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# Rewards Policy Insider
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## In this Issue:

# Department of Labor Finalizes Amendments to Rules for Qualified Professional Asset Managers

Following the release of proposed modifications to the prohibited transaction exemption ("PTE") governing qualified professional asset managers ("QPAMs") in 2022, the Department of Labor ("DOL") released a final version of those rules in April 2024. The final rules, which make some amendments from the proposed rules, will generally become effective on June 17, 2024.

## Background

In order to prevent conflicts of interest, ERISA's prohibited transaction rules generally prohibit a retirement plan fiduciary from entering into transactions with a "party in interest." These rules can create issues for investment managers managing plan assets for many plans at once because a manager may not be aware of every party in interest to the plans' clients. This can cause an investment manager to unwittingly enter into a prohibited transaction. PTE 84-14, often called the QPAM exemption, provides relief from many such prohibited transactions that may occur when QPAMs invest plan assets.

In general, the QPAM exemption is available only to large registered investment advisers ("RIAs") and certain other financial institutions, such as banks and insurance companies. The QPAM exemption requires that these entities meet a number of conditions, including that a QPAM is ineligible to rely on the exemption for a period of ten years if the QPAM, various affiliates, or 5% or more of the owners of the QPAM are convicted of certain crimes. Financial institutions also must meet certain minimum asset or net worth requirements in order to be eligible to use the QPAM exemption.

## Final Amendments to QPAM Exemption

In July 2022, DOL issued proposed rules to amend the QPAM exemption. In broad terms, the proposed amendments would have increased the requirements for entities that rely on the exemption, such as implementing new filing and recordkeeping requirements. The proposed amendments would also have included stricter requirements for QPAMs that have, or have an affiliate that has, been convicted of a crime. (A fuller summary of the proposed amendments is provided in Rewards Policy Insider 2022-17.)

The final QPAM exemption, which DOL released on April 3, 2024, retains many of the amendments in the proposal but also makes some changes. Key aspects of the final amendment include:

- Notifications to DOL. As with the proposed amendments, the final amendments require QPAMs to notify DOL that they are relying on the

exemption. But unlike the proposed amendments, the final amendments newly require a QPAM to notify DOL within 30 days if the QPAM, its affiliate, or a 5% or more owner has been found to have engaged in certain prohibited misconduct.

- New Rule Regarding Discretion. Under the proposed amendments, the relief provided by the QPAM exemption would have only applied to transactions involving investments where the QPAM is exercising discretion in the investment decisions. This would have essentially prohibited relief for any transaction negotiated or initiated by a party in interest because the QPAM would not have sole responsibility over the transaction in that situation. The final amendments modify this language to more explicitly clarify that a QPAM relying on the exemption cannot permit other parties in interest to make decisions regarding plan investments under the QPAM's control.
- Increase in Equity and "Assets Under Management" Threshold. Similar to the proposed amendments, the final amendments increase the equity threshold for entities allowed to use the QPAM exemption from $1 million to $2.72 million, and increase the required amount of assets under management that the entity has from $85 million to $135.87 million. In a new addition, the final amendments provide that the initial increases in these amounts will occur in three stages from 2024 through 2030.

The final amendments will generally become effective on June 17, 2024. Given this fast-approaching deadline, QPAMs who rely on the QPAM exemption should prepare to notify DOL, as required by the amendments, that they are relying on the exemption.

# Agencies Plan to Change Rules for Classifying Prescription Drugs as Essential Health Benefits

The Departments of Health and Human Services, Labor, and Treasury (the "Agencies") intend to propose rules to make all prescription drugs covered by a group health plan "essential health benefits" ("EHBs") for purposes of the Affordable Care Act ("ACA"). The proposed change appears to be motivated by Agency concerns about copay maximizer programs.

## Background

The ACA generally requires small group and individual market plans to cover all EHBs, as defined by the EHB benchmark plan for the state in which the coverage is issued.

The ACA does not require large employer group health plans or self-insured group health plans of any size to cover EHBs. However, these plans may not impose any annual or lifetime dollar limits on EHBs, and any out-of-pocket amounts participants spend on covered EHBs generally must count against the plan's maximum out-of-pocket ("OOP") limit.

For purposes of determining EHBs, plans must choose a benchmark plan from the list of approved EHB benchmark plans for each state. Unlike small group insured plans and individual market coverage, large group and self-insured plans can use any state's EHB benchmark plan.

### What do EHBs Have to do with Copay Maximizer Programs?

Some plans reportedly have implemented so-called copay maximizer programs, which are designed to enable the plans to take full advantage of the subsidies that pharmaceutical manufacturers offer for certain high-cost drugs. These programs work best if the drug at issue is not an EHB, and thus is not subject to the ACA's maximum out-of-pocket limits. Plans that want to use a copay maximizer program for particular drugs need to select an EHB benchmark plan accordingly.

