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OBBBA Brings Additional Considerations to Open Enrollment Season—Are You Prepared?

Client Alert

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Every fall, employers sponsoring health and welfare benefit plans turn their attention to benefit design for the coming year. As a result, the open enrollment season provides the perfect opportunity to ensure current welfare benefit legal requirements are kept up to speed: plan documents and summary plan descriptions; annual notices; and nondiscrimination testing.

Added to the checklist this year: the “One Big Beautiful Bill Act” (Pub. L. No. 119-21) (“OBBBA”). First, this Client Alert will review the basic annual checklist and then provide an OBBBA overview of new items.

Basic Benefit Design Checklist for Open Enrollment

Plan Documents and Summary Plan Descriptions

Most employers utilize a benefit program or insurance booklet prepared by a third-party administrator or insurer as the substantive summary of key benefit provisions in their welfare plans. In fact, most plans and corresponding summary plan descriptions incorporate these very documents by reference. As a result, to keep the documents up-to-date, each employer should ensure that it requests from their third-party administrators and insurers the updated benefit programs and descriptions for next year. Once in receipt (and the plan sponsor “approves” the documents consistent with any amendment provision in the governing plan document), these documents will become the attached booklets and information for the official plan document, as well as the summary plan description.

In addition, employers frequently adopt a “wrap” style plan document to bind around the benefit programs and insurance booklets prepared by their third-party administrators and insurers to include eligibility, enrollment, and legal information that such benefit programs and insurance booklets frequently

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lack. These “wrap” style documents may need to be updated or reviewed by counsel for completion: for example, if insurance booklets are used as the summary plan description, such booklets rarely satisfy ERISA’s legal requirements and call for add-on content prepared by legal counsel.

Annual Notices

Each year, the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code require plan sponsors to distribute specific notices regarding welfare benefits. Open enrollment provides the perfect opportunity to distribute these notices, as most employers can include the notices with any election forms provided to plan participants.

A sample of the relevant notices that must be distributed annually include:

- Summary of Benefits and Coverage
- Grandfathered Plan notice (if applicable)
- Notice of Patient Protections
- Children’s Health Insurance Program Reauthorization Act notice
- Women’s Health and Cancer Rights Act notice
- Medicare Part D Creditable Coverage notice
- Michelle’s Law notice (if the materials describe any requirement for certifying student status)
- Updated summary plan descriptions (or summaries of material modifications)

Nondiscrimination Testing

Certain welfare benefits must pass nondiscrimination tests on an annual basis. There are two tests for self-insured medical plans, three tests for cafeteria plans, and four tests for dependent care flexible spending accounts. These nine tests are required by the Internal Revenue Code, and failure to satisfy the tests results in taxation of these benefits to your highly compensated employees and possible under-withholding taxes and penalties.

Self-insured medical arrangements (including health flexible spending accounts and health reimbursement arrangements) are subject to the following two tests:

1. Eligibility
2. Benefits

Cafeteria Plans that are not Premium Only Plans that meet an exemption from nondiscrimination testing are subject to the following three tests:

1. Eligibility

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2. Contributions and Benefits
3. Key Employee Concentration

Dependent care flexible spending accounts are subject to the following four tests:

1. Eligibility
2. Contributions and Benefits
3. 5% Owners Concentration
4. 55% Average Benefits

Although there appears to be some redundancy in the tests above (e.g., Eligibility and Benefits tests), each of the tests operates somewhat differently, with different data requirements and prohibited group members.

In addition to the above, the new OBBBA adds new considerations to the above checklist.

OBBBA Considerations

High-Deductible Health Plan (HDHP) Changes

The OBBBA permanently extends the telehealth safe harbor for HDHPs and Health Savings Account (HSA) eligibility and is retroactive to January 1, 2025, ensuring no interruption in coverage. This means HDHPs can cover telehealth services on a first-dollar basis (before the deductible is met) without impacting HSA eligibility. Effective after December 31, 2025, direct primary care (DPC) arrangements, i.e. where patients paying monthly fees to primary-care-providers for basic services, will also be HSA compatible, within limits (\$150 per month for an individual participant or \$300 per month for families; annually indexed for inflation).

Impact: Employers that offer HDHPs should consider taking action as applicable to promote first-dollar telehealth benefits and DPC arrangements. Employers with self-insured plans can reduce medical costs by encouraging the use of telehealth benefits versus more costly alternatives, in open enrollment materials.

Increased Dependent Care Flexible Spending Account (FSA) Limits

Effective for plan years beginning after December 31, 2025, the annual limit for Dependent Care FSA contributions will increase from \$5,000 to \$7,500. For married individuals filing separately, the limit will increase proportionally from \$2,500 to \$3,750. The increased limit is not indexed for inflation for years after 2026.

Impact: For employees/families at different income levels, the higher Dependent Care FSA limit involves a tradeoff in eligibility for the Child and Dependent Care Tax Credit (CDCTC), as expenses reimbursed through a Dependent Care FSA reduce the amount of expenses eligible for

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the CDCTC on a dollar-for-dollar basis.

Impact: For employers, the increased limit may provide challenges for Dependent Care FSA plans' passing non-discrimination rules. If an employer nonetheless wants to increase the Dependent Care FSA limit, the employer will need to amend their FSA governing document accordingly.

Tax-Deferred Savings Accounts for Children – “Trump Accounts”

“Trump accounts” are established under OBBBA for the benefit of children under the age of 18, and can begin receiving contributions on July 4, 2026, through beneficiary age 17. The individual annual contribution limit is \$5,000, indexed annually for inflation; employers may establish a plan to make up to \$2,500 in excludable annual contributions to their employees' Trump accounts, but details, such as whether this is in addition to the individual contribution, need to be clarified. Forthcoming agency guidance on this and many other details is expected regarding nondiscrimination eligibility rules, notification requirements, distributions, investment restrictions, and other matters.

Impact: Employers may consider budgeting for next year to make contributions up to \$2,500 excludable from an employee's gross income, which will require a plan document, pending forthcoming guidance.

Assistance?

Butzel can help you prepare, or review, the plan documentation, summary plan descriptions, and annual notices for the upcoming plan year to ensure compliance and avoid costly penalties imposed by ERISA and the Internal Revenue Code.

If you have any questions about the above issues related to your welfare benefit plans, or if you need assistance with compliance, please contact Butzel's Employee Benefits Team, the authors of this Client Alert, or your Butzel attorney.

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