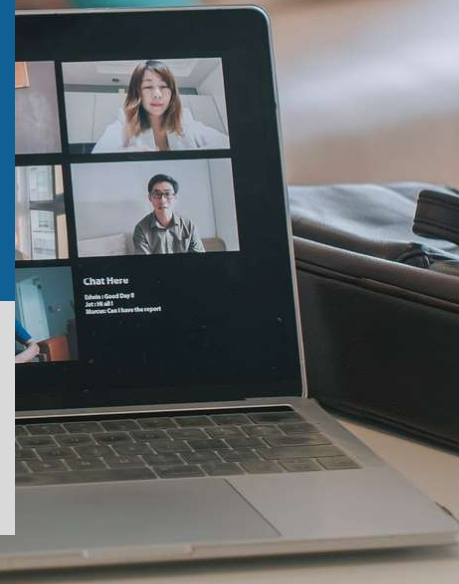


# Regulatory & Legislative Update

Presented by Benefit Comply  
**September 2024**



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# 2024 Elections

# Current – 118th Congress

- **House of Representatives**

- 220 Republicans
- 211 Democrats
- 4 vacant seats

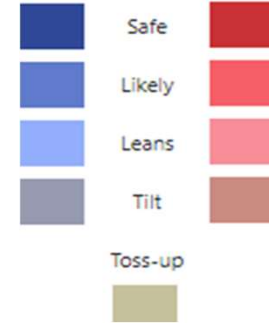
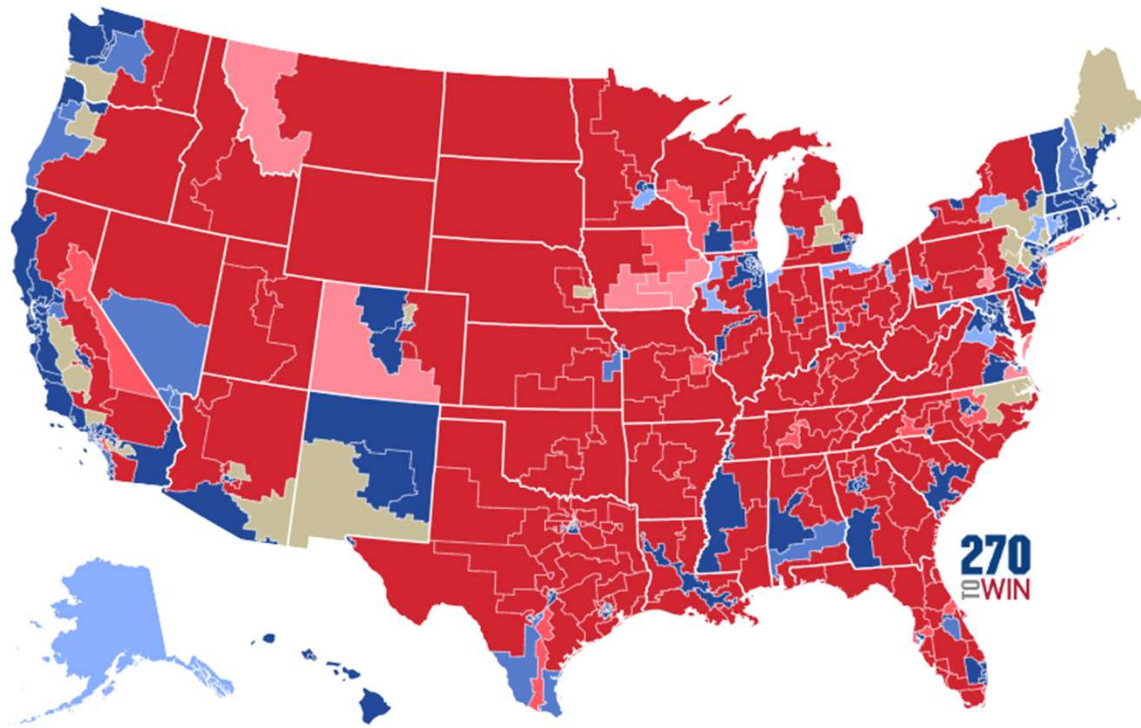
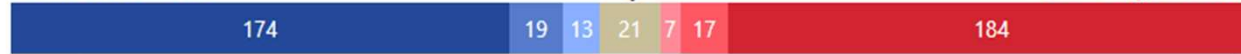
- **Senate**

