ALSTON & BIRD

HEALTH & WELFARE PLAN LUNCH GROUP

September 3, 2026

One Atlantic Center
1201 W. Peachtree Street
Atlanta, GA 30309-3424
(404) 881-7885
E-mail: john.hickman@alston.com

INDEX

ALSTON & BIRD

0

September 2026 Agenda

- Regulatory Update (including IDR Rule)
- Litigation Update
- Critical Guidance for Trump Accounts and DCAP Discrimination Testing
- At Last: DOL Electronic Delivery Guidance for GHPs
- Grab Bag

1

ALSTON & BIRD

Health Care Regulatory Update

2

Health & Welfare Benefits MONTHLY UPDATE

Final Rules/Notices

- Independent Dispute Resolution Operations, (HHS-CMS; DOL-EBSA; TREAS-IRS), Final Rule published 6/4/26
  - Federal Independent Dispute Resolution Operations; Correction, published 8/28/26
- Patient Protection and Affordable Care Act, HHS Notice of Benefit and Payment Parameters for 2027; and Basic Health Program, (HHS-CMS), Final Rule published 5/20/26
- Nondiscrimination on the Basis of Disability; Accessibility of Web Content and Mobile Applications of Recipients of Departmental Financial Assistance; Extension of Compliance Dates, (HHS-OCR) published 5/11/26
- Contract Year 2027 Policy and Technical Changes to Medicare Advantage, Medicare Prescription Drug Benefit, Medicare Cost Plan, and Programs of All-Inclusive Care for the Elderly Programs, (HHS-CMS), Final Rule, published 4/6/2026
- Administrative Simplification: Adoption of Standards for Health Care Attachment Transactions and Electronic Signatures (CMS-HHS), Final Rule published 3/24/26.
- Update to the Women's Preventive Services Guidelines (HHS-HRSA), Notice published 1/5/26

Health & Welfare Benefits
MONTHLY UPDATE

Proposed Rules

- Employer Contributions to Trump Accounts and Nondiscrimination Rules for Dependent Care Assistance Programs (TREAS-IRS), Notice of Proposed Rulemaking published 8/11/26; comments deadline 9/25/26.
- Electronic Disclosure by Group Health Plans Under ERISA (DOL-EBSA), Proposed Rule published 7/23/26; comments deadline 9/21/26.
- Excepted Fertility Benefits (DOL-EBSA), Proposed Rule published 5/13/26; comments due by July 13, 2026.
- Fiduciary Duties in Selecting Designated Investment Alternatives (DOL-EBSA), Proposed Rule published March 30, 2026
- Trump Accounts (TREAS-IRS), Notice of Proposed Rulemaking published on 3/6/2026
- Trump Accounts Contributions Pilot Program (TREAS-IRS), Notice of Proposed Rulemaking published on 3/6/2026
- Employee or Independent Contractor Status under the Fair Labor Standards Act, Family and Medical Leave Act, and Migrant and Seasonal Agricultural Worker Protection Act (DOL-WHD), Notice of Proposed Rule published on 2/27/2026; comment deadline 4/28/26
- Requirement to Provide Paper Statements in Certain Cases-Amendments to Electronic Disclosure Safe Harbors (DOL-EBSA), Proposed Rule published on 2/25/2026
- Improving Transparency Into Pharmacy Benefit Manager Fee Disclosure (DOL-EBSA), Proposed Rule published on 1/30/26

Health & Welfare Benefits
MONTHLY UPDATE

At the Office of Management and Budget (OMB)

These proposed rules are under review at OMB and are not yet publicly available:

- Proposed Rule: **Definition of an "Employer" Under Section 3(5) of ERISA -- Association Health Plans** (DOL-EBSA), rec'd 8/11/26
- Final Rule: **Transparency in Coverage** (HHS-CMA), rec'd 7/27/26
- Proposed Rule: **Improving Transparency into Pharmacy Benefit Manager Fee Disclosure** (DOL-EBSA), rec'd 7/23/26
- Proposed Rule: **Loyalty and the Exclusive Purpose Rule in Selecting Plan Investments and Exercising Shareholder Rights** (DOL-EBSA), rec'd 6/30/26
- Proposed Rule: **Short-Term, Limited-Duration Insurance** (HHS-CMS), rec'd 5/30/26
- Final Rule: **HIPAA Privacy Rule: Changes to Support Coordinated Care and Individual Engagement and Reduce Regulatory Burdens**, rec'd 4/2/2026 (HHS-OCR))

