It Benefits You
Your Employee Benefits Newsletter

May 2022

In This Issue:

- Upcoming Compliance Deadlines
- Don't Be Surprised by the No Surprises Act and Transparency in Coverage Rules!
- Holistic Management: The Role of HR in Mental Health Awareness
- McGriff Compliance Q&A: How Long Should Benefits Be Continued During an Employee's Leave of Absence?
- Borrowing Considerations to Fund Retirement Plan Liabilities
- Telemedicine, HSAs and HDHPs: More Relief or More Headaches?
- Federal Protections for Gender-Affirming Care
- Understanding the Value of a Learning Culture
- McGriff May Webinar Opportunities

We're celebrating each and every one of our valued clients in May as part of our **"May We Say Thank You"** month. And to express our gratitude, the McGriff Leadership Team has prepared a special message for you below.

Please know that we're grateful for you each and every day. One way we show our appreciation is by sharing our thought leadership through publications such as this newsletter, *It Benefits You*. Keeping you abreast of important matters relating to the administration of your employee benefits is a top priority at McGriff. Our Client First philosophy drives everything we do - and we want you know how much we truly value our partnership.

From all of us at McGriff, again, thank you for trusting us to be your partner.

Julie George

McGriff Employee Benefits
Client Experience Leader

Upcoming Compliance Deadlines

August*

1

PCORI Fee Deadline

If an employer sponsors a self-insured health plan, including a level-funded plan or an employer-sponsored HRA, the ACA requires the employer to submit the annual Participant-Centered Outcomes Research Institute (PCORI) Trust Fund Fee. Plan sponsors must report and pay the PCORI fee using IRS **Form 720**. The fee amount for plan years ending on or after Oct. 1, 2021 and before Oct. 1, 2022 is $2.79 multiplied by the average number of lives covered under the plan.

August*

1

Form 5500 Filing Deadline for Calendar Year Plans

Generally, a Form 5500 must be filed no later than the last day of the seventh month after the end of the plan year for ERISA pension and welfare benefit plans. For calendar-year plans, the deadline is August 1. With few exceptions, an employer must file a 5500 if any of its ERISA benefit plans had 100 or more covered participants on the first day of the plan year.

*July 31, 2022 falls on a Sunday.

Don't Be Surprised by the No Surprises Act and Transparency in Coverage Rules! Employee Benefits Compliance Webinar

May 12, 2022 | 2 p.m. EDT
1.0 SHRM Credit Pending
Click here to register!

The No Surprises Act is aimed at protecting health plan participants from surprise medical bills, which can occur when patients unexpectedly receive care from out-of-network (OON) providers, while the Transparency in Coverage (TiC) rules are designed to make pricing of shoppable health items and services more readily available to insureds. These new elements bring new compliance requirements for employers who sponsor health insurance plans for their employees.

Join the McGriff Compliance Team as they make sense of these less than clear transparency rules, and eliminate the element of surprise from the No Surprises Act! We will discuss the status of these requirements, upcoming and recently effective deadlines, and practical tips about how employer plan sponsors can work with their carriers and/or TPA to meet these requirements.

Holistic Management: The Role of HR in Mental Health Awareness

The past few years have challenged even the most seasoned HR professionals. The sudden pivots from in person to remote work arrangements, COVID and its related health issues, to mandate or not mandate vaccines and on and on. For the most part, it has been nothing short of amazing what HR (with the support of other executives) has been able to do. They've arrived in the spring of 2022 exhausted but still keeping the employee life cycle spinning.

One of the many issues which has become quite clear during this period has been the role of mental health and well-being in the workplace. While most organizations have been ready, willing and able to meet the physical work demands needed to keep their business running, the ability and willingness to tackle the tougher mental issues have been lacking or in some cases, missing in action.

May is Mental Health Awareness Month. For these 31 days, HR should be challenged to not only consider mental well-being as a pillar of employee care, but to act on that consideration to build a more holistic approach to their standards of employee care.