- 49 Republicans
- 47 Democrats
- 4 Independents

# House Predictions – 2024 Election

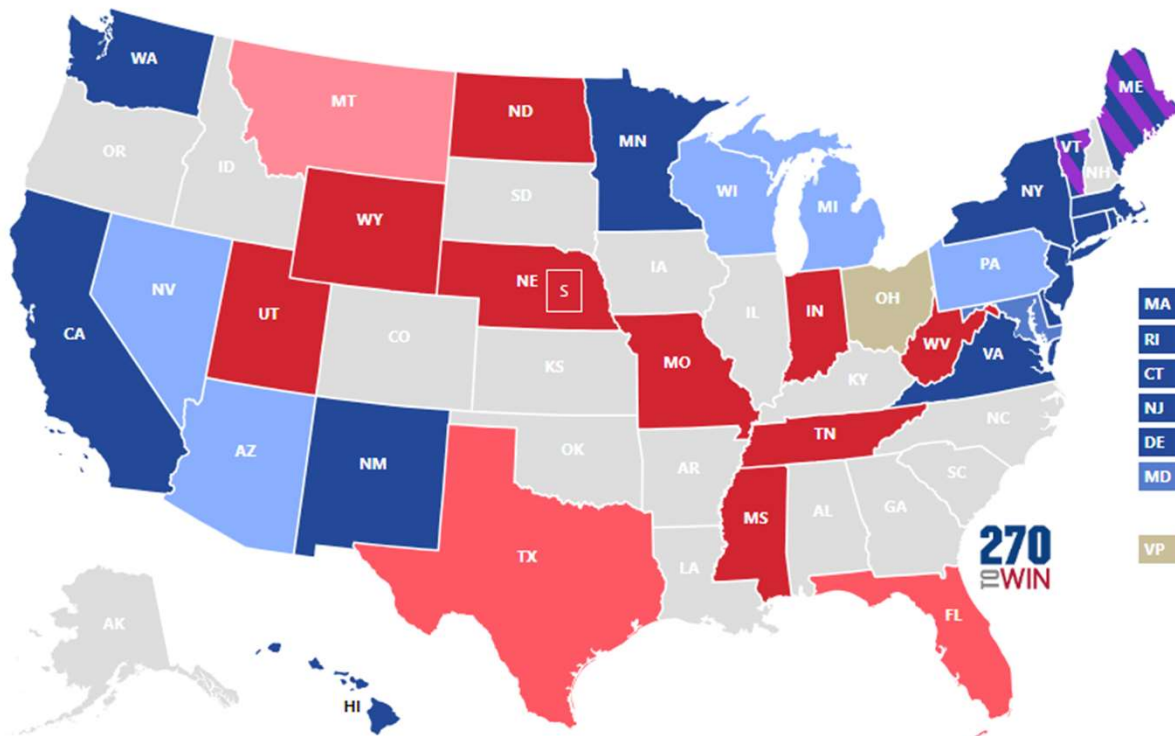
Democrats 206

208 Republicans

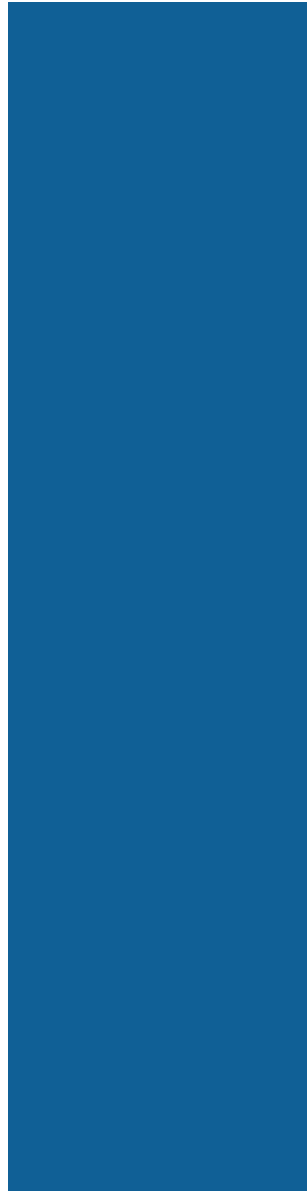


Map Updated: Sep. 7, 2024 at 21:29 UTC (5:29 PM EDT)

# Senate Predictions – 2024 Elections



Map Updated: Sep. 12, 2024 at 19:59 UTC (3:59 PM EDT)



# **Supreme Court Decision – Change in Administrative Power**

# Supreme Court Decision – *Loper v. Raimondo*

- Supreme Court Decision – July 2024
  - Overturned a 40-year precedent known as the “Chevron Doctrine”
- Chevron Doctrine

Congress sets forth laws in statutes

The diagram consists of three trapezoidal boxes arranged horizontally from left to right. The first box is orange and contains the text 'Congress sets forth laws in statutes'. The second box is grey and contains the text 'Federal agencies (e.g., DOL, IRS, HHS) interpret statutes via regulations, FAQs, etc.'. The third box is yellow and contains the text 'When challenged, courts defer to agency interpretations'. A green oval highlights the yellow box. The boxes are connected by thin lines, suggesting a flow of information or process.

Federal agencies (e.g., DOL, IRS, HHS) interpret statutes via regulations, FAQs, etc.

When challenged, courts defer to agency interpretations

- Court Decisions
  - When the statute language is clear, the court must follow the statute
  - When the statute language is not clear or doesn't address the specific question, the court is not required to defer to the applicable agency's interpretation



# Supreme Court Decision – *Loper v. Raimondo*

- Examples for Benefit-Related Regulations
  - Mental Health Parity Rules – meaningful benefits, relevant data evaluation
  - §1557 Nondiscrimination Rules – health programs & activities, “on the basis of sex”
  - EEOC Wellness Rules – voluntary medical examinations