ALSTON & BIRD

Final Rule: Federal IDR

6

Health & Welfare Benefits
MONTHLY UPDATE

Overview of the 2026 IDR Final Rule

What the Rule Covers

- IDR Gateway registration for plans/issuers
- Required use of CARCs/RARCs on remittance advice
- Enhanced QPA disclosures (plan sponsor name, registration number)
- Revised open negotiation and IDR initiation procedures
- Batching and bundling rules
- Reduced administrative fee ($15/party/dispute)
- Extenuating circumstances extensions

Key Facts

- General effective date: August 3, 2026
- Phased applicability (some provisions effective on date; others 90 days after guidance)
- CARC/RARC compliance required for items and services furnished on or after January 1, 2027 (per guidance issued July 17, 2026)
- IDR Gateway functionality expected Spring 2027

7

ALSTON & BIRD

7

Health & Welfare Benefits
MONTHLY UPDATE

Key Changes from 2023 Proposed Rule

Registration Timeline Extended

From 30 to 90 business days after registry becomes available

Fully-Insured Plans Exempt from Individual Registration

Issuers register once on behalf of all fully-insured coverage; individual plans do not register separately

Administrative Fee Slashed to $15

Reduced from $115/party/dispute; effective June 11, 2026 (good cause waiver of 30-day delay)

CARC/RARC Guidance Issued July 17, 2026

9 specified RARCs required; compliance required for items/services furnished on or after January 1, 2027

Open Negotiation/IDR Phased In

Applicable 90 days after Departments issue guidance on portal functionality (not on effective date)

Health & Welfare Benefits
MONTHLY UPDATE

Obligations

Obligation	Responsible Party	TPA Role
Register with Federal IDR Registry	Self-insured plan (plan sponsor identified)	May register on behalf of plan
Provide QPA disclosures	Plan/issuer	Typically provides on behalf of plan
Use CARCs/RARCs on remittance advice	Plan/issuer	Typically implements
Participate in open negotiation	Plan/issuer (or representative)	Often handles operationally
Submit offer in IDR process	Plan/issuer	May submit as representative entity
Pay administrative fee ($15)	Plan/issuer	May remit; joint/several liability if attestation made
Pay certified IDR entity fee	Non-prevailing party	N/A
Comply with payment determination (30 days)	Self-insured plan (NOT the TPA)	Not legally obligated to pay claims
Update registration (within 30 days)	Plan/issuer	May perform on behalf of plan
Annual registration confirmation (Q4)	Plan/issuer	May perform on behalf of plan

Health & Welfare Benefits
MONTHLY UPDATE

Action Steps: Plan Sponsors

1. **Review and amend ASA/TPA agreements**

   Address IDR compliance, registration, fee payment, open negotiation, and CARC/RARC implementation duties.

2. **Confirm TPA will register plan**

   Registration within 90 business days of registry availability. Ensure plan sponsor name and EIN are correctly identified.

3. **Establish governance procedures**

   Monitor TPA compliance with IDR process requirements. Document oversight activities.

4. **Budget for IDR fees**

   Administrative fees ($15/dispute—no longer $115) and potential certified IDR entity fees for adverse determinations.

5. **Evaluate State law opt-in**

   Consider whether plan will opt in to any specified State law and ensure proper effectuation in plan documents.

Health & Welfare Benefits
MONTHLY UPDATE

Action Steps: TPAs

1. **Prepare for IDR portal registration**

   Anticipate registry availability within 24 months; later guidance says Spring 2027. Develop processes to register each self-insured client plan individually.

2. **Implement RARC capability for 9 specified codes**

   RARCs effective November 1, 2026; compliance required for items/services furnished on or after January 1, 2027. If plan/issuer fails to provide required RARCs, providers retain the right to initiate open negotiation within 30 days.

3. **Update QPA disclosure processes**

   Include plan sponsor legal business name and registration number on QPA disclosures.

