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WEB's ***Benefits Insider*** is a bi-monthly member exclusive publication providing the latest developments from Washington, DC, on matters of interest to employee benefits professionals. The content of this newsletter is being provided through a partnership with the American Benefits Council, a premier benefits advocacy organization. To inquire about membership with the Council, contact Deanna Johnson at (202) 289-6700 or djohnson@abcstaff.org.

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RECENT LEGISLATIVE ACTIVITY

Mental Health Legislation Draft Would Enhance Parity Enforcement

Draft legislation being considered by members of the U.S. Senate Health, Education, Labor and Pensions (HELP) Committee would step up enforcement of existing mental health parity requirements, according to **a discussion draft and summary** released on March 7 and as detailed in a Committee press release.

The draft Mental Health Reform (MHR) Act, released by HELP Committee Chairman Lamar Alexander (R-TN), ranking Democratic member Patty Murray (D-WA) and Senators Bill Cassidy (R-LA) and Chris Murphy (D-CT), is intended to address mental illness by improving treatment access and quality.

The measure also includes a section on "mental health parity protections," building on the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA), which prohibits large employer and group health plans that provide medical and surgical benefits and mental health or substance use disorder benefits from applying financial requirements or quantitative treatment limitations more restrictive than the predominant financial requirements or treatment limitations that apply to substantially all medical and surgical benefits. Final regulations implementing MHPAEA were released by the U.S. departments of Treasury, Labor (DOL) and Health and Human Services (HHS) in November 2013.

The MHR Act, as currently drafted, would:

- Direct federal agencies to issue additional guidance regarding the disclosure of information to patients, including how they establish and apply non-quantitative treatment limitations on mental health and substance use disorder coverage.

- Direct the U.S. Department of Labor to clarify the permitted uses and disclosures of "protected health information" under the HIPAA privacy rule, including identifying and developing model training programs on sharing such information.

- Establishes an enforcement "action plan," informed by key stakeholders, to provide for streamlined information for patients and more consistent enforcement of mental health parity laws.

The Senate HELP Committee has already scheduled a formal review of the bill for March 16. The bill's authors have already indicated their intention to introduce additional measures to as part of a manager's amendment.

Senate Committee Mulls Multiemployer Pension Plan Challenges

In a March 1 hearing, the Senate Finance Committee heard from a number of witnesses in support of, and opposition to, the Multiemployer Pension Reform Act of 2014 (MPRA)

that allows trustees in financially distressed multiemployer plans to reduce vested benefits.

The MPRA, enacted as a part of the Consolidated and Further Continuing Appropriations Act, allows multiemployer plan sponsors to intervene and make changes to already vested benefits to prevent the plans from becoming insolvent.

Senate Finance Committee Chairman Orrin Hatch (R-UT), described the MPRA as the best of a set of bad options and said that if the law were to be repealed, future pension cuts will be even worse. “This moment also highlights the challenge of delivering on the promise of pensions in defined-benefit plans across the board, both public and private, and the stakes for retirees if these systems fail,” Hatch said.

Hatch also said he had done his best to continue to advance the Miners Protection Act (S. 1714), introduced by Senators Shelly Moore Capito (R-WV) and Joe Manchin (D-WV). S. 1714 would transfer certain funds from the Abandoned Mine Lands Act (AML) to the United Mine Workers health and pension funds.

The committee heard from the following witnesses:

- Joshua Gotbaum, guest scholar with the Brookings Institution and former director of the Pension Benefit Guaranty Corporation (PBGC), argued that the MPRA was flawed but much better than the alternative, under which either the PBGC would have been bankrupted by a tidal wave of insolvent plans or the plans that could survive would not have the tools to improve their finances and ultimately would become insolvent themselves. He also advocated increasing premiums for multiemployer pension plans.

- Rita Lewis, beneficiary of the Central States Pension Plan, cited her experience as a widow of a plan participant and made appeals to the Members to prohibit the plans from cutting back benefits of retirees.

- Cecil E. Roberts, Jr., international president of the United Mine Workers of America, suggested that the looming insolvency of both the mine workers’ health and retirement funds would break longstanding pension promises made by employers and the U.S. government.

- Andrew G. Biggs, resident scholar at the American Enterprise Institute, argued that multiemployer plans use looser funding rules and standards than single employer plans and their rules should be tightened. He expressed support for a shift to a defined contribution or retirement annuity approach rather than composite or hybrid plan designs.

The multiemployer plan funding crisis has the potential to destabilize the PBGC and cause ripple effects for single-employer pension plans as well, including the imposition of further PBGC insurance premium hikes on single-employer plan sponsors.

RECENT REGULATORY ACTIVITY

Administration Announces Implementation Date for New SBC Template, Associated Documents

In Frequently Asked Question (FAQ) guidance issued on March 11, the U.S. departments of Labor, Health and Human Services and the Treasury announced the implementation date for the use of the new Summary of Benefits and Coverage (SBC) template and associated documents.