  - §4980H Rules – full-time status (measurement methods), hours of service

# Supreme Court Decision – *Loper v. Raimondo*

- Impact on Employers
  - Continue to follow current agency interpretations
  - Understand that court decisions may have varying impacts – e.g., nationwide injunctions, circuit level injunctions, state-level injunctions, case-specific injunctions
  - Over time, without congressional action to further clarify any statutes in question, there could be some confusion and instability for employers as to what exactly is required

# Medicare Part D Creditable Coverage

## 2025 Changes to Medicare Part D

- Increased prescription drug coverage available via Part D effective January 2025
  - Coverage that is currently creditable may no longer be creditable
- Credibility for employer prescription drug coverage tied to plan year
  - Non-calendar year plan effective first day of plan year beginning in 2025
- Employer action
  - Determine if coverage is creditable for 2025
  - Notify participants and CMS



# Rx Creditable Coverage



- How is Creditable Coverage Determined?
  - Carrier or TPA may provide creditable status; or
  - Employer must use simplified method or obtain actuarial determination
- Why is it Important?
  - Individuals must enroll in Medicare Part D coverage when first eligible or pay a premium penalty unless covered by a group health plan with creditable Rx coverage

# Medicare Part D Eligibility

- Individuals become eligible for Part D (Rx coverage) upon enrolling in Part A, Part B, or both
  - Individuals merely eligible for Medicare, but not yet enrolled in Part A or B are not eligible for Part D
- Once eligible for Medicare Part D, going 63 days or more without creditable Rx coverage may then result in lifetime late enrollment penalties
- Upon a change in creditable coverage status, special enrollment is triggered for 2 months from loss of coverage or notification, whichever occurs later