4. **Develop open negotiation workflows**

   Revised process conducted through the Federal IDR Gateway once functionality is announced.

5. **Review batching procedures**

   Claims from different self-insured plans CANNOT be batched even if processed by same TPA; All batching provisions applicable for disputes with open negotiation periods beginning on or after November 1, 2026.

Health & Welfare Benefits
MONTHLY UPDATE

Key Dates & Timelines

June 11, 2026	$15 administrative fee effective (good cause waiver of 30-day delay)
July 17, 2026	RARC guidance issued (specifying 9 required RARCs)
August 3, 2026	General effective date; batching functionality notice issued
November 1, 2026	All batching provisions effective; RARC codes effective; withdrawal/extenuating circumstances modifications effective
January 1, 2027	CARC/RARC compliance required (items/services furnished on or after this date)
Spring 2027	IDR Gateway functionality expected (registry first, then open negotiation, initiation, entity selection, withdrawals, extensions)
TBD + 90 biz days	Registration deadline for self-insured plans (90 business days after registry available)
TBD + 120 days	Suspension of resubmission of incorrectly batched/bundled disputes (120 days after registration period expires)

ALSTON & BIRD

Litigation Update

Health & Welfare Benefits
MONTHLY UPDATE

Litigation Update: TMA III En Banc (5th Cir. Aug. 11, 2026)

Texas Medical Ass'n v. U.S. Dep't of HHS (TMA III), No. 23-40217 (5th Cir. Aug. 11, 2026) (en banc)

- **Ghost Rates:** QPA may not be calculated using "ghost rates" (rates in provider contracts that were never actually paid). Vacated the portions of the 2022 Final Rules permitting ghost-rate inclusion.
- **Bonus/Incentive Payments:** Upheld exclusion of bonus and incentive payments from QPA calculation as a permissible reading of the statute.
- **Single-Case Agreements (SCAs):** Inclusion of SCAs in the QPA is permissible; the statute does not require their exclusion.
- **Remedy:** Vacatur limited to ghost-rate provisions; remaining challenged provisions upheld.

Health & Welfare Benefits
MONTHLY UPDATE

Is Your High-Deductible PPO Option Dominant?

- Additional complaints filed against for profit employers regarding their health plan PPO offerings.
- Complaints generally allege that the employers breached their ERISA fiduciary duties:
  - in offering lower deductible PPO option(s) “dominated” by a higher deductible option; and
  - failing to disclose/describe material information regarding the costs

Health & Welfare Benefits
MONTHLY UPDATE

When is a PPO Option "Dominant"?

- Allegedly, if ee premiums + MOOP in total are greater for the lower deductible option for the same plan benefits, *e.g.*, same PPO network, benefits, etc.
  - Single coverage premiums + MOOP = $4,240 for the lower and $3,956 for the higher, difference of $284
- Evaluate 2027 premiums and MOOP levels across lower deductible options?
- Defenses
  - Standing?
  - Settlor v. fiduciary function?
  - Is the lower deductible option actually less advantageous for all employees no matter the level of health care expenditures?

ALSTON & BIRD

ALSTON & BIRD

Critical Guidance for DCAP Discrimination Testing and Trump Accounts

Health & Welfare Benefits
MONTHLY UPDATE

New Proposed Regulation Guidance

- Proposed Regulation published 8/11/26
- Comments due 45 days after publication
- Addresses Section 128 Trump Account contributions
  - Trump Account contribution program requirements
  - Salary reductions
  - Annual limitation
  - Nondiscrimination rules
- Addresses Section 129 nondiscrimination testing

Health & Welfare Benefits
MONTHLY UPDATE

Effective Date for Proposed Regulations

- Proposed regulations apply to plan years **beginning on or after** the date final regulations are published in the Federal Register.
- Taxpayers *may* rely on these proposed regulations for plan years **beginning before** the date final regulations are published in the Federal Register.