The Mental Health Parity and Addiction Equity Act (MHPAEA) has been at the top of most compliance teams for a while now but HR should look beyond just the legal requirements of addressing those concerns. By treating mental health (as well as addiction issues, which often arise out of mental health challenges) as an integral part of the workplace, we can expect conversations, resources and healthier employees as a result.

Since we all know that healthier employees are more productive and engaged employees, a focus on mental health should definitely be on the radar of every human resource and senior executive team beginning now.

Let's not just have an awareness month. Let's have a new focus and integration of mental health and well-being as part of our on-going risk management and engagement functions. It really just makes sense.

For more information on national Mental Health Awareness month, please review the resources available on the National Alliance on Mental Illness website: https://www.nami.org/Get-Involved/Awareness-Events/Mental-Health-Awareness-Month

Janie Warner, SHRM-SCP

Vice President, McGriff National HR Advisory
Practice Team Leader

Compliance Q & A: How Long Should Benefits be Continued During an Employee's Leave of Absence?

Without an established leave of absence policy, it's difficult to tell an employee that benefits are being terminated in the middle of a leave – especially when the leave is due to the health condition of the employee or a loved one. It's easy to make an emotional decision rather than a sound business decision, but good intentions can lead to significant financial exposure and increased risk of complaints of discriminatory treatment. Employers should consider not only the needs of the employee, but also the interplay of carrier contractual provisions, federal and state benefit regulations and the employer's own policies.

Click here to read the full McGriff Compliance Q&A.

Christy Showalter, JD
McGriff Employee Benefits
Compliance Officer

Borrowing Considerations to Fund Retirement Plan Liabilities

Pension sponsors often deal with fluctuating annual contributions and a funded status that never seems to improve. A troubling reality since a well-funded plan and predictable plan contributions would obviously be ideal.

A pension plan's annual contribution can be determined by considering the plan sponsor's funding policy (limited by ERISA's minimum contribution requirements). Nevertheless predictable annual contributions and a well-funded plan are both difficult to achieve. Even more so for under-funded plans.

When it comes to the more volatile under-funded plans, are fluctuating annual contributions the best strategy to improve the plan's funded status? Maybe there's a better way.

Plan sponsors of any size, especially organizations with a strong balance sheet and debt capacity, may have an untapped resource that could help, i.e., the capacity to borrow.

First, consider a one-time, larger contribution that could be financed. The amount might be determined as follows:

- The next five years (or some specific period) of plan contributions
- An amount to fully fund the PBGC variable-rate premium liability
- Half of the plan's current shortfall based on the funded status on the company's balance sheet

What are the benefits of a larger single contribution to the pension plan?

- Eliminating the minimum required contribution for a period of time, creating a contribution holiday
- Paying back the loan with fixed annual payments that are potentially less than current contributions
- A balance-sheet-neutral transaction, exchanging a variable pension debt for a fixed debt
- A higher funded status that lowers investment risk by swapping volatile return-seeking assets for stable liability-hedging assets

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- More benefit security allows additional de-risking action such as annuitization, or lump-sum settlements
- Increasing corporate earnings if the pension cost is lowered as a result of an immediate increase to plan assets
- Potentially lower PBGC variable-rate premiums
- Potential for taxable entities to deduct the borrowing costs

There are several considerations in evaluating whether a borrow-to-fund strategy is optimal:

- A large, financed contribution requires careful evaluation of the investment strategy for the plan, including the borrowed assets
- An organization's debt capacity may not be sufficient, or the company may need to keep some debt capacity for other business needs, such as acquisitions or capital improvements
- Taxable entities may want to delay a larger one-time contribution if higher corporate tax rates are expected soon
- Depending on a variety of factors, the contribution may not generate a significant reduction to the PBGC variable-rate premium

It takes careful analysis to see if a borrow-to-fund transaction is right for your plan. For certain plan sponsors, a larger one-time financially engineered contribution could be an advantageous tactic. This approach may create a positive outcome on the funded status of the plan and reduce risk. It can lead to lower cash flow commitments for the near future, a balance-sheet-neutral transaction, and improved earnings.

