Volume 31
Number 10
October 2021

Insider

Workplace guidance on HIPAA and vaccine status disclosures

By Maureen Gammon and Kathleen Rosenow

The Department of Health and Human Services' Office for Civil Rights (OCR) has issued **Q&A guidance** to help clarify when a person's vaccine status is covered by the Health Insurance Portability and Accountability Act (HIPAA) privacy rule. Although the Q&As focus on the COVID-19 vaccine, the information applies to all vaccines, regardless of the disease or condition being protected against or whether the vaccine has been fully approved or received an emergency use authorization.

The employment-related guidance is discussed below.

1. **An employer may require its workers to disclose to their employer, its clients or other parties whether they have received a COVID-19 vaccine.**

   The HIPAA privacy rule applies only to HIPAA covered entities (health plans, healthcare clearinghouses and healthcare providers that conduct standard electronic transactions), and, in certain situations, to their business associates.

   While in general, the privacy rule does not apply to information an employer may request from employees as a condition of employment, other federal or state laws do. For example, under federal anti-discrimination laws, an employer may require that all employees entering the workplace provide documented proof of COVID-19 vaccination, subject to reasonable accommodations and other equal employment opportunity provisions. Under the Americans with Disabilities Act, vaccine documentation must be kept confidential and stored separately from the employee's personnel files. This guidance also applies to covered entities and business associates (see below).

2. **A covered entity or business associate may require its workers to disclose to their employer or other parties whether they have received a COVID-19 vaccine.**

   Again, because the HIPAA privacy rule does not apply to employment records, generally, the rule does not regulate what employee information a covered entity or business associate can request as a condition of employment.

   According to the Q&A guidance, a covered entity or business associate may require or request employees to:

   - Provide documentation of their COVID-19 or flu vaccination to their current or prospective employer.
   - Sign a HIPAA authorization for a covered healthcare provider to disclose the workforce member's COVID-19 or varicella vaccination record to his or her employer.
   - Wear a mask while in the employer's facility, on the employer's property or in the normal course of performing their duties at another location.
   - Disclose whether they have received a COVID-19 vaccine in response to queries from current or prospective patients.

3. **In general, a doctor's office may not disclose to an employer or other parties an individual's protected health information (PHI), including whether he or she has received a COVID-19 vaccine.**

   Under the HIPAA privacy rule, covered entities and their business associates may not use or disclose an individual's

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PHI, including vaccine status, unless they obtain authorization from the individual or the privacy rule allows it. Only PHI that is reasonably necessary for a stated purpose may be disclosed.

The following are examples in the guidance of permissible vaccine status disclosures under the HIPAA privacy rule:

- A covered physician may disclose PHI on an individual's vaccination to the individual's health plan to obtain payment for administering a COVID-19 vaccine.
- A covered pharmacy may disclose PHI on an individual's vaccination status (e.g., that an individual has received a COVID-19 vaccination, the vaccination date, the vaccine manufacturer) to a public health authority, such as a state or local public health agency.
- A health plan may disclose an individual's vaccination status where required by law.
- A covered nurse practitioner may provide PHI relating to an individual's COVID-19 vaccination status to that individual.
- A covered hospital may disclose PHI on an individual's vaccination status to the individual's employer so the employer may conduct an evaluation relating to medical surveillance of the workplace (e.g., surveillance of the spread of COVID-19 within the workforce) or to evaluate whether the individual has a work-related illness, if certain conditions are met.

If a covered entity wants to disclose an individual's vaccine status in other circumstances (e.g., to a sports or entertainment event organizer, hotel, airline or car rental agency), the HIPAA privacy rule generally requires the individual's written authorization.