Health & Welfare Benefits
MONTHLY UPDATE

Nondiscrimination Testing

- Eligibility test
- Great News. 55% Average Benefits Test ONLY applies to individuals who participate – i.e., no benefit means can exclude them from denominator.
- Clarification also provided for other aspects of nondiscrimination tests
- The big picture – guidance for DCAP (also applies to Trump Accounts)
  - Eligibility test
  - Contributions and benefits test
  - Concentration test (DCAP only)
  - 55% Average benefits test

Health & Welfare Benefits
MONTHLY UPDATE

Nondiscrimination Testing: Prohibited Group

- HCE Definition for DCAP/Trump Account Testing Is the Same Definition as for § 401(k) Testing
  - More-than-5% owner in current or prior year
  - > $160,000 for 2026 look back compensation in prior year (Optional: members of top 20% paid group).
- Also, More-Than-5% Shareholder Used for DCAP 25% Concentration Test

Health & Welfare Benefits
MONTHLY UPDATE

Contributions and Benefits Test

- The Statute:
  - "The contributions or benefits provided under the plan shall not discriminate in favor of highly compensated employees." Code § 129(d)(2).
  - IRS guidance
    - designed to provide contributions and benefits on the same terms for all employees who are eligible to participate, *even if eligible employees receive different amounts of contributions and benefits as a result of differing elections or differing utilization of the contributions and benefits*.

Health & Welfare Benefits
MONTHLY UPDATE

Eligibility Test

- Must Benefit a Reasonable Classification of Employees
  - Use the reasonable classification test
    - Is the classification reasonable (e.g., all salaried employees, all employees in Georgia, manufacturing employees, etc.)?
    - A minimum percentage of non-HCEs must "benefit"
      - If 50% of non-HCEs benefit, the plan automatically passes
      - Otherwise,
        - If less than 100% of HCEs benefit and/or
        - non-HCEs represent more than 60% of the workforce, the plan can pass with a lower percentage
    - Merely a safe harbor. Not an exclusive test. Other methods
      - Facts and circumstances with no one factor determinative. Factors include:
        - Business reason for classification
        - Percentage of employees eligible
        - Are those eligible representative across salary ranges
        - Difference between plan's ratio percentage and employer's safe harbor percentage

Health & Welfare Benefits
MONTHLY UPDATE

Eligibility Test

- The Prohibited Group
- Permitted Exclusions
  - Employees < age 21 (if plan excludes them)
  - Employees < 1 year of service (if plan excludes them)
  - Collective bargaining
- What to Do When DCAP Fails Test

Health & Welfare Benefits
MONTHLY UPDATE

Eligibility Test: Calculations Needed

- Percentage of Non-HCEs Who Benefit
- Percentage of HCEs Who Benefit
- Percentage of Employees Who Are Non-HCEs
- See the Code § 410(b) Nondiscriminatory Classification Table for the Safe and Unsafe Harbor Percentages

Health & Welfare Benefits
MONTHLY UPDATE

Applying the Eligibility Test

- Step 1 — Determine Benefiting Percentage

$$\text{NHCE\%} = \frac{\text{NHCEs Benefiting}}{\text{Total NHCEs}}$$

$$\text{HCE\%} = \frac{\text{HCEs Benefiting}}{\text{Total HCEs}}$$

- Step 2 — Determine Ratio Percentage

$$\text{Ratio\%} = \frac{\text{NHCE\%}}{\text{HCE\%}}$$

Health & Welfare Benefits
MONTHLY UPDATE

Applying the Eligibility Test

- Step 3 — Compare Ratio % to Safe Harbor %
  - Calculate NHCE Concentration %

$$\frac{\text{\# of NHCEs}}{\text{Total \# of NHCEs + HCEs}}$$

  - Look up Safe Harbor % in the Code § 410(b) Nondiscriminatory Classification Table for the calculated NHCE Concentration %

Health & Welfare Benefits
MONTHLY UPDATE

Applying the Eligibility Test

- If Ratio% ≥ Safe Harbor %, Then Pass
- If Ratio% ≤ Safe Harbor %, Then Fail
- If Between Pass/Fail, Facts and Circumstances Must Be Considered. Look at:
  - business reason; percentage of workforce eligible to benefit; how close to pass/fail; and representativeness of covered group to workforce