For more information about borrow-to-fund considerations, optimizing contribution strategies, or other retirement topics, contact Steven Bull, Actuarial Business Development, McGriff Retirement Consulting at (336) 291-1137 or sbull@mcgriff.com, or Eddie Vaughn, Practice Leader, McGriff Retirement Consulting at (336) 291-1142 or evaughn@mcgriff.com.

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Telemedicine, HSAs and HDHPs: More Relief or More Headaches?

The $1.5 trillion Consolidated Appropriations Act, 2022 (CAA), offers renewed short-term relief related to telemedicine, Health Savings Accounts (HSAs) and High Deductible Health Plans (HDHPs). As background, under general HSA rules, pre-deductible health coverage, including telemedicine benefits, disqualifies an individual from HSA eligibility. With limited exceptions, HSA participants must pay fair market value for telemedicine services before meeting the HSA minimum deductible.

COVID-19 pandemic-related relief in the 2020 CARES Act relaxed the general rule for plan years beginning in 2020 and 2021, during which time pre-deductible telemedicine benefits could be provided without negatively impacting HSA eligibility. However, that relief expired for plan years beginning in 2022.

With the enactment of the CAA on March 15, plan years beginning on or after January 1, 2022, may once again offer pre-deductible telemedicine coverage without impacting HSA eligibility, but only during the months of April through December, 2022. Unfortunately, that leaves a gap from January through March for 2022 calendar year plans during which time the general rule will apply (pre-deductible telemedicine benefits will prevent HSA eligibility). This gap presents an administrative challenge for employers with 2022 calendar year HDHPs who want to take advantage of the relief and provide pre-deductible telemedicine coverage.

With those rules in mind, here are some potential options available for 2022 plans with HSA participants.

1. Do not offer pre-deductible telemedicine coverage (i.e., cost-sharing below fair market value) during any period in 2022. As long as they remain HSA-eligible for all of 2022, participants can contribute the full HSA maximum.

   Pros: Consistent administration not allowing pre-deductible telemedicine coverage for any period in 2022 and full-year HSA eligibility for participants

   Cons: The plan does not offer pre-deductible telemedicine coverage under the CAA relief

2. Offer pre-deductible telemedicine coverage for the months of April through December, but do not do so for January through March. As long as they remain HSA-eligible for all of 2022, participants can contribute the full HSA maximum.

   Pros: Full-year HSA eligibility for participants and pre-deductible telemedicine coverage from April through December as allowed by CAA

   Cons: Administrative challenge of offering pre-deductible telemedicine from April through December, but not doing so from January through March

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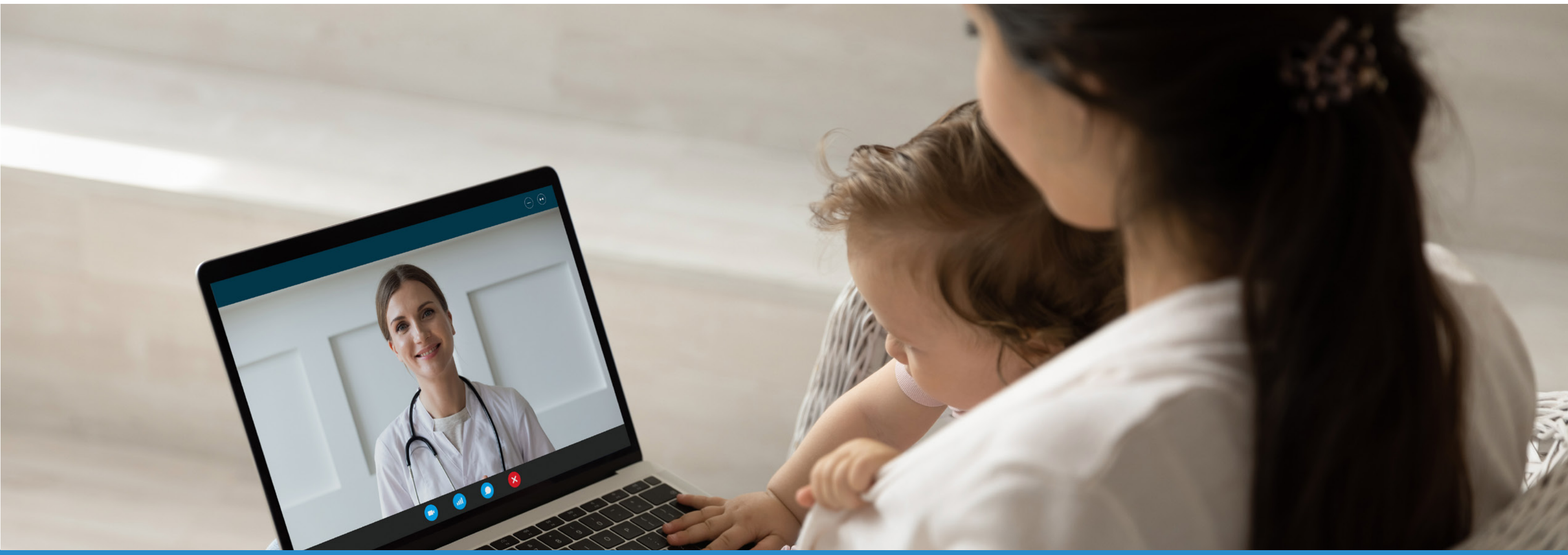

