

PRESENTED AT

**The University of Texas School of Law
69th Annual Taxation Conference**

**November 30 and December 1, 2021
Austin, TX**

The Year in Employee Benefits

Greta E. Cowart

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Part I- Health and Welfare Benefits**

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Health and Welfare Plan Changes in the Consolidated Appropriations Act, 2021

By Greta Cowart*
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CHANGES FOR GROUP HEALTH PLANS

The protections for participants and their beneficiaries in the Patient Protection and Affordable Care Act¹ (the “ACA”) were expanded by the Consolidated Appropriations Act, 2021² (the “Act”). Some changes built on concepts in the ACA, some added additional reporting requirements for employers sponsoring group health plans, and others created opportunities for new entrepreneurs. Most of these changes for health plans will not be applicable until 2022, but the effective dates need to be watched now. Employers should start to prepare as this impacts the planning for 2022 which is commencing in the next few months.

The plan participant protections added by the Act were generally enacted similar to the way in which

HIPAA’s portability provisions were added in 1996 by adding parallel provisions to the Public Health Services Act³ (PHSA), to the Employee Retirement Income Security Act⁴ (ERISA) and to the I.R.C. The ACA changes were added to the PHSA and then incorporated by reference into the I.R.C. and ERISA. By enacting the changes in the three statutes, the changes cover most group health plan and insurance issuers and are further defined by regulations jointly issued by the three federal agencies charged with administering such laws, the Department of Health and Human Services (HHS) for the PHSA, the IRS for the I.R.C., and the U.S. Department of Labor (DOL) for ERISA (collectively the “Tri-Agency(ies)”). Regulations issued by the Tri-Agencies on parallel statutory language is done via a coordinated process. So the rapid statutory deadlines on the issuance of the implementing regulations will present a challenge first for the Tri-Agency group working on the regulations and then for employers working toward compliance, unless transitional relief is provided. Employers will need to watch for the guidance.

Prevention of Surprise Billing for Patients Seeking Care from an Emergency Room or Free Standing Emergency Care Facility

When an individual goes to an emergency department, there is no way for the individual to control whether the health care providers or the related facility services and their health care providers are in-network. This new provision is targeted to reduce the unexpected bills following seeking emergency care services. The Act adds ERISA §716 and I.R.C. §9816 which addresses care for emergencies up until the individual is stabilized. Care provided by an out-of-network provider, provided after an individual is stabilized, is only covered if certain requirements are satisfied. The surprise billing provisions add more

* Greta Cowart has counseled employers for more than 30 years on best practices in human resources and employee relations issues related to benefits and executive compensation. In her practice, Greta routinely develops strategies for effective administration of claims and other benefit related disputes, including defense of grievances, and strategies preparing for litigation considering implications under ERISA, while also considering applicable labor and employment laws. Greta counsels employers regarding benefits strategies to solve problems and reduce risks related to benefits. To reduce risks related to benefits, Greta assists employers with de-risking strategies and also provides fiduciary training, review of fiduciary operations, and counsels regarding strategies for improving the documentation of the fiduciary process.

¹ Pub. L. No. 111-148.

² Pub. L. No. 116-260.

³ Pub. L. No. 78-410, 42 U.S.C. ch. 6A §201 *et seq.*

⁴ Pub. L. No. 93-406, 29 U.S.C. ch. 18 §1001 *et seq.*

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