# Determining Creditable (or Non-Creditable) Status

- **Step 1: Check with Carrier or TPA**
  - If carrier or TPA cannot timely confirm status, move to Step 2
  - If carrier or TPA provides creditable status, move to Step 3
  
- **Step 2: Use Simplified Method or Obtain an Actuarial Determination**
  - Plans not applying for the retiree drug subsidy for qualified retiree coverage are eligible to use the simplified method (most plans)
  - Plans applying for the retiree drug subsidy must obtain an actuarial determination
  
- **Step 3: Distribute Creditable Status Notices to Eligible Individuals**
  
- **Step 4: Report Creditable Status to CMS**

# Mental Health Parity Rules



# Mental Health Parity

- Parity Requirements
  - ✓ Plans that offer mental health or substance use disorder benefits must provide coverage for those benefits “in parity” with medical/surgical benefits
  - ✓ Notices when mental health or substance use disorder claims are denied
  - ✓ Comparative analysis performed on non-quantitative treatment limitations (NQTLs)

# Mental Health Parity

## Annual & Lifetime Limits

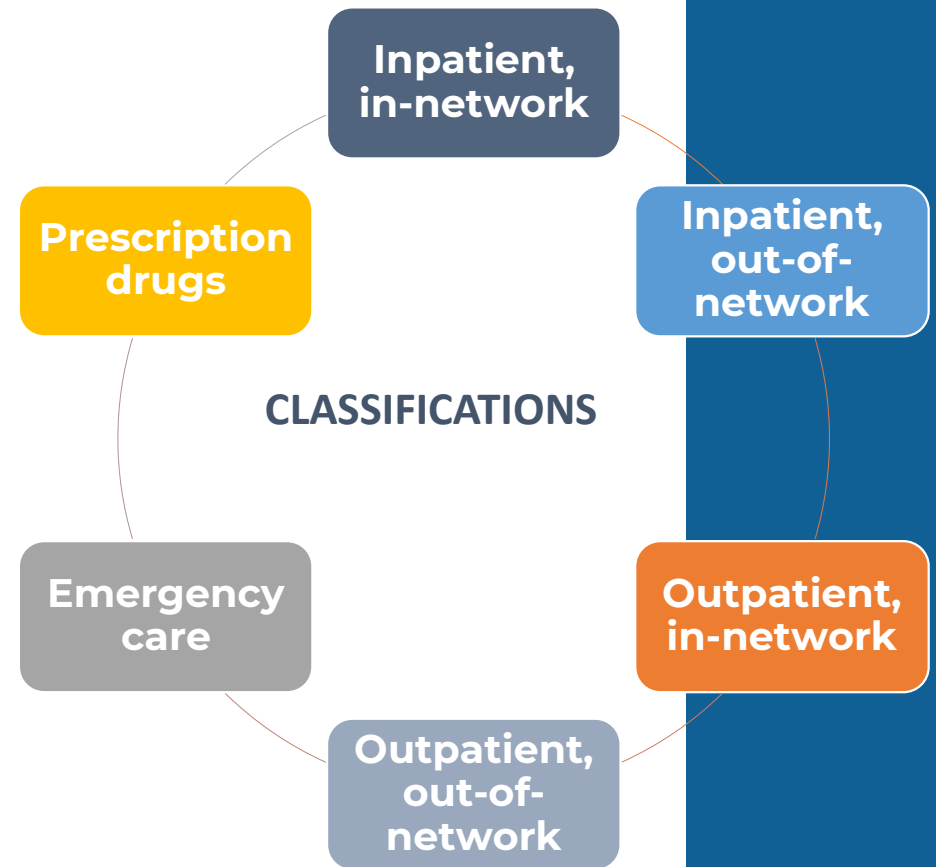
- Must be the same or more generous than for medical/surgical benefits

## Financial Requirements & Quantitative Treatment Limitations

- Cannot be more restrictive than the predominant requirements or limitations that apply for substantially all (2/3) medical/surgical benefits