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FAQs clarify COVID-19 vaccine coverage requirements, incentives

By Anu Gogna and Ben Lupin

The Departments of Labor, Health and Human Services, and the Treasury have released **FAQ guidance** clarifying various COVID-19 related issues, including how the Health Insurance Portability and Accountability Act (HIPAA) nondiscrimination and Affordable Care Act (ACA) affordability rules apply to COVID-19 vaccination coverage and incentive requirements.[1]

***Insider* is a monthly newsletter developed and produced by Willis Towers Watson Research and Innovation Center.**

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COVID-19 vaccination coverage requirement

The FAQ guidance clarifies that group health plans must now cover a COVID-19 vaccine and its administration, without cost sharing, immediately once it becomes authorized under an emergency use authorization (EUA) or approved under a Biologics License Application (BLA). The coverage must follow the scope of the EUA or BLA, including any amendments, such as those that allow for additional doses to be administered to certain individuals, booster doses, or an expanding age demographic for whom the vaccine is authorized or approved.

COVID-19 vaccination premium incentive/ surcharge

The FAQ guidance confirms that:

- Employer plan sponsors may offer an incentive to employees to get vaccinated against COVID-19 or impose a surcharge on those who are unvaccinated as part of a HIPAA/ACA compliant wellness program. A premium incentive that requires an individual to perform or complete an activity related to a health factor, in this case obtaining a COVID-19 vaccination, to obtain a reward must comply with

[1] See "**Compliance Q&A: COVID-19 vaccine and testing mandates, incentives**," *Insider*, September 2021, for more information.

the five criteria for *activity-only* wellness programs, as set forth in the FAQ guidance. The same would be true for a surcharge.

- Under applicable regulations, a group health plan *may not* require vaccination of participants, beneficiaries or enrollees as a condition for being eligible to receive benefits or coverage relating to the treatment of COVID-19.
- To determine whether employer-sponsored health coverage is affordable for ACA employer mandate purposes, wellness incentives for being vaccinated against COVID-19 are treated as not earned and are therefore included in the employee's required contribution.

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COVID-19 vaccine guidance issued for federal contractors, subcontractors

By Anu Gogna and Ben Lupin

On September 24, 2021, the Safer Federal Workforce Task Force issued **COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors**. This guidance is a result of President Biden's Executive Order on **Ensuring Adequate COVID Safety Protocols for Federal Contractors**, which is part of Biden's COVID-19 action plan, **Path Out of the Pandemic**.[1] The Executive Order directs executive departments and agencies to ensure that federal contracts include a clause specifying that the contractor and subcontractor will comply with all guidance issued by the task force.

According to the task force guidance, federal contractors and subcontractors must:

- Ensure that *all* employees are fully vaccinated for COVID-19 and provide proof of vaccination by December 8, 2021, unless granted an exemption
- Ensure that all employees and workplace visitors comply with Centers for Disease Control and Prevention (CDC) guidance for masking and physical distancing
- Designate a person to coordinate implementation and compliance with the COVID-19 vaccine mandate

Lawsuits have already been filed against the Biden administration challenging the federal contractor COVID-19 vaccine mandate.

Highlights

Applicability

The task force guidance generally applies to all employees working at the federal contractor *(including those not involved with the contract and those working from home);* however, it does not apply to those who work outside the United States.

All employees (except those with an accommodation exemption) must be fully vaccinated by December 8, 2021.

It also applies to all subcontractors, except for those solely providing products.

COVID-19 vaccination

All employees (except those with an accommodation exemption) must be fully vaccinated by December 8, 2021.

Proof of COVID-19 vaccination

The employee must provide proof of vaccination. Acceptable forms of documentation (including digital copies) include:

- A copy of the record of immunization from a health care provider or pharmacy
- A copy of the COVID-19 Vaccination Record Card
- A copy of medical records documenting the vaccination
- A copy of immunization records from a public health or state immunization information system
- A copy of any other official documentation verifying vaccination with information on the vaccine name, date(s) of administration, and the name of the health care professional or clinic site administering vaccine

A recent antibody test or an employee's attestation of vaccination is *not* an acceptable form of proof. Individuals who have had COVID-19 must still get vaccinated.

[1] See "**President Biden's new COVID-19 vaccine plan will affect employers**," *Insider*, September 2021.

