

2021 A Year in Review

A summary of 2021 healthcare regulation and policy updates in relation to ERISA plans

2021 Resulted in many regulatory and policy updates as the country continued to manage the effects of the COVID-19 pandemic and sought ongoing relief to ERISA plan participants, fiduciaries, and sponsors. This article provides a summary of some of the most impactful regulatory and policy updates that occurred this past year.

Relief	Impact	Resources
February 2021		
February 10: Mental Health Parity and Addiction Equity Act ("MHPAEA") in accordance with the Consolidated Appropriations Act of 2021 (the "CAA")	The CAA contains requirements for certain employer-sponsored health plans to further comply with the MHPAEA. MHPAEA deals with parity in coverage of mental health/substance abuse care and medical/surgical benefits. With the passage of the CAA, employers must now provide evidence of compliance upon request from regulators. MHPAEA requires plans be reviewed for compliance with quantitative and non-quantitative treatment limitations.	CAA 2021 Healthgram's Compliance Update CMS MHPAEA Resources
March 2021		
March 1: Employee Benefits Security Administration ("EBSA") Disaster Relief Notice 2021-01	This notice provides guidance on the duration of the COVID-19-related relief provided by EBSA Disaster Relief Notice 2020-01 ("Notice 2020-01") and the Notice of Extension of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Affected by the COVID-19 Outbreak ("Joint Notice") issued by the Department of Labor ("DOL"), the Department of the Treasury ("DOT"), and the Internal Revenue Service ("IRS") (collectively "Agencies"). Disaster Notice 2020-01, along with the Joint Notice, tolled certain deadlines up to one (1) year as a result of the COVID-19 pandemic. Included among these deadlines are COBRA's sixty (60)-day election period, COBRA's forty-five (45)-day grace period for initial payment, and COBRA's thirty (30)-day grace period for payments after the initial payment.	EBSA Disaster Relief Notice 2021-01 Federal Register Healthgram's Compliance Update
March 11: American Rescue Plan Act of 2021 ("ARPA")	ARPA was designed to facilitate the United States' recovery from the devastating economic and health effects of the COVID-19 pandemic. President Biden signed ARPA, which included a COBRA subsidy from April 1, 2021, through September 30, 2021.	American Rescue Plan Act of 2021
April 2021		
April 15: The Biden Administration proposes revisions to reinstate Title X of the Public Health Services Act.	Health and Human Services ("HHS") proposed revising its prior rule to reinstate Title X funding to clinics that provide abortions or abortion referrals.	Title 42 – The Public Health and Welfare
July 2021		
July 13: Requirements Related to Surprise Billing; Part I	The No Surprises Act provides patients with protection from surprise medical bills under certain circumstances. It also mandates transparency regarding healthcare costs and holds patients liable for in-network cost-sharing amounts only. This IFR establishes guidelines for, among other things, payment methodology for determining cost sharing and qualifying payment amount ("QPA").	Federal Register CMS Fact Sheet
August 2021		
August 16: FAQ48	FAQ48 gave notice that HHS, DOL, and DOT were considering making changes to the November 15, 2018, final regulations concerning religious and moral exemptions and accommodations regarding coverage of certain preventive services.	Federal Register FAQs About Affordable Care Act Implementation 48
August 20: Final Transparency Rules and FAQ49	FAQ49 provided information regarding the implementation of certain provisions of the Affordable Care Act ("ACA") and the CAA. Notably, FAQ49 gave notice of delayed enforcement of the November 12, 2020, Transparency in Coverage Final Rules as well as certain provisions of the CAA.	FAQs About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 49
September 2021		
September 16: Requirements Related to Air Ambulance Services, Agent and Broker Disclosures, and Provider Enforcement	The No Surprises Act (part of the CAA) provides patients with protection from surprise medical bills under certain circumstances, including Air Ambulance services. It also mandates transparency regarding Broker Compensation. These proposed rules further implement certain provisions of the CAA and require certain plans and issuers to submit information about air ambulance services to HHS.	Federal Register
September 30: Requirements Related to Surprise Billing; Part II	The No Surprises Act (part of the CAA) provides patients with protection from surprise medical bills under certain circumstances. It also mandates transparency regarding healthcare costs and holds patients liable for in-network cost-sharing amounts only. This IFR discusses, among other things, the independent dispute resolution process for resolving payment disputes and an external review process.	No Surprises Act CMS Fact Sheet CMS Calendar Year 2022 Guidance for the Federal Independent Dispute Resolution Process Under the No Surprises Act
November 2021		
November 5: The Emergency Temporary Standard ("ETS") on vaccination and testing was published in the Federal Register.	The ETS, imposing certain requirements relating to COVID-19 (including, but not limited to, imposing either a mandatory vaccination policy or a vaccination or test policy for Employers with 100 or more employees) acted as a proposal for a permanent standard. The Occupational Safety and Health Administration ("OSHA") decided to extend the comment period for that rule by 45 days.	DOL ETS Federal Register
November 12: U.S. Court of Appeals for the Fifth Circuit granted a motion to stay OSHA's COVID-19 Vaccination and Testing ETS.	According to the U.S. Dept. of Labor ("DOL"), "The court ordered that OSHA "take no steps to implement or enforce" the ETS "until further court order." The U.S. Court of Appeals for the Sixth Circuit now has jurisdiction over ETS challenges and DOL has filed a motion to lift the stay. While OSHA remains confident in its authority to protect workers in emergencies, OSHA has suspended activities related to the implementation and enforcement of the ETS pending future developments in the litigation. Note that the comment period is separate from the litigation."	DOL ETS U.S. Court of Appeals for the Fifth Circuit
November 15: Health and Human Services, Adjustment of Civil Monetary Penalties for Inflation and the Annual Civil Monetary Penalties Inflation Adjustment for 2021, 45 CFR Part 102, 86 Fed. Reg. 62928	HHS announces adjustments to Civil Monetary Penalties for HIPAA, MSP, and SBC violations.	Federal Register
November 15: State of Washington Partnership Access Lines ("WAPAL") Funding Program	First payment due for the state of Washington's new legislation which requires health insurance carriers and employers that sponsor self-funded health plans to pay a quarterly assessment to support a state program. The WAPAL Fund provides funding for the costs to maintain certain psychiatry and behavioral sciences consultation and referral lines overseen by the Washington State Healthcare Care Authority. To register online to report enrollment data using the WAPAL fund assessment tool, visit: https://assessments.wapalfund.org/ . After reporting enrollment data, employers will receive an invoice in the amount of \$0.13 per covered life per month. While an argument may exist, that ERISA preempts WAPAL, there has been no case on point to date.	WAPAL Fund Website House Bill 2728 Washington State website FAQs
November 19: The U.S. House of Representatives passed H.R. 5376, the Build Back Better Act ("BBB Act" or "the Act").	The BBB Act contains several retirement and benefits provisions that may affect financial organizations, service providers, and consumers. One provision of the BBB Act would provide four (4) weeks of paid leave to eligible individuals within a fifty-two (52)-week period.	Build Back Better Act
December 2021		
December 27: Per Division BB, Title II, Sec. 202 of the CAA, service providers must provide compensation disclosures	The "Transparency Provisions" outlined in the CAA encompass four key areas, one being disclosure of direct and indirect compensation for brokers and consultants to employer-sponsored health plans on the individual market.	The CAA 2021

Healthgram will continue to keep you informed about important legislation changes and updates. For more compliance news, view our Insights article: [Looking Ahead: 2022 Compliance News](#).

This article was published on December 9, 2021 and is intended to provide general information. It may not reflect amended regulations, FAQ's, etc.