## Non-Quantitative Treatment Limitations (NQTLs)

- Cannot impose processes, strategies, evidentiary standards or other factors that are more stringent than for medical/surgical benefits



## NEW – Meaningful Benefits in 2026

- For any covered mental health condition or disorder or substance use disorder, the plan must provide “meaningful benefits” for that condition or disorder in every classification in which medical/surgical benefits are provided
  - Plan must provide “core treatment” for that specific condition or disorder
    - Standard treatment, therapy, service, or intervention indicated by generally recognized independent standards of current medical practice

# NEW – Assessing Parity for NQTLs in 2026

- Plan may not impose any NQTL on mental health or substance use disorder benefits if that specific NQTL does not also apply to medical/surgical benefits in the same classification

## Design and Application

- Cannot impose processes, strategies, evidentiary standards or other factors that are more stringent than for medical/surgical benefits
- Cannot rely on discriminatory factors or evidentiary standards to design an NQTL

## Relevant Data Evaluation

- Must collect and evaluate relevant data and address any material differences in access between mental health and substance use disorder benefits and medical/surgical benefits
- Additional requirements for network composition

# NEW – Comparative Analysis

## ▪ Clarification on Required Content

- Description of NQTL, which benefits are subject to the NQTL, and which benefits are in which classification
- List and definitions for any factors and evidentiary standards used to design or apply the NQTL
- Description of how factors are used in the design and application of the NQTL
- Demonstration of parity for the NQTL, as written
- Demonstration of parity for the NQTL, in operation, including material differences in access and reasonable action taken to address the material differences
- Findings and conclusions



**\*Must be certified by one or more named plan fiduciaries beginning in 2025**

**\*Must be available upon request (already in effect)**

# Mental Health Parity – Compliance Responsibilities

## ▪ Fully-Insured Group Health Plans

- Carrier is directly responsible for compliance
- Carrier is required to complete a written comparative analysis

## • Self-Funded Group Health Plans

- Employer as plan sponsor is directly responsible for compliance
  - TPA, PBM and other service providers may be co-fiduciaries and jointly liable
- Action items
  - Review plan design for parity
  - Request information from service providers about efforts to comply in plan design and claims processing
  - Confirm whether service provider will prepare a comparative analysis or provide necessary data for another vendor to prepare a comparative analysis

# **HIPAA Privacy for Reproductive Healthcare**

# HIPAA 101

- HIPAA applies to Protected Health Information (PHI):
  - Individually identifiable health information that has “touched” the health plan
- Permissible Uses and Disclosures of PHI by a health plan:
  - Treatment, Payment, and Health Care Operations
  - Written Authorization from Subject Individual
  - “Public Policy” Disclosures:
    - Judicial and administrative proceedings
    - Law enforcement purposes
    - Coroners or medical examiners
    - Health care oversight
    - And more...



# 2024 Privacy Rule

- New Category of Prohibited Disclosure/Use of PHI
  - Applies to PHI potentially related to reproductive health care
    - Must obtain a valid attestation before releasing such PHI (model attestation available)
  - Update written HIPAA policies and procedures and training for compliance by December 22, 2024
- Updates to Notice of Privacy Practices (NPP)
  - Changes related to both PHI related to reproductive health care and confidentiality of substance use disorder patient records (new model notice will likely be released)
  - Must be used starting February 16, 2026

# 2025 Affordability Percentage

# Coverage Affordability

- Affordability matters for two reasons:
  1. Premium tax credit eligibility for coverage through the public Marketplace
  2. Applicable large employer (50 or more FTEs) compliance with §4980H(b)

Affordability Percentages	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025
	9.56%	9.66%	9.69%	9.56%	9.86%	9.78%	9.83%	9.61%	9.12%	8.39%	<b>9.02%</b>