Health & Welfare Benefits
MONTHLY UPDATE

More-Than-5% Shareholder 25% Concentration Test

- **Not Applicable to Trump Accounts**
- The Test
  - How much do owners get?
  - Not more than 25% of the benefits under the DCAP may be provided to individuals (or their spouses or dependents) who are shareholders or owners owning more than 5% of the employer (on any day of the year)
- What to Do When Plan Fails Test

Health & Welfare Benefits
MONTHLY UPDATE

55% Average Benefits Test

- What the Test Says:
  - The average benefits provided to non-highly compensated employees (NHCEs) ***under all DCAPs of the employer*** must be at least 55% of the average benefits provided to HCEs under all DCAPs
  - Proposed regulation "clarification" provides that you only look at "participants"
- What the Test Does:
  - Ensures that HCEs do not participate disproportionately
  - Focuses on average (not aggregate) benefits
- HCEs are the prohibited group
  - Apply Code § 401(k) definition

Health & Welfare Benefits
MONTHLY UPDATE

55% Average Benefits Test

- It is a Utilization Test
  - "Benefits provided" means the amount of dependent care reimbursement that the employee actually receives under the DCAP (not just salary reductions)*
  - Forfeitures under the DCAP aren't benefits

*But given timing and administrative limitations most administrators test based on salary reduction amounts.

Health & Welfare Benefits
MONTHLY UPDATE

55% Average Benefits Test

- Who Can Be Excluded ("Excludables")?
  - Employees who have not completed one year of service by the end of the year
  - Employees who have not reached age 21 by the end of the year
  - Collectively-bargained employees who are excluded from the plan, if dependent care benefits were the subject of good faith bargaining (but must be included if CBA requires benefits)
  - For benefits provided through salary reduction, any employee whose compensation is less than $25,000
- Who Must Be Included in the Test? Historical approaches debated in past:
  - Approach #1: Count all employees (other than Excludables), even if they aren't eligible to participate in the DCAP?
  - Approach #2: Count only the employees who are eligible to participate in the DCAP?
    - Can DCAP provide that only eligible if have children?
  - Approach #3: Count only those who actually participate?
- Proposed regulation clarifies that Approach #3 is the correct approach

Health & Welfare Benefits
MONTHLY UPDATE

55% Average Benefits Test: Examples

Example 1.

- 15 HCEs and 15 NHCEs, all eligible under same terms and conditions

- Eleven HCEs elect $7,500 each, and four of the NHCEs elect $7,500 each

- The remaining employees elect no benefits under the plan.

- Average benefit provided to HCEs is $7,500 ($82,500/11) and the average benefit provided to the NHCEs is also $7,500 ($30,000/4).

PASS -- the average benefits provided to the NHCEs is 100 percent of the average benefits provided to the HCEs. Note: would not pass if included the "zeros" in the test.

Health & Welfare Benefits
MONTHLY UPDATE

55% Average Benefits Test: Examples

Example 2.

- 15 HCEs and 15 NHCEs, all eligible under same terms and conditions
- Eleven HCEs elect $7,500 each, the remaining HCEs elect nothing. Average for HCEs $7500
- One of the NHCEs elects benefits of $7,500; three of the NHCEs elect benefits of$5,000; one of the NHCEs elects benefits of $2,500; and two of the NHCEs elect benefits of $1,000. Average benefit of $3857.14 ($27,000 /7 electing NHCEs).

FAIL: the average benefits provided to the NHCEs is 51.4 percent of the average benefits provided to the HCEs ($3,857.14/$7,500).

Observation: Perhaps a minimal contribution rate will help ensure passage. But it must be equally applied.

Health & Welfare Benefits
MONTHLY UPDATE

55% Average Benefits Test: Examples

Example 3 (Same as Example #2 but some NHCEs are excludables)

- 15 HCEs and 15 NHCEs, all eligible under same terms and conditions
- Eleven HCEs elect $7,500 each, the remaining HCEs elect nothing. Average for HCEs $7500
- One of the NHCEs elects benefits of $7,500; three of the NHCEs elect benefits of$5,000; one of the NHCEs elects benefits of $2,500; and two of the NHCEs elect benefits of $1,000.
- Two of the NHCEs electing $5000 and two of the NHCEs electing $1000 are excludable.
- Now the average benefits (with exclusions) for NHCEs is $5000 ($15000/3)

PASS: the average benefits provided to the NHCEs is 66.7% of the average benefits provided to the HCEs ($5,000/$7,500).