Masking and physical distancing

Covered contractors must ensure that all employees and visitors comply with published CDC guidance for masking and physical distancing at the workplace. The rules for masking (including exceptions to the general rule) may depend on the community transmission rate in the federal contractor's or subcontractor's area as well as the setup of the workplace; specific rules should be discussed with qualified legal counsel.

Accommodations

A federal contractor may be required to provide an accommodation to employees, regardless of where they work, who communicate to the employer that they are not vaccinated, or cannot wear a mask, because of a disability (which would include medical conditions) or because of a sincerely held religious belief, practice or observance. The contractor would need to review and consider what, if any, accommodation it must offer.

Compliance

The guidance supersedes any state or local law or ordinance; however, covered contractors must still comply with any state law or municipal ordinance workplace safety protocols that are *more protective* than those under the task force guidance. In addition, contractors must comply with the task force guidance regardless of whether they are subject to other workplace safety standards (such as the Occupational Safety and Health Administration guidance on the COVID-19 vaccination mandate for employers with 100 or more employees, which is expected in the coming weeks).

Covered contractors must ensure that all employees and visitors comply with published CDC guidance for masking and physical distancing at the workplace.

Timing

For federal contracts awarded *prior to October 15, 2021,* where performance is ongoing, the requirements must be incorporated at the point at which an option is exercised or an extension is made.

The requirements must be incorporated into contracts awarded on or after November 14, 2021. Between October 15, 2021, and November 14, 2021, agencies must include the clause in the solicitation and are encouraged to include it in contracts awarded during this time period; however, they are not required to do so unless the contract solicitation was issued on or after October 15, 2021.

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New rule on No Surprises Act's surprise medical billing requirements

By Anu Gogna and Ben Lupin

The U.S. departments of Health and Human Services, Labor and Treasury, along with the Office of Personnel Management, have released an interim final rule with comment period (the IFC) titled **Requirements Related to Surprise Billing; Part II**. The IFC provides guidance on the Federal independent dispute resolution (Federal IDR) process under the surprise medical billing requirements of the No Surprises Act (NSA), which was part of the Consolidated Appropriations Act, 2021.

For plan years beginning in 2022, NSA's surprise medical billing requirements protect group health plan participants from balance bills when they: (1) seek emergency care, (2) are transported by an air ambulance, or (3) receive non-emergency care at an in-network hospital but are unknowingly treated by an out-of-network physician or laboratory.[1]

Part I of the guidance was issued earlier this year and included, among other things, details on the methodology for calculating the qualifying payment amount (QPA), which is used to determine the cost-sharing amount an individual must pay.

Federal IDR process

The Federal IDR process can be used by out-of-network providers, facilities, air ambulance services providers, plans, and issuers in the group and individual markets to determine

[1] For more information on the NSA's surprise medical billing requirements, see "**2020 year-end COVID-19 stimulus law: Health and benefit implications**," *Insider*, January 2021.

the out-of-network rate for certain items or services if a payment amount cannot be agreed upon during a 30-day open negotiation period. Either party may initiate the Federal IDR process.

The parties then may jointly select a certified IDR entity to select one of the parties' offers as the binding payment amount. Both parties must pay an administrative fee ($50 each for 2022), with the non-prevailing party responsible for paying the certified IDR entity fee.

Along with the second IFC, the Centers for Medicare and Medicaid Services issued **Technical Guidance No. 2021-01** to provide Federal IDR fee guidance for calendar year 2022.

When making a rate determination, certified IDR entities must begin with the presumption that the QPA is the appropriate out-of-network amount. After that, the entity must consider additional information submitted by any party so long as it is credible. Unless any submitted information clearly demonstrates that the value of the item or service is materially different from the QPA, the entity must select the offer closest to the QPA.

Either party may initiate the Federal IDR process.

IDR entity certification

The IFC also describes the IDR entity certification process and the information IDR entities must submit to become certified. The departments will certify IDR entities on a rolling basis, and entities that would like to be certified by January 1, 2022, should submit their applications by November 1, 2021.

