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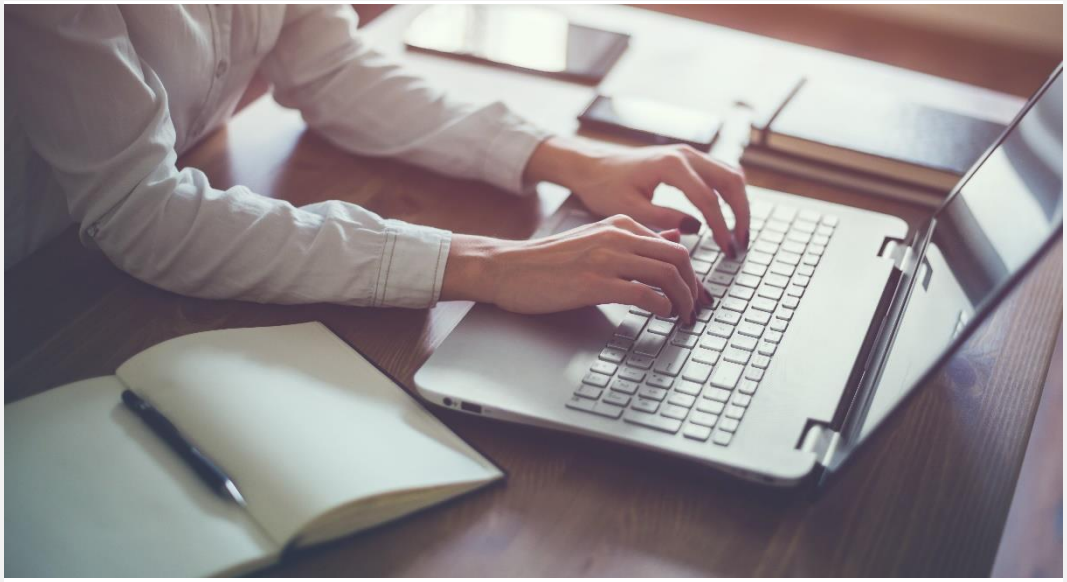

In this Issue:

Department of Labor Revokes Biden-era Guidance Warning Against Cryptocurrency Investments

As was widely expected, the Department of Labor ("DOL") has rescinded a 2022 guidance document that discouraged – but did not outright prohibit – fiduciaries from allowing 401(k) plan participants to invest their accounts in cryptocurrencies and other digital assets. This move returns the official position of DOL to neither endorsing, nor disapproving of, cryptocurrencies in plan investment menus.

Background on 2022 Guidance

In 2022, in the wake of news reports that some investment firms were beginning to market investments in cryptocurrency to 401(k) plans, DOL released Compliance Assistance Release ("CAR") 2022-01. The CAR provided guidance to defined contribution plans that offer cryptocurrency and other digital assets as investments. In the guidance, DOL emphasized that cryptocurrency is highly speculative and is vulnerable to hackers.

Specifically, CAR 2022-01 cautioned plan fiduciaries to exercise "extreme care" when considering whether to add a cryptocurrency option to a 401(k) plan's investment menu for plan participants. The reference to "extreme care" raised concerns among many plan fiduciaries as implying a special standard of care for a single kind of investment. The guidance also stated that fiduciaries that allow cryptocurrency through a brokerage window – which gives a plan participant the ability to choose from additional, specialized investment options – could be the subject of a DOL investigation. The guidance was challenged in court, but was ultimately upheld.

DOL Rescinds 2022 Guidance

On May 28, 2025, DOL released CAR 2025-01, which rescinds the 2022 guidance. Addressing concerns regarding the "extreme care" standard, CAR 2025-01 states that the 2022 CAR's reference to that standard is not found in ERISA and differs from fiduciary principles.

By rescinding the 2022 guidance, DOL notes in the 2025 CAR that it is returning to the agency's historical approach of neither endorsing, nor disapproving of, plan fiduciaries who include cryptocurrency in a plan's investment menu. DOL's new approach as announced in the CAR applies both to cryptocurrencies and digital assets such as "tokens," "coins," and "crypto assets."

Reinforcing DOL's new direction on cryptocurrency, Labor Secretary Lori Chavez-Deremer stated in a press release that the agency was rolling back the Biden Administration's overreach and making it clear that investment decisions should be made by fiduciaries, not bureaucrats.