Observation: Excludables can participate but their election(s) will not impact NHCE percentage.

Health & Welfare Benefits
MONTHLY UPDATE

55% Average Benefits Test: Examples

Example 4 (same as example 2 but correction prior to reporting deadline)

- 15 HCEs and 15 NHCEs, all eligible under same terms and conditions

- Eleven HCEs elect $7,500 each, the remaining HCEs elect nothing. Average for HCEs $7500

- One of the NHCEs elects benefits of $7,500; three of the NHCEs elect benefits of$5,000; one of the NHCEs elects benefits of $2,500; and two of the NHCEs elect benefits of $1,000. Average benefit of $3857.14 ($27,000 /7 electing NHCEs).

INITIAL OUTCOME FAIL: the average benefits provided to the NHCEs is 51.4 percent of the average benefits provided to the HCEs ($3,857.14/$7,500).

REVISED OUTCOME PASS: Prior to reporting deadline each HCE has $500 included in income resulting in an average of $7000 for HCEs. The average benefits provided to the NHCEs is 55.1 percent of the average benefits provided to the HCEs ($3,857.14/$7,000).

Health & Welfare Benefits
MONTHLY UPDATE

Interesting Issues

- Effective Date
  - Can be relied upon immediately
  - Application to prior years where testing was borderline?
  - Application to years in which test may have failed?
- Election change issues
  - No guidance, but would seem reasonable to allow elections to increase DCAP or allow new elections for HCEs
    - What about NHCEs?
    - What about election decreases?

Health & Welfare Benefits
MONTHLY UPDATE

Corrections

- Corrections guidance
  - Correction possible by inclusion in income by W-2 reporting date
    - Is that enough time? Other options – end of following plan year?
    - No mention of other corrections – e.g., increase NHCE benefits
  - Correct by including amounts in income/wages
    - If ALL HCEs exceed the 55%, include the amount in excess of 55% for each
    - Otherwise: Reasonable method (e.g., ADP corrections – start with highest HCE, reduce and level until in compliance)

ALSTON & BIRD

Trump Account Guidance

Health & Welfare Benefits
MONTHLY UPDATE

Trump Account Contribution Program Requirements

- Components:
  - Separate written plan
  - Notice to employees
  - Written statement (W-2)
- Employee "Written" Certification can be relied upon
  - the account beneficiary is the employee (non-salary reduction) or anticipated to be the dependent of the employee for that employee's taxable year during which the contribution is made;
  - the beneficiary's date of birth,
  - no facts are known to the employee that would make the account beneficiary ineligible to receive a contribution to his or her Trump account for that calendar year.
  - Employer must use a method reasonably designed to verify, through information provided by the trustee, payroll processor, or other service provider, that the contribution is made to a valid Trump account
- Employer must notify trustee of contribution eligibility/ineligibility
- Employer cannot designate Trump account trustee (only one Trump account allowed per beneficiary)
- Employer follows written plan requirements

Health & Welfare Benefits
MONTHLY UPDATE

Trump Account Contribution Salary Reductions

- Up to $2500 (indexed) allowed per employee (not per trust beneficiary) via employer contribution pre-tax salary reduction
  - Excess employer contribution amounts (up to $5000 overall Trump Account limit) would be taxable compensation
  - Exclusion applies solely for income tax (not employment tax wages)
- Salary reduction limited to dependent of employee (due to deferred compensation issues)
- Elections must be prospectively changeable, at least monthly
- Cafeteria Plan amendment required

Health & Welfare Benefits
MONTHLY UPDATE

Trump Account Contribution

- Employee does not include self employed/sole proprietor
  - Contrast DCAP (non-salary reduction)
- Dependent is defined per IRC 152
  - In case of divorced parents only one parent can claim (contrast health care definition)
- DOL Tech Rel 2026-2
  - Trump Account Contribution Plan will generally not trigger ERISA coverage (analogous to HSA guidance).