Federal IDR timeline

Figure 1 is taken from the **fact sheet** accompanying the IFC.

Figure 1. **Important open negotiation and IDR deadlines**

Independent dispute resolution action	Timeline
Initiate 30-business-day open negotiation period	30 business days, starting on the day of initial payment or notice of denial of payment
Initiate independent dispute resolution process following failed open negotiation	4 business days, starting the business day after the open negotiation period ends
Mutual agreement on certified independent dispute resolution entity selection	3 business days after the independent dispute resolution initiation date
Departments select certified independent dispute resolution entity in the case of no conflict-free selection by parties	6 business days after the independent dispute resolution initiation date
Submit payment offers and additional information to certified independent dispute resolution entity	10 business days after the date of certified independent dispute resolution entity selection
Payment determination made	30 business days after the date of certified independent dispute resolution entity selection
Payment submitted to the applicable party	30 business days after the payment determination

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IRS clarifies COBRA time frame extensions

By Maureen Gammon and Kathleen Rosenow

The IRS, in coordination with the departments of Labor (DOL) and Health and Human Services (HHS), has issued **Notice 2021-58** to clarify issues surrounding the time frame extensions for COBRA continuation coverage implemented in response to the COVID-19 pandemic. The guidance addresses both the election of and premium payments for COBRA continuation coverage under the time frame extensions as well as how the extensions interact with COBRA premium assistance under the American Rescue Plan Act of 2021 (ARPA). The guidance is effective immediately.

Background

In response to the COVID-19 pandemic, the federal government issued several pieces of guidance, referred to collectively as the Outbreak Period rules:

- **May 2020:** The DOL and the Department of the Treasury issued regulations extending certain time frames under the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code for group health plans, disability and other welfare plans, participants and beneficiaries, employers and other plan sponsors, plan fiduciaries, and other service providers affected by the COVID-19 outbreak during and following the Outbreak Period.[1] The Outbreak Period was originally defined as the period from March 1, 2020, until 60 days after the end of the National Emergency (which, to date, has not been announced). Under the regulations, the following COBRA time frames were extended:
  - The 60-day election period for COBRA continuation coverage
  - The date for making COBRA premium payments (typically 45 days for the initial premium and made not later than 30 days after the first day of the period for which payment is being made for subsequent premiums)
  - The date for individuals to notify a group health plan of a qualifying event or determination of disability under COBRA
  - The date for providing a COBRA election notice under ERISA and the tax code
- **February 2021:** The DOL issued EBSA Disaster Relief Notice 2021-01 clarifying the definition of the Outbreak Period.[2] Under this guidance, individuals and group health plans with time frames that are subject to the relief will have the applicable periods disregarded until *the earlier of*: (1) one year from the date the individual or plan was first eligible for relief, or (2) 60 days after the announced end of the National Emergency (i.e., the end of the Outbreak Period). A disregarded period *cannot* exceed one year.

[T]emporary COBRA premium subsidies for certain assistance eligible individuals [have] expired and are no longer available.

ARPA provided for temporary COBRA premium subsidies for certain assistance eligible individuals; however, those subsidies have since expired and are no longer available.

New guidance

The new notice clarifies that the extended time frame under the Outbreak Period rules for an individual to elect COBRA continuation coverage and the extended time frame for the individual to make initial and subsequent COBRA premium payments generally run concurrently:

- If an individual elected COBRA continuation coverage outside of the initial 60-day COBRA election period, that individual generally will have *one year and 105 days* after the date the COBRA notice was provided to make the initial COBRA premium payment (60 days to make the initial election plus 45 days to pay the initial COBRA premium).
- If an individual elected COBRA continuation coverage within the initial 60-day COBRA election period, that individual will have *one year and 45 days* after the date of the COBRA election to make the initial COBRA premium payment.

Thus, individuals who delay electing COBRA may not have more than one year of total disregarded time for the COBRA election and initial COBRA payment. These general time frames are subject to the transition relief (see below).

