced out-of-pocket costs for in-vitro fertilization (IVF)**, new guidance from the Departments explains two ways to structure fertility benefits as "excepted benefits" (thereby exempting them from many ACA requirements):

    - **Independent, Non-Coordinated Excepted Benefits**: This requires a separate insurance policy that is not coordinated with an employer-sponsored group health plan.
    - **Limited Excepted Benefits**: These benefits can be provided through excepted benefit health reimbursement accounts (capped at an annual maximum of $2,150) or Employee Assistance Programs (EAPs). If an EAP, the EAP may not provide significant fertility benefits in the nature of medical care but can offer benefits for coaching or navigator services to understand fertility treatment options.

5. In July 2025, Congress enacted widespread legislation, known as **the One, Big Beautiful Bill Act**, resulting in the following changes: [3]

    - The Maximum annual Dependent Care Assistance Program benefit increased from $5,000 to $7,500.
    - High deductible health plans may cover telehealth before the deductible is met, making permanent a provision that was enacted during COVID.
    - Employer student loan repayment assistance programs were made permanent, continuing the $5,250 annual exclusion and indexing it for inflation.
    - Trump Accounts begin in 2026, allowing pre-tax employer contributions to the Accounts for employees' children of up to $2,500 per employee each year.

6. Last year, MMPL reported on new HHS regulations strengthening the privacy of **Protected Health Information (PHI) relating to reproductive health care**. Since then, a federal district court in Texas vacated the new regulations, concluding HHS exceeded its statutory authority by restricting state laws related to reporting child abuse; redefining "person" to exclude unborn babies; and acting without congressional authorization.[4] The Court preserved the new Notice of Privacy Practices requirements relating to PHI on substance use disorders from "Part 2" programs, which plans must have in place by February 16, 2026.

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[2] *Compare Lange v. Houston County*, 152 F.4th 1245 (11th Cir. 2025) (a Title VII case holding that a gender-affirming care exclusion was permissible), *with L.B. v. Premera Blue Cross*, 795 F. Supp. 3d 1311 (W.D. Wash. 2025) (an ACA § 1557 case striking down a gender-affirming care exclusion).
[3] One Big Beautiful Bill Act, Pub. Law No. 119-21, 139 Stat. 72 (2025).
[4] *Purl v. United States Department of Health & Human Services*, 787 F. Supp. 3d 284 (N.D. Tex. 2025).

7. HHS continues to assess **penalties for Health Insurance Portability and Accountability Act (HIPAA) violations**, with several recent settlements for breaches tied to phishing and ransomware attacks by third parties. The penalties ranged from $25,000 to $3 million, depending on the egregiousness of the failure, and often included a corresponding corrective action plan and continued HHS oversight.

   This year, HHS also proposed new regulations related to **HIPAA's Security Rule**. As proposed, the regulations would add numerous requirements, including compliance audits, use of multifactor authentication, and encryption of PHI at rest and in transit.[5] Alongside its enforcement focus on cyberattacks, this proposed rule change may portend a redoubled focus on data security for ePHI, which HHS stated can be addressed through a combination of insurance, procedural and technological safeguards, and comprehensive risk assessments.

8. Litigation has been increasing on **use of Artificial Intelligence (AI)** and automatic algorithms to process medical claims. In April, a federal district court in California[6] allowed a class action to proceed against the plan administrator on the theory that it violated plan terms and breached its fiduciary duty by using AI rather than having a "medical director" make claims determinations. Similar suits have been filed in multiple other federal district courts.

9. **State efforts to regulate pharmacy benefit managers (PBMs)** continue to produce mixed results in court. In 2025, a federal district court in Tennessee held that the state's "any willing pharmacy" law—requiring PBMs to admit any "qualifying pharmacy" into their pharmacy network—was preempted by ERISA because it interfered with the design and administration of ERISA plans.[7] By contrast, a federal district court in Illinois rejected an ERISA preemption challenge to an Arkansas rule requiring health plans and other payors to report pharmacy reimbursement data, concluding that the rule is a cost regulation statute and does not have an impermissible connection with ERISA.[8]

   Fiduciary breach suits alleging additional costs to plan participants **resulting from PBM practices** have also become more frequent, but so far plaintiffs have had little success. In 2025, suits against the Wells Fargo and the Johnson & Johnson plan fiduciaries alleged the fiduciaries were responsible for plan overpayments to PBMs. Both courts dismissed the cases, finding there was no showing of loss to plan participants.[9]

10. Drugs, and **weight-loss drugs** in particular, continue to be a prominent health plan concern. In 2025, courts dismissed complaints claiming that health plans violated the ACA by

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[5] 45 C.F.R. Parts 160 and 164 (Jan. 6, 2025).
[6] *Kisting-Leung v. Cigna Corp.*, 780 F. Supp. 3d 985 (E.D. Cal. 2025).
[7] *McKee Foods Corp. v. BFP Inc.*, No. 1:21-CV-279, 2025 WL 968404 (E.D. Tenn. Mar. 31, 2025), *appeal filed* (6th Cir. May 5, 2025).
[8] *Central States, SE & SW Areas Health and Welfare Fund v. McClain*, No. 25-CV-3938, 2025 WL 2522621 (N.D. Ill. Sept. 2, 2025).
[9] *Lewandowski v. Johnson and Johnson*, No. 24-CV-671, 2025 WL 3296009 (D.N.J. Nov. 26, 2025); *Navarro v. Wells Fargo & Co*., No. 24-CV-3043, 2025 WL 1136091 (D. Minn. Apr. 17, 2025).

excluding coverage for weight loss drugs.[10] The Trump administration also announced a pricing agreement with drug manufacturers for various drugs, including drugs to treat diabetes, heart disease (Ozempic and Wegovy only), obesity, and other conditions, if sold to consumers through TrumpRx.gov.

11. The annual dollar limit on **employee contributions to Flexible Spending Accounts** increased from $3,300 to $3,400. The limit on Health Savings Account (HSA) contributions for self-only coverage increased from $4,300 to $4,400, and from $8,550 to $8,750 for family coverage. The age 55+ HSA catch-up limit remains at $1,000.

From all of us here at MMPL, your employee benefits law firm.

Not intended as legal advice.

[10] *Holland v. Elevance Health, Inc*., No. 2:24-CV-00332-LEW, 2025 WL 1160477 (D. Me. Apr. 9, 2025), *appeal filed* (Apr. 20, 2025); *Whittemore v. Cigna Health and Life Insurance Company*, No. 2:24-CV-00206-LEW, 2025 WL 475128 (D. Me. Feb. 12, 2025), *appeal filed* (Mar. 19, 2025).