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Health and Welfare Plan Compliance Checklist

- **ERISA Disclosure Requirements**, including
  - Plan document
    - Compliant with content requirements
  - Summary plan description (SPD)
    - Compliant with content regulations
    - Compliant with claims procedure regulations
    - Compliant with style and format regulations
  - Wrap plan document and wrap SPD (as needed)
  - Summary of material modifications or reductions (SMM or SMR) (if applicable)
  - Summary of benefits and coverage (SBC) (health plan only) (templates and CLAS County Data updated for 2025)
  - Use compliant distribution methods (mail, in-person, or electronic)
  - Comply with foreign language requirements (e.g., ERISA/SPD and ACA/SBC regulations (CLAS County Data updated for 2025))

- **ERISA Reporting Requirements**, including
  - Form 5500 filings
  - Summary annual report (SAR)
  - Form M-1 (for multiple employer welfare arrangements or MEWAs)

- **IRS Non-Discrimination Testing,** including
  - IRC § 105(h) for self-funded plans
  - IRC § 125 for cafeteria plans
  - IRC § 129 for dependent care assistance programs
  - IRC § 79 for group term life insurance
  - IRC § 127 for educational assistance programs

- **Annual and New Hire Notice Requirements**, including
  - Women's Health and Cancer Rights Act notice (annual)
  - CHIP notice (annual)
  - Medicare Part D creditable/non-creditable coverage notice (annual)
  - Newborns' and Mothers' Health Protection Act notice
  - Notice of special enrollment rights under HIPAA
  - Michelle's Law notice
  - HIPAA Notice of Privacy Practices (if plan is self-funded, including health FSA, every 3 years) (to be updated by February 16, 2026)
  - HIPAA and ADA wellness program notices (if applicable)
  - Notice of grandfathered status (if applicable)
  - Notice of Patient Protections (if applicable)
    - If applicable, add to grandfathered plans (CAA)
  - Mental Health Parity and Addiction Equity Act (MHPAEA) notice (if applicable)
  - Initial COBRA notice (new hire)
  - Employer Notice to Employees of Coverage Options (Notice of Exchange) (new hire)

- **Consolidated Appropriations Act, 2021 (CAA)**, including
  - Rx Reporting (RxDC): Prepare to timely report on pharmacy benefits and drug costs
    - Contract with carrier or TPA
    - File annual report (June 1)
  - On-Line Price Comparison Tool: Create on-line price comparison tool (also mandated by TiC Final Rule)
    - Update plan documents, as necessary
  - ID Cards: Update ID cards and distribute
  - Provider Directories: Create protocol to timely verify network status, create protocol to respond to inquiries, create on-line database, and update printed directories
    - Update claims procedure manuals
    - Update plan documents, as necessary
  - Balance Billing Disclosure: Modify model form and make balance billing disclosure publicly available, post on public website of plan, and include in certain EOBs
  - Surprise Billing: For limitations on surprise billing for emergency services, non-emergency services, ancillary care, and air ambulance services
    - Update plan documents, as necessary
    - Update claims procedure manuals and notices/EOBs
    - Apply patient protection rules, if applicable, to grandfathered plans
    - Apply emergency services billing restrictions to grandfathered plans and update for non-grandfathered plans
    - Implement new rules for Independent Dispute Resolution (IDR) system
  - Air ambulance reporting: Prepare to timely report (awaiting final guidance)
    - Contract with carrier or TPA
  - Advanced Explanation of Benefits (AEOB) (delayed)
    - Create infrastructure and forms
    - Update plan documents, as necessary
    - Update claims procedure manuals
  - Continuity of care:
    - Update plan documents, as necessary
    - Update claims procedure manuals and notices
    - Create notice of termination of provider/facility
  - Mental health parity:
    - Complete DOL MHPAEA Self-Compliance Tool
    - Perform and document comparative analyses of "non-qualitative treatment limitations" (NQTLs)
  - Gag clauses:
    - Update contracts to remove gag clauses
    - File annual attestation (December 31)
  - Covered service provider (providing consulting or brokerage services) disclosure
    - Follow up with covered service providers to request disclosures
    - Review fiduciary responsibilities and implement procedures for selecting and monitoring service providers

- **ACA Reporting, Disclosure, and Compliance Obligations**, including
  - Notice of grandfather status and Notice of Patient Protections (if applicable)
  - Updated claims appeal language and processes for health and disability benefits
  - Determination of whether employer is an "applicable large employer" (ALE)
    - Application of IRS aggregated (control) group rules