House Passes Reconciliation Bill with HSA Enhancements, Other Provisions of Interest to Employers

On May 22, 2025, the U.S. House of Representatives passed H.R. 1, the "One Big Beautiful Bill Act," which the White House is touting as "a once-in-a-generation opportunity to cement an America First agenda of prosperity, opportunity, and security into law." The bill's many tax provisions include a package of enhancements to health savings accounts (HSAs) and various other provisions of interest to employers, as discussed more below.

HSA Provisions

The bill includes a variety of provisions to enhance HSAs, generally beginning in 2026.

HSA Contributions. Current law limits the amount individuals can contribute to HSAs during a year. It also prohibits rollovers from Health Reimbursement Arrangements (HRAs) or health Flexible Spending Accounts (FSAs) to HSAs, although certain rollovers were permitted for a period of time prior to 2012.

- Increased contribution limits for lower-income individuals. The bill would increase the annual HSA contribution limit – subject to certain adjusted gross income thresholds – by as much as $4,300 for individuals with self-only coverage and by $8,550 for those with family coverage. This would double the annual contribution limit for those who are eligible for the full increase, which would be phased out for individuals with adjusted gross incomes (AGI) between $75,000 and $100,000 for single filers, and between $150,000 and $200,000 for joint filers.

- Transfers from HRAs and FSAs to HSAs. The bill would allow individuals to make a "qualified HSA distribution" from their HRA or FSA to their HSA on a tax-favored basis, up to the limit on salary reduction contributions to FSAs in effect for that year ($3,300 in 2025) – or twice that amount for individuals with family coverage. Additionally, the amount of the qualified HSA distribution would reduce the amount the individual is otherwise eligible to contribute to their HSA for the taxable year. These qualified HSA distributions would generally only be permitted in connection with establishing "high-deductible health plan" (HDHP)coverage, but there would be no limit on how many qualified HSA distributions an individual is allowed to make.

- Catch-up contributions. The bill would allow married couples to choose how to allocate their combined catch-up contribution amount if both spouses are eligible to make catch-up contributions (i.e., are at least 55 years old) and at least one spouse has family HDHP coverage.

Eligibility to Contribute to HSAs. The bill would also modify certain requirements relating to an individual's eligibility to contribute to an HSA. Under current law, the general rule is that only certain individuals who are covered by an HDHP, and not by any other coverage that is not an HDHP, may make contributions to an HSA.

- Enhanced eligibility. The bill would amend current rules to permit otherwise eligible individuals to contribute to HSAs even if they:
    - Are entitled to Medicare Part A due to age;

- Participate in a direct primary care service arrangement;
- Are eligible to receive certain "qualified items or services" – including physicals and immunizations – from an employer-provided on-site clinic; or
- Are covered by their spouse's FSA.

- ACA Exchange Bronze and Catastrophic Plans treated as HDHPs. For purposes of determining eligibility to contribute to an HSA, the bill would treat bronze level plans and catastrophic plans offered in the individual market through ACA Exchanges as HDHPs.

HSA Distributions. Under current law, only certain qualifying medical expenses incurred after the HSA was established can be paid from an HSA on a tax-favored basis.

- Amounts paid for physical activity, fitness, and exercise. The bill would specify that, for HSA purposes, the term "qualified medical expenses" – which means expenses that can be paid from HSAs on a tax-favored basis – would include certain sports and fitness expenses paid for the purpose of participating in a physical activity, up to certain limits. This would generally include things like gym memberships, but would not include one-on-one personal training or remote or virtual fitness classes or instruction. The limit would be $500 for single taxpayers, and $1,000 for joint filers, subject to annual adjustments for inflation.

- Expenses incurred before HSA established. The bill would provide that otherwise eligible medical expenses incurred after HDHP coverage is established but before an HSA is set up could still be "qualified medical expenses" and paid from the HSA. This rule would apply only if the HSA is opened within 60 days of HDHP coverage beginning.

HRAs and Individual Market Coverage

After the ACA was enacted, the IRS took the position that employers could not offer health reimbursement arrangements (HRAs) to employees for the purpose of helping them purchase individual health insurance coverage. Congress created a special exception to this rule for very small employers when it established Qualified Small Employer HRAs (QSEHRAs) in 2016. Several years later, the Treasury Department issued regulations establishing Individual Coverage HRAs (ICHRAs), which any employer could use to achieve the same objective.

The bill would generally codify the ICHRA rules, subject to certain modifications. The new arrangements would be called "Custom Health Option and Individual Care Expense" ("CHOICE") arrangements.

The bill would also permit CHOICE arrangement participants to pay any excess individual health insurance premiums on a pre-tax basis through a Code section 125 cafeteria plan, even if the individual coverage is purchased on an ACA Exchange. This same option is currently available to participants in QSEHRAs.