While these programs may work well for the plans, some worry that they are less beneficial to participants who may still face significant out-of-pocket costs for other covered drugs and services. Those concerns apparently have prompted the Agencies to consider regulatory action.

### Proposal to Change the EHB Rules

The Agencies recently issued a final rule that essentially provides that small group and individual market plans must treat all covered prescription drugs as EHBs, even if they cover more than what is required by their EHB benchmark plan.

According to Agency FAQs, this final rule does not apply to large group market or self-insured plans. However, the FAQs also state the Agencies are planning to issue a proposal to extend the same requirement to large group and self-insured plans as well. That would mean these plans could no longer designate any of their covered prescription drugs as non-EHBs.

The FAQs did not specify when the proposed rulemaking would be issued.

## Court Rulings Shake Up Abortion Restrictions in Florida and Arizona

Recent court rulings in Florida and Arizona upended the abortion laws in those two states, with a Florida Supreme Court ruling triggering a strict six-week ban, and an Arizona Supreme Court decision allowing a law from the

1800s to go into effect. Floridians will have the chance to weigh in on the issue themselves in November in light of the recent certification of a ballot measure to protect abortion in the state constitution. In Arizona, the legislature has approved a bill to repeal the 1864 law, and a ballot initiative similar to the one in Florida is being considered.

## Florida

On April 1, 2024, the Florida Supreme Court issued a ruling upholding Florida's current 15-week abortion ban. In the much-anticipated ruling, the court rebuffed the plaintiffs' argument that the state constitution's right to privacy protects the right to an abortion, finding that the constitution does *not* protect the procedure and therefore permitting the 15-week ban to stand.

The effect of the ruling extends well beyond the 15-week ban. In April 2023, the state enacted the Heartbeat Protection Act, which prohibits abortions after six weeks and contains limited exceptions, such as when an abortion is necessary to protect the mother's health. The law also restricts medication abortions by requiring any such drugs to be dispensed in-person by a physician, rather than through a shipping or postal service. The law is a trigger law, meaning that it would only become effective after certain triggering events occur. One such event was the Florida Supreme Court upholding the 15-week ban and finding that the state constitution did not protect abortion rights. As a result of the court's April 1st decision, the six-week law's effective date was triggered, and it is expected to go into effect on May 1, 2024.

In a separate decision issued on the same day, the Florida Supreme Court also weighed in on the initiative to place on the November 2024 ballot a measure to provide a constitutional right to abortion up to viability. After the group behind the initiative announced that it had collected enough signatures from voters to get the measure placed on the ballot, the state declined to certify the signatures, which triggered a legal battle. On April 1st, the Florida Supreme Court approved the proposed constitutional amendment for placement on the November 2024 ballot. So, even though the strict six-week abortion ban will soon override the 15-week ban, Florida voters will have a chance to weigh on the issue themselves before year end.

## Arizona

On April 9, 2024, the Supreme Court of Arizona ruled that an 1864 near-total abortion ban could go into effect. Under the law, it is illegal for a person to perform an abortion unless it is necessary to save the pregnant individual's life. Violation of the law is punishable by imprisonment of between two to five years. The law had been the subject of a longstanding legal battle and had been blocked by a lower state court since October 2022. In the ruling, the Arizona Supreme Court held that, in light of the U.S. Supreme Court's overturning of *Roe v. Wade* in 2022, there is nothing that prevents Arizona from enforcing the 1864 law.

The court delayed the law's effective date for 14 calendar days after the ruling, and a prior court order in the case stipulated that the state would not enforce the law until at least 45 days after a final ruling. Meanwhile, the Arizona legislature has approved a bill to repeal the 1864 law. Assuming the governor signs that bill, abortion will remain legal in the state for up to 15 weeks.

Even more changes to Arizona's abortion laws could be on the horizon. An effort is underway to place on the November 2024 ballot a measure to enshrine the right to an abortion in the state constitution, and the group behind the initiative recently announced that they successfully collected enough voter signatures to qualify for the ballot. Abortion opponents are reportedly weighing whether to launch their own ballot measure efforts to further restrict the procedure.

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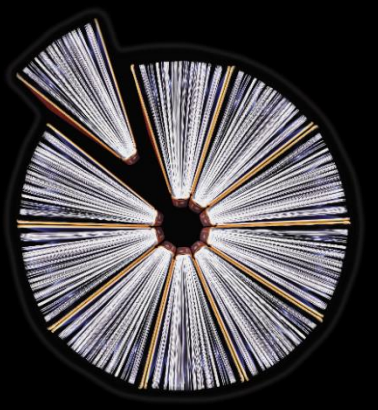

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