- ALE tracking and reporting (IRS Forms 1094/1095)
  - Where required, distribute and file data/forms for state individual coverage mandate (e.g., CA (FTB), DC, MA, NJ, RI, VT)
- ALE shared responsibility payments (§4980H(a) and (b) payments)
  - Structure benefits to avoid payments (offer "minimum essential coverage" (MEC) that is "affordable" and "minimum value" (MV))
  - Choose affordability safe harbor and calculate affordable contributions
  - Determine full-time status of "common law" employees
  - Establish full-time status measurement methodology and track employees
- Update plan document and SPD to include eligibility language explaining measurement methodologies, other eligibility terms, and employee contributions
- Best practice: Create contribution schedules and enrollment/waiver forms that address ACA shared responsibility offer of coverage requirements
- Summary of benefits and coverage (SBC) (templates and CLAS County Data updated for 2025)
- Compliant waiting period
- Patient-Centered Outcomes Research Institute Fee (PCORI) and IRS Form 720 (July 31)
- W-2 reporting
- Medical loss ratio (MLR) rebates and ERISA plan asset rules
- Update plan limits annually (e.g., HSA contribution limits, HDHP deductible & out-of-pocket limits)
- Transparency in Coverage (TiC) Final Rule
  - Create and maintain three machine-readable files (MRFs) and an on-line self-service tool
  - Contract with carrier or TPA
  - If plan has a public website, post a link to MRFs
  - Watch for updates on proposed regulations
- Non-discrimination rules for fully insured plans (awaiting guidance)

- **The One Big Beautiful Bill (OBBB),** including
  - Update, as needed, plan document and employee communications to address changes to health savings accounts (HSAs) and new rules on telehealth and direct primary care
  - Update, as needed, cafeteria plan document, enrollment forms, and communications to reflect increase in dependent care spending account (DCAP) contribution limit
  - Update or create, as needed, written educational assistance program to reflect extension of law to include qualified student loan debt payments
  - Update or create, as needed, written plan for tax credits for paid family and medical leave program
  - No tax relief for (a) bicycle commuting expense reimbursement under a transportation fringe benefit plan and (b) employer-paid moving expenses (some exceptions for moving expenses apply)
  - As needed, create written plan for Trump Account contributions and amend cafeteria plan
  - Prepare for impact of roll-back of Premium Tax Credit (PTC) eligibility extension and OBBB's impact on Medicaid and Marketplace plans
  - Implement guidance on transition relief for No Tax on Tips and No Tax on Overtime provisions
  - Prepare for employer reporting requirements to implement No Tax on Tips and No Tax on Overtime
    - Coordinate with payroll provider, CPA, and employment lawyer

- **HIPAA Privacy, Security, and HITECH Requirements**, including
  - Appoint Privacy and Security Officer(s)
  - Assess how protected health information (PHI) and electronic PHI (ePHI) is created and received
  - Conduct an ePHI risk analysis

- Draft and implement Privacy and Security policy and procedure manuals
- Draft and distribute Notice of Privacy Practices (if self-funded, every 3 years) (to be updated by February 16, 2026)
- Execute business associate agreements
- Conduct staff training
- Safeguard PHI and ePHI
- Draft data breach notification procedures and incident response plan
- Regularly update Security procedures and safeguards
- Establish firewall between plan PHI and employment functions
- Watch for updated Security Rule regulations
- Address status of Reproductive Health Care regulations
- Coordinate with California and other state privacy laws, including recent updates

- **Cafeteria Plan Compliance**, including
  - Plan document
  - Summary plan description (for health FSA)
  - Update contribution limits annually, as needed
  - Draft and implement annual election process and documentation (including Cal. Lab. Code § 2810.7)
  - Perform IRS non-discrimination testing (including IRC § 125)
  - Administer consistent with mid-year election change restrictions

- **Additional Compliance Challenges**, including
  - ERISA fiduciary, prohibited transaction, and plan asset rules
    - Coordinate (and document) responsibilities with vendors; audit and benchmark services
  - Cybersecurity compliance under ERISA fiduciary and record retention rules
  - Control/aggregated group rules
  - Annual CMS Disclosure for Medicare Part D
  - COBRA and state mini-COBRA laws (e.g., Cal-COBRA)
  - Health savings accounts (HSAs)
  - Voluntary plans
  - Excepted and ancillary benefits
  - Wellness programs
  - Employee assistance programs (EAP)
  - Educational assistance programs
  - Fringe benefits
  - Imputed income
  - Uniformed Services Employment and Reemployment Rights Act (USERRA)
  - Application of municipal ordinances (e.g., San Francisco Health Care Security Ordinance (HCSO))
  - Coordinate plan terms with employee handbook, new hire packets, website, job descriptions, employment contracts and severance agreements, and open enrollment materials
  - Coordinate benefits with paid and unpaid leaves (including USERRA, FMLA, CFRA, and PDL, as updated)
  - Coordinate benefits with wage supplement programs (including STD, LTD, SDI, and PFL, as updated)
  - Create documentation and record retention policies
  - Prepare for DOL, IRS, and HHS audits

- **CalSavers**:
  - Employers with 5 or more employees must either provide a qualified retirement plan for their workers or register with CalSavers by June 30, 2022
  - Employers with 1 or more employees must either provide a qualified retirement plan for their workers or register with CalSavers by December 31, 2025

This is only a brief synopsis of certain provisions of federal law applicable to health and welfare plans. Employee benefit laws and regulations are detailed and complex, and this summary does not purport to cover every aspect of applicable law. The information provided is subject to change. This summary does not constitute legal advice. Employers should consult their legal counsel concerning implementation of the provisions discussed in this synopsis, and whether there are other legal standards to be adopted or updated.