3. Offer pre-deductible telemedicine for the entirety of 2022. Participants will be ineligible to contribute to an HSA from January through March, but will be eligible to contribute from April through December. Because participants will only be eligible for ¾ of the year and HSA eligibility is determined monthly, HSA contributions for the year will be limited to ¾ of the annual maximum. There is no compliance concern if a participant does not contribute more than ¾ of the annual maximum, even if pre-deductible telemedicine coverage is provided from January through March.

   Also, under the full contribution rule, if an individual is HSA-eligible on December 1, they can make a full maximum contribution for the year as long as they remain eligible for the following calendar year.

   Therefore, even if participants are ineligible from January through March, the full contribution rule allows them to make the full maximum HSA contribution in 2022 (assuming they remain eligible for all of 2023).

   Pros: Consistent administration and pre-deductible telemedicine coverage for all of 2022

   Cons: ¾ limit on HSA contributions or reliance on the full contribution rule in 2022

Employers offering telemedicine benefits embedded with a group health plan should talk to their carriers and service providers about whether or not to implement this relief and what changes may be needed to the plan.

Timing and administrative challenges might make it impractical to provide the relief at this stage in the year, particularly for fully insured plans. If you have any questions, please contact your McGriff service team.

Chris Macali, JD
McGriff Employee Benefits
Compliance Officer

Federal Protections for Gender-Affirming Care

The Department of Health and Human Services recently issued guidance on federal civil rights protections and health privacy laws that apply to gender-affirming care.

Federal Civil Rights Protections

Affordable Care Act Section 1557 protects a person's right to access health programs receiving federal funds without facing discrimination based on sex, including gender identity. Covered entities refusing to provide treatment to an individual based on gender identity is prohibited discrimination. Similarly, restricting a person's ability to receive medically necessary gender-affirming care solely based on their sex assigned at birth or gender identity likely violates Section 1557.

Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act protect individuals with disabilities from discrimination in programs receiving federal funds or in state and local government programs. Gender dysphoria may qualify as a disability under these laws. Thus, restrictions preventing otherwise qualified individuals from receiving medically necessary care based on their gender dysphoria may also violate these laws.

Federal Health Privacy Laws

The Health Insurance Portability and Accountability Act (HIPAA) prohibits the disclosure of gender-affirming care that is protected health information (PHI) without an individual's consent, except in limited cases. The HIPAA Privacy Rule allows, but does not require, covered entities to disclose PHI without an individual's consent when required by another law.

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Understanding the Value of a Learning Culture

As employers evaluate how to combat today's attraction and retention challenges, learning and development (L&D) efforts are a great way for organizations to find and keep employees. Research found that the majority of employees would stay at an organization longer if they felt the employer was invested in their careers.