In FAQs About Affordable Care Act (ACA) Implementation (Part 30), the departments announced that "health plans and issuers that maintain an annual open enrollment period will be required to use the new SBC template and associated documents beginning on the first day of the first open enrollment period that begins on or after April 1, 2017, with respect to coverage for plan years (or, in the individual market, policy years) beginning on or after that date. For plans and issuers that do not use an annual open enrollment period, the new SBC template and associated documents would be required beginning on the first day of the first plan year (or, in the individual market, policy year) that begins on or after April 1, 2017."

The SBC is a brief document, to be provided by group health plans and health insurance coverage in the group and individual markets, intended to provide consumers with consistent and comparable information regarding health plan benefits and coverage. The DOL recently published a coordinated information collection request proposing a new SBC template and instructions, an updated uniform glossary, and other associated materials.

DOL Extends Comment Period for Proposed Paid Leave Requirements for Federal Contractors

The U.S. Department of Labor (DOL) has extended by two weeks the deadline for comments on a proposed rule that will require federal contractors and their subcontractors provide employees with a certain amount of paid leave.

DOL has released **a notice of proposed rulemaking (NPRM)** requiring parties that contract with the federal government to "provide their employees with up to seven days of paid sick leave annually, including paid leave allowing for family care." The project is a part of President Obama's stated policy goal to improve paid leave for all workers.

Comments on the NPRM will now be due on April 12, bringing the comment period to 46 days. Public comment periods for most proposed rules are typically 60 to 90 days.

DOL to Survey Individuals about Retirement Strategies

The U.S. Department of Labor (DOL) is requesting public comments on the outline of a long-term research study on how retirement planning strategies and decisions evolve over time.

In an official notice published on February 29, the DOL's Employee Benefits Security Administration announced that it is planning a longitudinal study of U.S. households to determine "how people make planning and financial decisions before and during retirement." Before DOL issues a formal information collection request, the agency is soliciting comments on the utility and applicability of the study, as well as the potential burden on respondents.

"Gaining insight into Americans' decision-making processes and experiences will provide policymakers and the research community with valuable information that can be used to guide future policy and research," the DOL said in its notice. "This investigation will explore a set of research questions on retirement savings, investments, and drawdown behavior by conducting a study that tracks retirees and future retirees over an extended period."

As part of the study, the DOL will combine household reports of such items as retirement account contributions and investment allocations with survey responses on planning methods, strategies and financial advice received.

The DOL is poised to finalize a sweeping regulatory project that would broadly expand the definition of "investment advice" by extending fiduciary status to a wider array of advice relationships than is done by the existing rules. The economic analysis justifying the rule was largely based on questionable assumptions about households' savings behavior.

RECENT JUDICIAL ACTIVITY

U.S. Supreme Court Rules for Employers in ERISA Preemption of Vermont Health Reporting Law

Vermont's health database reporting law is preempted by ERISA as it applies to self-funded employer plans, according to a 6-to-2 ruling of the U.S. Supreme Court in *Gobeille v. Liberty Mutual Insurance Company* issued on March 1. The decision is an important victory for multi-state employers that rely on ERISA's preemption standard to uniformly administer their health and retirement benefit plans.

The *Gobeille* decision affirms a ruling of the U.S. Court of Appeals for the Second Circuit, which held that ERISA preempts a Vermont law that requires all health plans (including self-insured plans) to file informational reports (including claims data) for the state's all-payer claims database.

Justice Anthony Kennedy, writing for the majority, held that "ERISA's express preemption clause requires invalidation of the Vermont reporting statute as applied to ERISA plans. The [Vermont] state statute imposes duties that are inconsistent with the central design of ERISA, which is to provide a single uniform national scheme for the administration of ERISA plans without interference from laws of the several states even

when those laws, to a large extent, impose parallel requirements." Kennedy further concluded that "[d]iffering, or even parallel, regulations from multiple jurisdictions could create wasteful administrative costs and threaten to subject plans to wide-ranging liability. Preemption is necessary to prevent the States from imposing novel, inconsistent, and burdensome reporting requirements on plans."

Justice Stephen Breyer, in a concurring opinion, noted that if each state was able to "go its own way" the result would be unnecessary, duplicative and conflicting reporting requirements, any of which "can mean increased confusion and increased cost." Breyer also suggested that it was within the power of the U.S. Secretary of Labor to "develop reporting requirements that satisfy the states' needs, including some state-specific requirements, as appropriate."

Justice Clarence Thomas, while he voted with the majority, also authored a concurring opinion expressing doubts as to whether ERISA's preemption language represents a valid exercise of Congress' power under the Constitution.

In a dissenting opinion, Justice Ruth Bader Ginsburg (joined by Justice Sonia Sotomayor), argued against ERISA preemption, reasoning that the reporting required by the Vermont law differed materially from the reporting requirements of ERISA and served distinct purposes, and thus was not the kind of state law Congress intended to preempt.

The *Gobeille* decision affirms the critical role of ERISA preemption in ensuring that self-funded employee benefit plans are not subject to burdensome multi-state regulation.