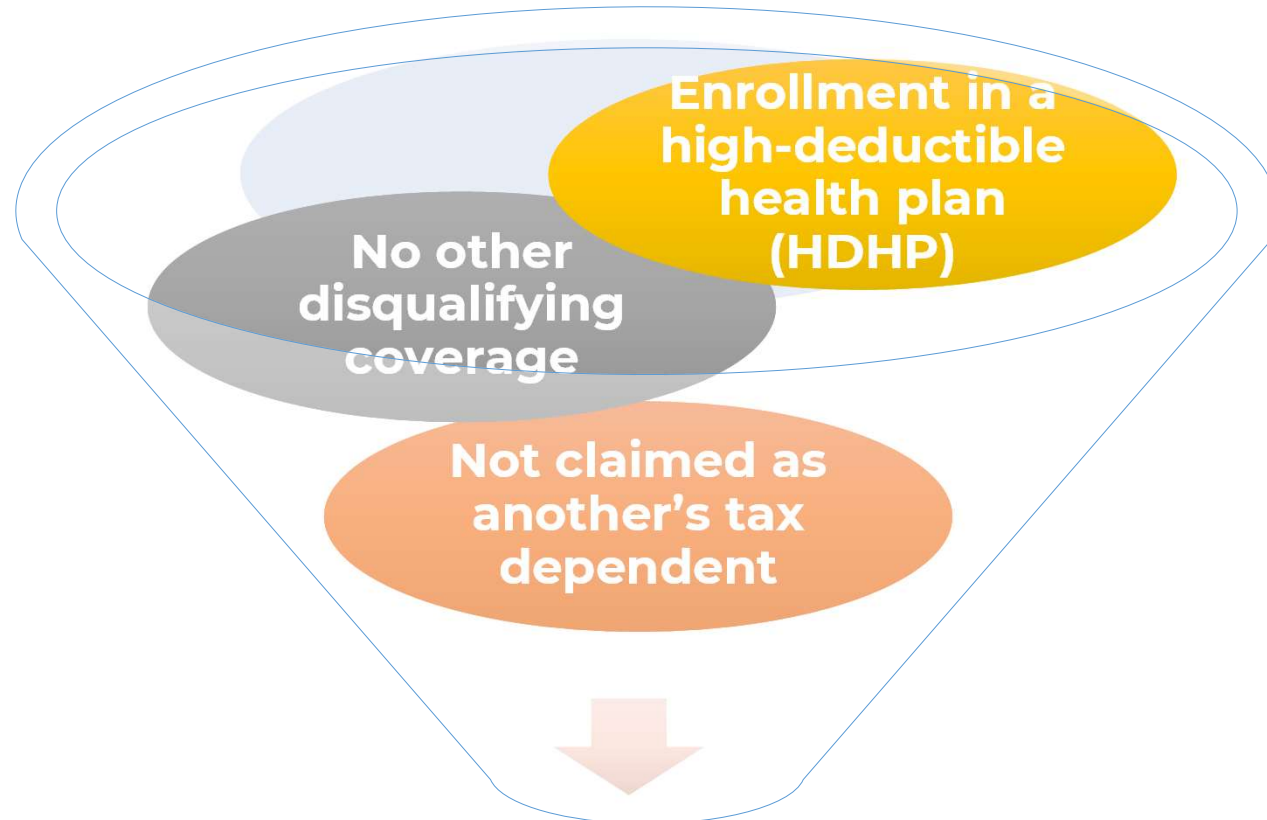
Updated affordability percentage applies when the plan renews in 2025

Just Announced

- Affordability Safe Harbors
  - Use 9.02% for FPL, rate of pay and Form W-2 safe harbors

# 2025 HSA Requirements

# HSA Eligibility



**Eligible to Contribute to an HSA**

# Qualifying HDHP

- Minimum Deductible and Maximum Out-of-Pocket (OOP)

- 2024

**Minimum Deductible**

- Self-only: \$1,600
- Family: \$3,200

**Maximum OOP**

- Self-only: \$8,050
- Family: \$16,100

- 2025

**Minimum Deductible**

- Self-only: \$1,650
- Family: \$3,300

**Maximum OOP**

- Self-only: \$8,300
- Family: \$16,600

# HSA Contribution Limits

- Contribution Rules
  - Eligibility determined monthly on the 1st day of the month
  - Annual contribution limit equals 1/12 of annual max times months eligible
  - Contributions can be made:
    - By the employee or the employer
    - Anytime after the HSA is established up until the tax filing date (typically April 15th)