[1] See "**Health and welfare plan time frames extended due to COVID-19**," *Insider*, May 2020.

[2] See "**DOL guidance on end of COVID-19 'Outbreak Period'**," *Insider*, March 2021.

The notice provides four examples of how these rules apply:

1. COBRA election made more than 60 days after receipt of COBRA election notice under the Outbreak Period rules
2. COBRA election made within 60 days of the receipt of COBRA election notice under the Outbreak Period rules
3. Time frame for electing COBRA under the Outbreak Period rules
4. Failure to make COBRA premium payments under the Outbreak Period rules

Transition relief

The notice provides an exception to the general rule that disregarded periods for COBRA elections and initial COBRA payments run concurrently to account for some individuals who may have assumed they had longer to pay the initial COBRA premium. As long as an individual makes the initial COBRA premium payment within one year and 45 days after the election date, in no event will an initial COBRA premium payment be due before November 1, 2021, even if November 1, 2021, is more than one year and 105 days after the date the election notice was received. For each subsequent COBRA premium payment, the maximum time an individual has to make a payment while the Outbreak Period continues is one year from the original due date without the time frame extensions, including the mandatory 30-day grace period.

The notice provides two examples of applying this transition relief:

1. Applying the relief for COBRA premium payments due before November 1, 2021
2. Failure to make the initial premium payment within one year and 45 days of election

ARPA

The notice clarifies that the time frame extensions *do not* apply to providing the required notice of the ARPA extended election period or for electing COBRA continuation coverage with COBRA premium assistance under ARPA. An individual who has a disregarded period under the Outbreak Period rules may elect retroactive COBRA continuation coverage as well as COBRA continuation coverage with COBRA premium assistance for any period during which he or she is eligible; however, the disregarded periods continue to apply to payments of COBRA premiums after the end of the ARPA COBRA premium assistance period, to the extent that the individual is still eligible for COBRA continuation coverage and the Outbreak Period has not ended.

Employers should review the guidance in the notice against their current COBRA administration policies and practices.

Going forward

- Employers should review the guidance in the notice against their current COBRA administration policies and practices to ensure they take into account the COBRA time frame extensions under the Outbreak Period rules.
- Employers using third-party COBRA administrators should confirm that they are appropriately administering COBRA in accordance with the guidance in the notice.
- Employers should review any communications to plan participants and beneficiaries that address the Outbreak Period rules, specifically as applied to COBRA, to ensure they are accurate. Any changes made necessary by the guidance should be communicated as soon as possible to those who are affected, particularly those who may be entitled to the available transition relief.

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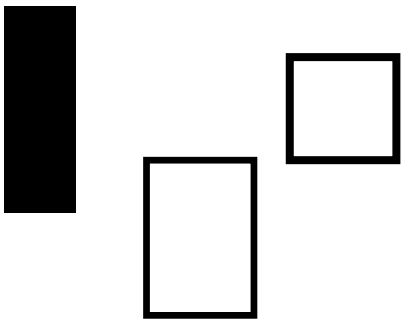

Congress discussing compensation, benefit and tax changes

By Ann Marie Breheny, Bill Kalten, Kathleen Rosenow and Steve Seelig

Significant benefit and compensation provisions are wrapped into a budget reconciliation package that is moving through the U.S. House of Representatives. The package also includes tax changes that have important implications for benefit programs and executive compensation. Though this legislation is still in the early stages of discussion and the provisions are subject to change, benefit and compensation provisions seem likely to be included if the legislation is enacted. Budget reconciliation is an important legislative vehicle because budget reconciliation procedures allow legislation to move through the U.S. Senate with a 51-vote majority rather than the 60-vote majority usually required to ensure Senate approval.

Paid family and medical leave

The House Ways and Means Committee approved a paid family and medical leave program that includes grants to employers. Under the Ways and Means Committee proposal, the program would provide up to 12 weeks of paid family and medical leave to qualifying caregivers.

