

# 2021 Client Conference

Welcome!

Robert Schmidt

MAY 19, 2021



# Benefits & Legislation

May 19

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9:05 am	Charles Clark	Federal Laws and Regulations Update 2021 Employer Actions for Benefit Plans
9:50 am	Garry Simmons Tammy McAllister	Health & Group Benefits: Strategic Considerations in Uncertain Times
10:35 am	Daniel Skwire	Disability Millibyte
10:55 am	Casey Mochel	Wrap Up

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# Diversity, Equity, and Inclusion Non-profit Organizations



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HISTORY  
AND  
OURSELVES

Challenging teachers and their students to stand up to bigotry and hate.

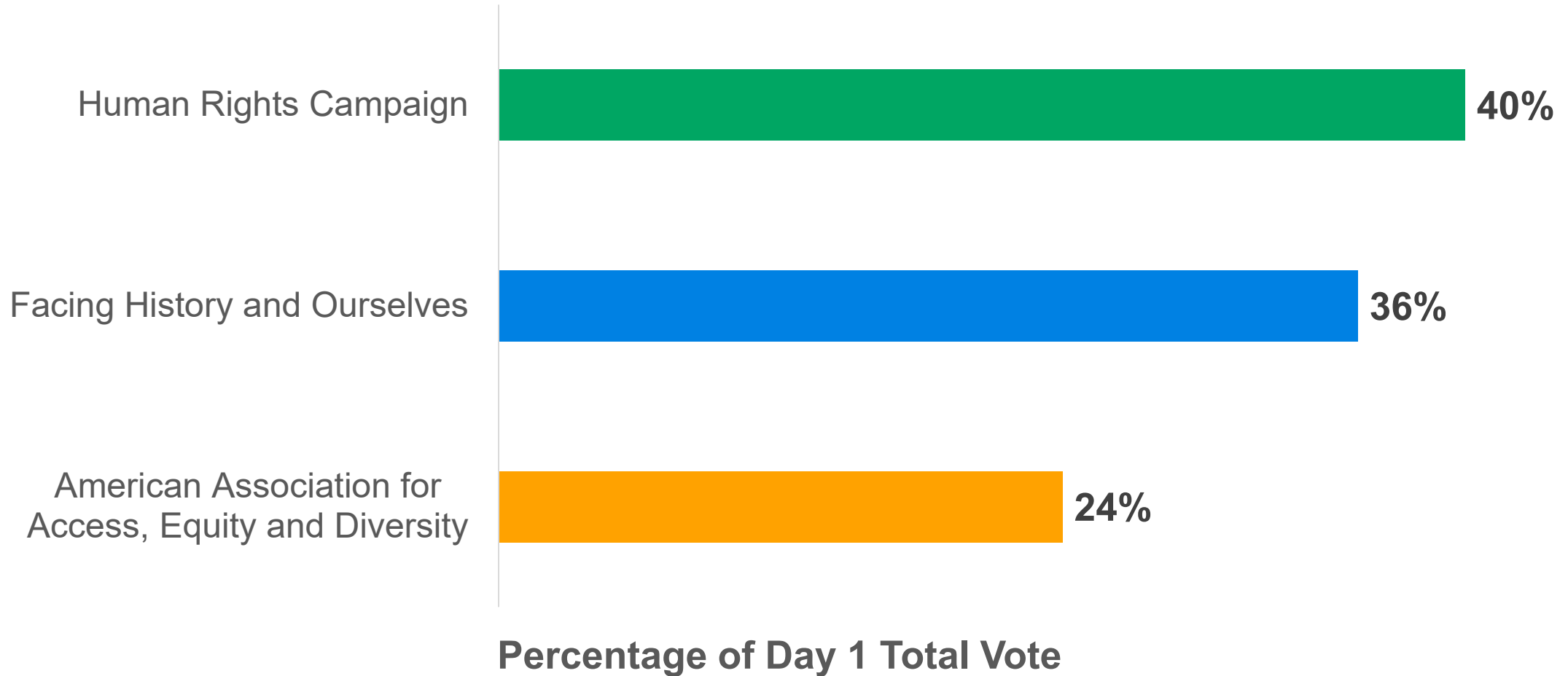


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Equality for ALL not for some.