42

ALSTON & BIRD

At Last: DOL Electronic Delivery Guidance for Group Health Plans

43

Health & Welfare Benefits
MONTHLY UPDATE

Shift from opt-in model to default electronic delivery

- Under the current 2002 safe harbor, electronic delivery generally is permitted only for:
  - Employees who are "wired at work"—that is, employees who use electronic systems as an integral part of their job and have effective work-related access to disclosures; or
  - Individuals who affirmatively consent to electronic disclosure and satisfy detailed consent procedures.
- **Proposed Rule: Default Electronic Delivery**
  - The proposed rule would largely eliminate the need to determine whether participants are "wired at work" or to obtain affirmative consent.
  - Instead, electronic delivery would generally be available whenever the participant or beneficiary has provided an electronic address, or has been assigned one by an employer.

Health & Welfare Benefits
MONTHLY UPDATE

Electronic Disclosure Requirements 101

- Under the new framework, a health plan administrator could satisfy ERISA's disclosure obligations by:
  - Posting required disclosures to a website or other electronic repository;
  - Sending participants a Notice of Internet Availability informing them that the document is available online;
  - Providing free paper copies upon request; and
  - Allowing participants to opt out of electronic delivery and continue receiving paper disclosures.

Health & Welfare Benefits
MONTHLY UPDATE

Similarities to Qualified Plan Rule

- Like the 2020 pension plan safe harbor, the proposed rule would:
  - Use a notice-and-access framework;
  - Require a NOIA whenever documents are posted;
  - Require website accessibility, readability, and searchability standards;
  - Require confidentiality safeguards;
  - Permit annual combined NOIAs;
  - Require procedures to address invalid electronic addresses; and
  - Preserve participant rights to paper copies and global opt-outs.
- In many respects, the proposed rule simply extends the operational structure of the pension plan safe harbor to group health plans.

Health & Welfare Benefits
MONTHLY UPDATE

Differences from Qualified Plan Rule

- **1. No Direct Email Delivery Option**
  - The proposal does not permit the alternative direct-email delivery method available under the pension plan safe harbor.
- **2. Broader Definition of Covered Documents**
  - The proposed health-plan rule would allow electronic delivery even for documents that must be furnished solely upon request, such as certain plan documents requested under ERISA § 104(b)(4).
- **3. Adult Dependent Children as Covered Individuals**
  - The proposal allows dependent children age 18 or older who provide their own electronic address to receive disclosures directly.
- **4. Modified Initial Notice Requirement**
  - The health-plan proposal would allow administrators to send the initial transition notice electronically to individuals already receiving disclosures electronically under the 2002 safe harbor.

Health & Welfare Benefits
MONTHLY UPDATE

Key Takeaways

- The proposal will simplify requirements for electronic disclosures.
  - The need to track who qualifies as "wired at work," obtain affirmative consent from non-workforce individuals, and maintain consent documentation would largely disappear.
  - Participants could instead be treated as electronically connected by virtue of providing an email address or mobile number.
- Plan sponsors must still manage operational requirements, including website maintenance standards, NOIA procedures, monitoring for invalid electronic addresses, and opt-out processing systems.

ALSTON & BIRD

Grab Bag

Health & Welfare Benefits
MONTHLY UPDATE

Medicare Notice of Creditable Coverage

- Generally due BEFORE October 15 each year.
- CMS has eliminated the requirement for account-based plans, including HRAs, to provide Medicare Part D creditable/non-creditable coverage notices to participants or to CMS.
- Why the change? Account-based plans reimburse medical expenses rather than directly providing prescription drug coverage, making an actuarial comparison to Part D impossible. CMS concluded creditable coverage concepts are "inapplicable" to these arrangements.
- Effective date: June 1, 2026; applies to coverage beginning January 1, 2027.

Health & Welfare Benefits
MONTHLY UPDATE

ACA Pay or Play Affordability Threshold for 2027

- Pay or play penalty threshold for affordability will be 10.22% for 2027, up from 9.96% for 2026.
- The Federal Poverty Level (FPL) for US mainland will be $15,960 for 2027 and for employers that use the FPL Safe Harbor, the required employee contribution for self-only coverage cannot exceed $135.93 per month, up from $129.90 for 2026.

ALSTON & BIRD

Questions

52