The program would be available to all workers who meet qualifying leave and earnings requirements, regardless of full-time, part-time, independent contractor, self-employment or other employment status and regardless of whether the individual's employer is subject to the Family and Medical Leave Act. The program would be funded through general governmental appropriations and, generally, would not impose new payroll taxes or other assessments on employers or employees.

Leave would be available to address one's own serious medical condition; care for a family member with a serious medical condition; care for a newborn or newly adopted child, or a child who has been placed for adoption or foster care; and other purposes. Under the program, family members would include a wide range of individuals, including spouses, domestic partners, siblings, grandparents, grandchildren, spouses of family members and others whose relationship by "blood or affinity" is equivalent to a family relationship. Payments from the program would vary based on income and would pay higher reimbursement rates to lower-income individuals.

Though this legislation is still in the early stages, ... benefit and compensation provisions seem likely to be included if the legislation is enacted.

Employers that provide qualifying paid family and medical leave benefits and meet other requirements receive federal grants to reimburse some of the costs of the benefit. In general, the grants would reimburse up to 90% of the cost of the benefit. In addition, states that have enacted paid family and medical leave mandates before the federal legislation is enacted could enforce those mandates and would be eligible for federal grants. After 2025, state programs would have to meet new minimum federal requirements.

The Senate is also expected to discuss paid family and medical leave as part of its budget reconciliation legislation, though the Senate provisions may differ from these provisions approved by the House Ways and Means Committee.

Retirement provisions

New savings incentives and revenue raisers

The House Ways and Means Committee approved several provisions with implications for retirement plans, including provisions to expand automatic retirement savings, expand the saver's tax credit, limit aggregate retirement savings accumulations and limit Roth individual retirement account (IRA) conversions.

- **Automatic enrollment:** In general, employers that do not have a retirement savings plan before the legislation is enacted would be required to maintain an automatic contribution arrangement that meets specified requirements or facilitate automatic payroll deductions to IRAs. Employees would be enrolled at a contribution rate of 6% to 10%, and contributions would escalate at least one percentage point annually to at least 10% (but generally not more than 15%) unless they opt out or elect different contribution amounts. Employer contributions would not be required.

- **Saver's tax credit:** The saver's tax credit would be modified to provide a credit of 50% of the first $1,000 in retirement contributions for taxpayers with income up to $25,000 for single filers, $50,000 for joint filers and $37,500 for heads of household. The credit percentage would then phase down as income increases. The credit would be paid as a contribution to a Roth IRA, a Roth account in an employer-sponsored plan or an ABLE account. If an individual does not designate an account, or the individual's plan or IRA does not accept the contributions, they will be held by the IRS and receive interest until they can be transferred to a plan or IRA.
- **Limit on aggregate retirement savings contributions:** In general, the legislation would impose a $10 million cap on aggregate vested balances in IRAs and defined contribution plans for single tax filers with income exceeding $400,000 ($450,000 for joint filers and $425,000 for heads of household), and distribution of amounts that exceed the cap would be required. Plans would be required to report account balances exceeding $2.5 million to the IRS.
- **Limits on Roth conversions:** In general, current law allows "backdoor" Roth conversions, which are accomplished either by converting after-tax contributions to a traditional IRA to a Roth IRA or by converting after-tax contributions to a defined contribution plan to a Roth account within the plan. The Ways and Means Committee proposal would eliminate such conversions by prohibiting rollovers of after-tax amounts to Roth IRAs or Roth accounts held in qualified plans. Furthermore, higher income taxpayers ($400,000 for single filers, $450,000 for joint filers and $425,000 for heads of household) would be prohibited from implementing Roth conversions after 2032.

The legislation also includes provisions addressing IRA investments and other issues. Some of these provisions, such as the automatic enrollment mandate and expansion of the saver's tax credit, are also included in pending bipartisan retirement savings legislation. The limits on plan accumulations and Roth conversions are aimed primarily at raising revenue to offset other provisions in the budget reconciliation package.

The limits on plan accumulations and Roth conversions are aimed primarily at raising revenue to offset other provisions in the budget reconciliation package.