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Day 1 poll results



# Caveats

The information provided in today's presentation should be considered incomplete without the benefit of the discussion that accompanied it. The observations described in the presentation are not necessarily applicable to any specific organization. Users of the information provided in this presentation should be advised by professionals with experience in relevant domains.

The opinions provided in the presentation are those of the authors/presenters and should not be attributed to Milliman, Inc.

# Federal Laws and Regulations Update: 2021 Employer Actions for Benefit Plans

2021 Client Conference

Charles J. Clark

MAY 19, 2021



# Agenda

- Pre-Wrap up
- SECURE 2.0 (H.R.)
- Review of Federal Laws affecting employee benefit plans: SECURE, Families First, CARES, & ARPA
- Federal regulations
- Fiduciary Lawsuits
- Wrap up
- Appendix: SECURE 2.0 in greater detail



**Pre-Wrap up**



# Pre-Wrap Up

Employer Plan Administration

## Why begin with a review of the wrap up?

If (when) SECURE 2.0 becomes law, we...

- Don't want you to be surprised by **how much and how many** employee benefit plan provisions **can/will change** and
- How much **additional administrative time** you may need to **affect those changes**.



# Pre-Wrap Up

## Employer Plan Administration



**Don't underestimate** the amount of administrative work necessary to meet the federal agency requirements

- Employers need to assess *mandatory vs. voluntary* compliance matters



### **Employer HR systems**

- Might need to be retooled
- Communication of changes to affected employees may need more than federal agency safe harbor language



Obstacles will come up as federal regulations are issued, which are more authoritative than federal notices from IRS or DOL

# SECURE 2.0 (H.R. 2954)

A few key provisions

# SECURE 2.0: House bill H.R. 2954

A few key provisions

- **Increase the RMD age** from 72 to 73 to 74 and to 75 by 2032
- **ALL catch-up contributions for ages  $\geq 50$  must be made as *after-tax ROTH***
  - Increased catch-up (*ROTH*) to \$10,000 for ages 62, 63 and 64
- **Student loan payments** to the employee's loan company/bank can be treated as elective deferrals for purposes of matching contributions
- **For overpayments mistakenly made to retirees**, permit retirement plan fiduciaries to be able to decide not to recoup overpayments
  - Retiree rollover of overpayments would remain valid.

# SECURE 2.0: House bill H.R. 2954

A few key provisions (continued)

- **All inadvertent errors can be self-corrected** under EPCRS without a submission to the IRS and before IRS finds the errors
- **Plan Relying on Electronic Delivery**
  - **Defined Contribution (DC):** plan is required to provide a paper benefit statement **at least once annually** unless a DC plan participant formally declines the paper statement.
  - **Defined Benefit (DB):** the triennial accrued benefit statement **must be a paper statement**, unless a DB plan participant formally declines the paper statement.

# SECURE 2.0: House bill H.R. 2954

A few key provisions (continued)

- **The cash-out limit increases** to \$6,000 from \$5,000
- **Long-Time Part-Time 401k deferral eligibility** time will be two years, not three years
- **DOL must issue missing participants regulations**
- **Matching contributions** can be ROTH contributions if elected by the employer

# SECURE 2.0: House bill H.R. 2954

A few key provisions (continued)

- **Employees can “self-certify”** that they have had an event that constitutes a deemed hardship for purposes of taking a hardship withdrawal from a savings plan
- **Plan amendments for HR 2954 must be made by the end of 2023**
  - HR 2954 also conforms the plan amendment dates under the SECURE Act, the CARES Act and SECURE 2.0 to the end of 2023



# LIVE POLL 1

Which of the following would be the **MOST DIFFICULT** for you to implement and administer?

Choose the top two:

- Increasing RMD age incrementally to 75
- Verifying employee student loan payments for matching contributions
- Setting up for counting hours for long-time part-time employees
- Coordinating ROTH options for matching & catch-up contributions
- Having to provide annual paper participant statements





# LIVE POLL 2

Which of the following would produce a **BEST OUTCOME** for your employers and your employees?