An authentic learning culture supports a growth mindset, an independent pursuit of knowledge and open sharing of that knowledge with others. This type of culture supports employees' desires to continually learn and build their careers. And in addition to being a powerful recruitment and retention tool for organizations, a learning culture has the potential to impact workplaces by closing skill gaps, increasing innovation and boosting productivity.

Creating a Culture of Learning

Developing a learning and positive company culture takes time and dedication. Consider the following ways employers can build or reinforce a workplace culture of learning:

- Personalize learning plans to help guide employees on their learning journeys to make learning efforts relevant, and design these plans to support employees' long-term career goals.
- Appreciate the value of learning regularly by focusing on how employees apply their newfound knowledge versus simply what was accomplished.
- Conduct assessments and behavioral interviews to gauge if candidates are lifelong learners and likely to contribute to a learning culture.

A culture of learning requires ongoing attention and effort from organizational leaders and managers, but can be an investment in employees—and the organization.

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Are You Taking Advantage of the LMS Capabilities in Mineral?

There are more than 250 courses in Mineral that McGriff Employee Benefits clients can assign to their employees…at no additional cost!

Contact your McGriff Benefits Consultant to learn more about how this McGriff-sponsored resource can help your company meet their learning culture goals!

May Webinar Opportunities

As part of McGriff's commitment to bring you information on regulatory updates, current trends and best practices, we are excited to invite you to our webinars scheduled for the month of May. We hope you can join us for one or more of these educational opportunities!

Train Your Supervisors Session: Avoiding Retaliation in the Workplace

May 9, 2022 | 3 p.m. EDT | 1.0 SHRM/HRCI Credit
To register, please click here

May 17, 2022 | 12 p.m. EDT | 1.0 SHRM/HRCI Credit
To register, please click here

The EEOC recently issued updated guidance on retaliation under the ADA and Title VII to incorporate COVID-related protections and caregiver responsibilities. The EEOC recommends that employers update policies and training for supervisors on retaliation in the workplace. In this session, the attorneys at Ogletree Deakins will help you train your supervisors on retaliation awareness and avoiding claims under evolving law and guidance. Plan to invite your supervisors to join this session.

Multi-Jurisdiction Compliance: More States, More Problems

May 11, 2022 | 3 p.m. EDT | 1.0 SHRM/HRCI Credit
To register, please click here

May 25, 2022 | 12 p.m. EDT | 1.0 SHRM/HRCI Credit
To register, please click here

Eighty-six percent of employers describe multi-state and multi-locality compliance as a challenge (and more than 20 percent rank that and remote work as their biggest risk). In this session, the attorneys at Ogletree Deakins will tackle several of the toughest multijurisdictional issues facing HR and provide practical options for compliance.

Is Your Safety and Health Program the Best It Can Be?

May 19, 2022 | 2 p.m. EDT
To register, please click here

Effective safety and health programs are based on a common set of key elements. Learn how to evaluate your program's effectiveness, proactively measure safety performance and build a continuous improvement organization for enhancing your safety culture and impacting your bottom line. Presented by Jen Desko and Nick Reynolds, both Risk Control Consultants with McGriff.

McGriff Data Analytics: What's New in '22 and Meet Innovu!

May 26, 2022 | 2 p.m. EDT
To register, please click here

Join McGriff's Financial Analytics for an update on data analytics capabilities, including insights from our new partner, Innovu. Don't miss this opportunity to learn how McGriff can make a difference in your ability to understand the drivers behind your claims experience and how we can work with you to identify and address your plan performance concerns.

Monthly Mineral Demonstration

May 17, 2022 | 2 p.m. EDT
To register, please click here

McGriff is excited to bring you Mineral (formerly ThinkHR) — a robust web-based resource with live advisors, reliable content and interactive technology solutions that provides an end-to-end People Risk Management solution! If you are involved with HR compliance or employee issues at any level, this will be another valuable benefit from your trusted McGriff team that can save you time and money. Join us on for a brief overview of Mineral and its benefits available to you as an employee benefits client of McGriff.