Employer Educational Assistance Programs

Currently, Code sec. 127 provides a $5,250 gross income exclusion for certain employer-paid educational assistance. Historically this benefit has been available to help employees pay for current education expenses. However, the provision was temporarily amended to allow employers to use their Code sec. 127 programs to help employees pay their student loan debts as well. That temporary rule is scheduled to expire at the end of 2025.

The bill would make the special provision relating to student loan re-payments permanent. It also would add an inflation adjustment to the $5,250 limit, starting in 2027.

Paid Family and Medical Leave Tax Credit

The bill would permanently extend the existing tax credit under Code section 45S for employers that provide paid family and medical leave benefits to their employees. It also modifies the credit so that it can be claimed for a percentage of premiums an employer pays if it chooses to fund its paid family and medical leave program with an insurance policy. The bill also would make the credit available in all states, including those that have mandatory paid family and medical leave programs.

Outlook

The House's passage of H.R. 1 represents a significant step forward for this bill, but there is still a long journey ahead. The Senate reportedly is developing its own reconciliation bill, which could end up being significantly different than the House-passed bill. Given the very narrow majority that Republicans currently have in the House, it may be very difficult to come up with a compromise between the House and Senate that the House will be able to approve.

The timing on Senate action is uncertain. However, the White House is hoping to have a bill on the President's desk by July 4th.

State Abortion Law Roundup: Novel Legal Cases Target Out-of-State Providers

As employers and employee benefit plan service providers continue to adapt to the changing landscape of state abortion laws, key developments on the litigation front have emerged in the first half of 2025. Most notably, Louisiana is pursuing criminal charges against a doctor based in New York who allegedly prescribed abortion pills to a patient via telehealth services. This is believed to be the first case of an out-of-state health care provider facing criminal charges for providing abortion services to a patient located in a state with a ban.

Criminal Charges Against Doctor Are A Test of "Shield" Laws

Louisiana. In January, a Louisiana grand jury indicted a New York doctor for prescribing and mailing abortion pills to a pregnant teenager living in Louisiana. Louisiana law prohibits nearly all abortions, except where necessary to save the pregnant individual's life. This appears to be the first case in the nation where an abortion provider faces criminal charges for prescribing pills to a patient residing in a state with a total abortion ban.

Louisiana Governor Jeff Landry has signed an extradition warrant for the doctor, but New York Governor Kathy Hochul has announced that she will refuse to extradite the doctor because she was operating lawfully under New York's abortion "shield" law. Under that law, individuals providing certain services that are legal within the state of New York – including in-person and telehealth services related to the termination of a pregnancy – are protected from arrest and extradition orders from other states where abortion is strictly regulated. In addition, the law requires the state government to refuse to cooperate with out-of-state investigations involving such protected services.

Texas. A similar conflict is developing between Texas and New York, where the same New York-based doctor has been sued by the Texas Attorney General for providing abortion pills to a woman in Texas. The doctor was ordered by a judge in February 2025 to pay a $100,000 penalty for allegedly violating Texas's ban by prescribing abortion medication via telemedicine. Texas prohibits abortions in nearly all circumstances, with narrow exceptions, such as to save the pregnant individual's life.

How these cases eventually play out will set the precedent for the effectiveness of abortion "shield" laws, which have been enacted in several states in addition to New York, including Colorado, Maine, and Washington.

Arizona Law Modified to Reflect 2024 Abortion Ballot Measure

In other news, some states have started updating their abortion laws to reflect the results of the November 2024 abortion ballot measures, which were voted on in 10 states. For example, Arizona voters voted to enshrine in the state constitution the right to abortion until fetal viability. In light of that vote, in March 2025, a court officially ruled that the state's 15-week ban, which had been in effect since 2022, is unconstitutional. As a result, state law reverted back to an old law that permits abortions up until viability, with exceptions for the pregnant individual's health and for medical emergencies.

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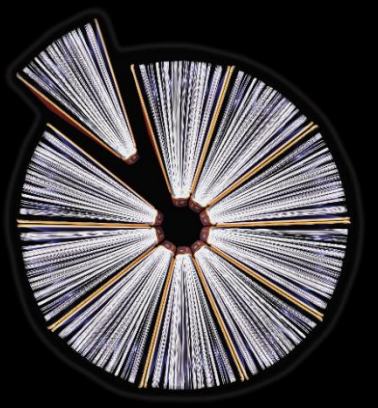

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