Health care provisions

ACA subsidies and Medicare benefits

Budget reconciliation proposals approved by House committees include provisions addressing Affordable Care Act (ACA) affordability and premium tax credits, Medicare benefits, mental health parity and prescription drugs.

- **Premium tax credits and related provisions:** The American Rescue Plan Act (ARPA), which was signed into law in March, expanded ACA premium tax credits for 2021 and 2022, in part by allowing more individuals to be eligible for the tax credits and reducing the maximum amount of household income that credit-eligible households must pay toward their premiums. The House Ways and Means budget reconciliation legislation would make these changes permanent. In addition, it would permanently reduce the affordability threshold for employer-sponsored coverage to 8.5% (from 9.83% for 2021). Another provision would allow low-income households to qualify for premium tax credits even if the employer offers affordable coverage, though employers would not be subject to employer shared responsibility penalties in such cases. ACA provisions are expected to remain under consideration as the budget reconciliation package moves forward. A separate temporary health coverage tax credit for health care premiums paid by those receiving Trade Adjustment Assistance or whose pension benefits are paid through the Pension Benefit Guaranty Corporation would be made permanent.
- **Medicare:** The House Ways and Means Committee proposal would add vision, hearing and dental benefits to Medicare. As the proposal moves through the Senate, a proposal to reduce the Medicare eligibility age could also come under discussion.
- **Mental health parity:** Budget reconciliation provisions approved by the House Education and the Workforce Committee would impose civil monetary penalties for violations of the Mental Health Parity and Addiction Equity Act.
- **Prescription drugs costs:** A proposal to allow the Secretary of Health and Human Services to negotiate the cost of certain prescription drugs and make the negotiated price available to commercial and group health plans as well as Medicare beneficiaries was struck by the Energy and Commerce Committee but approved by the Ways and Means Committee. Backing from the Ways and Means Committee may help keep the provisions in the legislation as it moves to the House floor, but the outlook for the price negotiation provisions is unclear.

Other provisions

ARPA expanded the number of individuals subject to the $1 million compensation cap under Internal Revenue Code section 162(m), beginning in 2027. The House Ways and Means Committee proposal would accelerate the effective date to 2022.

ARPA increased the limit for dependent care flexible spending arrangements to $10,500 for 2021. The Ways and Means Committee proposal would make the increase permanent and index the limit annually for inflation.

The committee proposal also includes significant tax changes. Among other provisions, it would:

- **Increase the corporate tax rate:** The tax rate would increase to 26.5% for corporations with revenues exceeding $5 million.
- **Reinstate the top individual tax rate:** The 39.6% top tax rate would be reinstated for single tax filers with income over $400,000. The threshold for joint filers would be $450,000, and heads of household would be subject to the top rate for income exceeding $425,000.
- **Increase the capital gains rate for higher-income taxpayers:** For those subject to the top tax rate, the capital gains tax rate would increase to 25%, from 20% under current law.
- **Impose surtaxes on higher-income taxpayers:** Individuals with income of $400,000 or more ($500,000 for couples filing jointly) would be subject to the 3.8% net investment income tax on their income or net investment gains regardless of whether the taxpayers materially participated in the trade or business that generated the income or gain, unless the money is otherwise subject to payroll or self-employment tax. A 3% surtax would be imposed on those with income exceeding $5 million. In addition, the 3.8% net investment income tax would be expanded to include all net income or net gain that is not subject to FICA or to self-employment tax, regardless of whether the individual materially participated in the trade or business that generated the money.

[T]he current $3.5 trillion price tag associated with the legislation will require substantial offsetting revenue.

Going forward

The budget reconciliation legislation is in its early stages, so these provisions could change or drop out of consideration as the legislation moves forward. However, the current $3.5 trillion price tag associated with the legislation will require substantial offsetting revenue, and the House committee proposals indicate that tax increases and some benefits and compensation provisions may serve as revenue raisers for the legislation. Other provisions approved by the House committees represent important policy priorities for key lawmakers.

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