

# Legal Update for Health Benefits

A Presentation for the Greater Philadelphia  
Business Coalition on Health

Presented by Edward I. Leeds  
Ballard Spahr LLP

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# Legal Update

## Themes

- Transparency and Disclosures
- Implementation and Responses
- Requirements and Opportunities
- Uncertainties

# COVID-19

Both national and public health emergency declarations scheduled to end May 11

- No requirement to cover full cost of testing and related expenses
- Vaccination requirements shift under ACA preventive care rules
- End of deadline extensions on July 10
  - Special enrollment events
  - Claim and appeal submissions
  - COBRA notice, election, payment

# COVID-19

## Telemedicine

- Statutory extension allows telemedicine services to continue to be covered under high deductible health plans without application of deductible through December 31, 2024, without adverse tax consequence for HSA contributions
- Certain other flexibilities given to telehealth providers may be constrained

# Transparency Regulations

- Posting of in-network and out-of-network payment information required
- Posting of Rx information postponed
- Updates required each month
- Retention of records unclear

# Transparency Regulations

Example: Health plan payments for brain stem MRI at one hospital

- Health Plan A     \$1,859
- Health Plan B     \$1,772
- Health Plan C     \$1,632
- Self-Pay            \$1,157
- Health Plan D     \$ 723
- Health Plan E     \$ 652
- Health Plan F     \$ 336

*Source: Bloomberg News 2/6/23 (from Office of Lehigh County, PA Controller; Health Cost Labs)*

# Consolidated Appropriations Act, 2021

## Requirement to report Rx and other health expenses

- Filings for 2020 and 2021 delayed to 1.31.23 with good faith standard
- Relaxation of some rules, including permission for more than one entity to report under a data type
- Next deadline is 6.1.23 for 2022 data.

# Consolidated Appropriations Act, 2021

## Broker/Consultant Disclosure Requirements

- ERISA plans must obtain information about services, fiduciary duties, and revenue from all sources
- Applies to brokers and consultants who advise about selection and retention of insurers/vendors and development and implementation of plan designs
- Applies to all contracts entered, extended, or renewed on or after December 27, 2021

# Consolidated Appropriations Act, 2021

## Plans required to report information about air ambulance services

- Proposed regulations set date of 3.31.23 for first set of reports based on expected issuance of final rules
- Final rules have not been issued.
- HHS (CCIIO) website now confirms that final rules must be published before reporting will be required

# Consolidated Appropriations Act, 2021

## No Surprise Billings Rules

<u>Applicability</u>	<u>Protection for Individual</u>	<u>Dispute Resolution Process for Plans</u>
Out-of-network emergency department (and related care until stabilized)	No balance billing	30-day negotiation period
Out-of-network provider at in-network facility	Cost-sharing based on qualifying payment amount	Expedited baseball arbitration process
Out-of-network air ambulance services		

# Consolidated Appropriations Act, 2021

## No Surprises Rules

- Court struck down regulatory presumption in favor of QPA in February 2022
- Regulations revised in August 2022
- Court struck down revised regulatory provision in February 2023

# Consolidated Appropriations Act, 2021

## Report on No Surprise Billing Rules

- Covered first six months
- Many more submissions than expected
- More complicated – eligibility issues
- Fee increase for submission from \$50 to \$350

# Consolidated Appropriations Act, 2021

## Mental Health Parity and Addiction Equity Act

- Expecting more guidance on comparative analysis for non-quantitative treatment limitations
- No civil penalty enacted
- Still an area of scrutiny

# Consolidated Appropriations Act, 2021

## Anti-Gag Rule

- Prohibits plans from entering into agreements that would restrict the provision of certain provider-specific cost and quality information and de-identified claims and encounter data
- Applies to all contracts entered into on and after December 27, 2020
- Annual attestation required

# Consolidated Appropriations Act, 2021

## Guidance on Anti-Gag Rule annual attestation

- First due by December 31, 2023, covering period from December 27, 2020 to date of attestation
- Due by December 31 for each later year
- Excepted benefits, STLDI, and Medicare plans are among plans that are exempt
- Not enforced against individual account plans

# *Dobbs v. Jackson*

Supreme Court decision overturning *Roe v. Wade* has prompted a number of employers to consider relevant provisions under health plans

- Coverage of abortion services
- Coverage of abortifacient drugs
- Coverage of travel expenses

EEOC activity

# *Dobbs v. Jackson*

Preamble to revised contraception regulations refers to Supreme Court decision repeatedly.

- Eliminate moral (non-religious) exemption from requirement to cover as preventive care
- Retain religious exemption from requirement
- Provide alternative route for individuals covered by exempt plan to obtain coverage without employer involvement

# Wellness Programs

## Wellness Program Incentives

- EEOC has yet issue new guidance
- *Diment v. Quad/Graphics*, N.D. Ill, No. 1:23-cv-01173 (2.24.23) (invalidating wellness program with \$1,800 annual incentive)

# HIPAA

Things to watch on the privacy front:

- Ongoing OCR settlements
- OCR tracking technology guidance
- OCR restructuring
- Regulations on substance use disorder information
- Potential Federal privacy legislation

# Under the Radar

## Effect of Medicare Developments

- Final RADV audit rules
- HHS OIG review of nursing home prescription patterns for antipsychotics

# Additional Resources

Additional information on many of these topics may be found at:

- <https://www.healthcarereformdashboard.com/>
- <https://www.ballardspahr.com/services/initiatives/covid-19-resource-center>