**2024**

- Self-only: \$4,150
- Family: \$8,300

**2025**

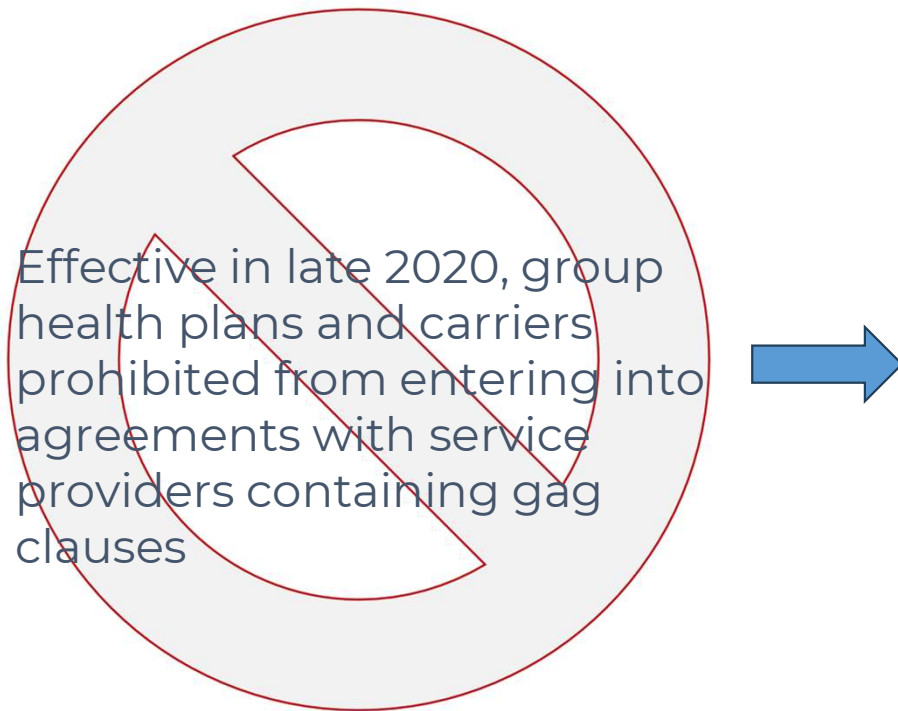
- Self-only: \$4,300
- Family: \$8,550

**\$1,000 Catch-Up For Those 55 or older**

# Gag Clause Attestations



# Gag Clause Prohibition



Reporting is required for group health plans, but not excepted benefits (e.g., dental, vision, health FSA, EAP), retiree-only group health plans, or account-based plans (e.g., HRAs)

# Gag Clause Attestation

- **Responsibility for Attestation**

- **Fully-Insured Group Health Plans**

- Carriers likely to attest on behalf of the plan

- **Self-Funded Group Health Plans**

- TPAs and PBMs may be willing to attest on behalf of the plan, but otherwise the employer must handle the attestation

- **Other Group Health Plan Arrangements**

- Employer must attest for any service providers that will not

# Upcoming Legislation???

# Proposed Legislation

- **COBRA – Creditable Coverage**
  - Currently only group health plan coverage due to active employment status is creditable
  - Change would allow COBRA continuation coverage to also be creditable for purposes of delaying Medicare Part B enrollment
- **Employer Reporting – Simplification**
  - May provide some relief for employers have to report coverage for self-funded group health plans (no SSNs required for covered spouses and dependents)
- **Transparency Requirements Expanded**
  - Further transparency requirements for hospitals, TPAs and PBMs
- **Telehealth & HSA-Eligibility**
  - Likely expansion of relief for another 2 years allowing telehealth to be offered alongside HDHP coverage without impacting HSA-eligibility



# Questions