Choose the top two:

- Adopting a student loan payment–matching contribution provision
- Being able to self-correct inadvertent errors under EPCRS (without submission to IRS)
- DOL issuing safe harbor guidance for missing participants
- Allowing employees to self-certify for hardship distributions
- Streamlining deadlines for all related plan amendments to end of plan year 2023

# **Review of Federal Laws affecting employee benefit plans**

SECURE, Families First, CARES, ARPA

# SECURE Act of 2019: Provisions in four words or less

Review of Federal Laws affecting employee benefit plans

- RMD age to 72
- 10-year non-spouse payout
- LT-PT 401k deferral eligibility
- 401(k) to annuity illustrations
- \$5,000 birth/adoption distribution
- 15% auto-escalate deferral ok'd
- Open MEPs safe harbor
- DB in-service at 59½



# Families First Act of 2020: Provisions in four words or less

Review of Federal Laws affecting employee benefit plans

- Emergency paid sick leave
- Emergency FML expansion
- COVID-19 cost-sharing waived

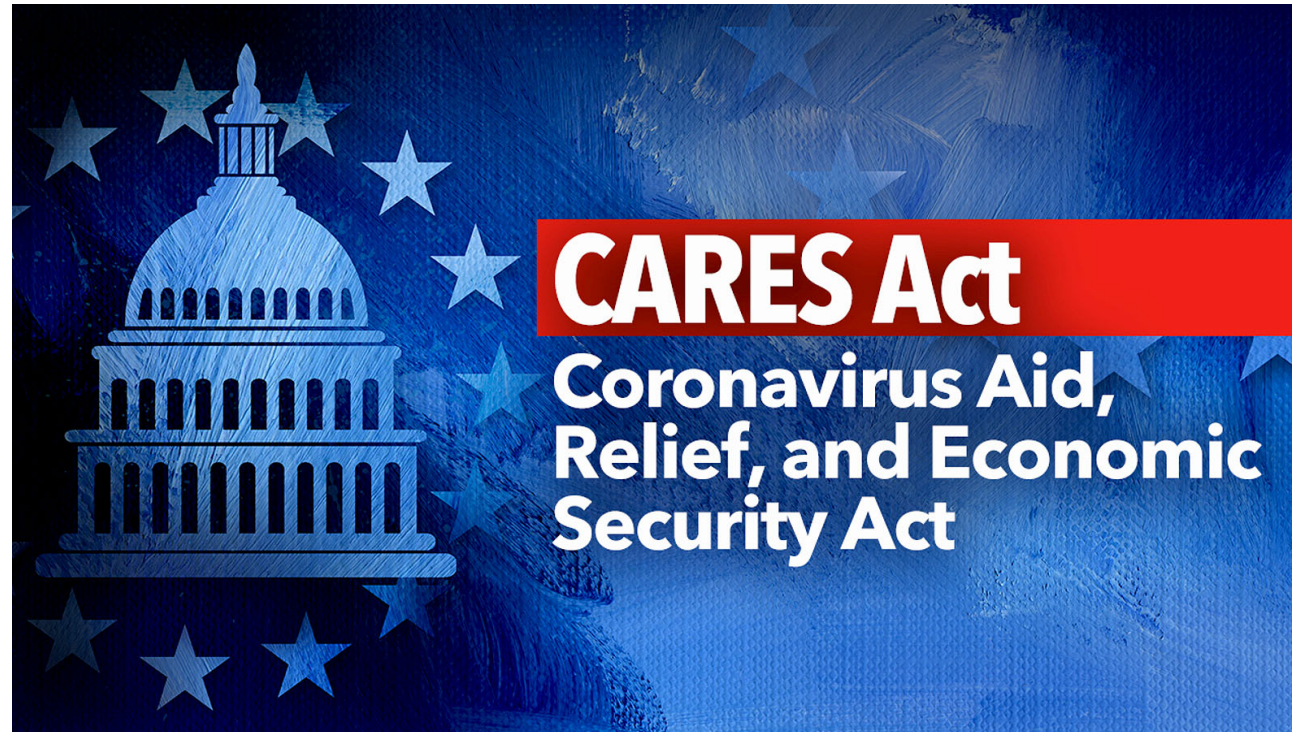


# CARES Act of 2020: Provisions in four words or less

Review of Federal Laws affecting employee benefit plans

## Plans impacted: DC & DB

- \$100,000 Coronavirus distributions
- \$100,000 plan loans permitted
- Delayed loan repayments
- 2020 RMDs waived
- Delayed SE DB contributions



# ARP Act of 2021: Provisions in four words or less

Review of Federal Laws affecting employee benefit plans

## Plans impacted: DB, ESI, §162(m)

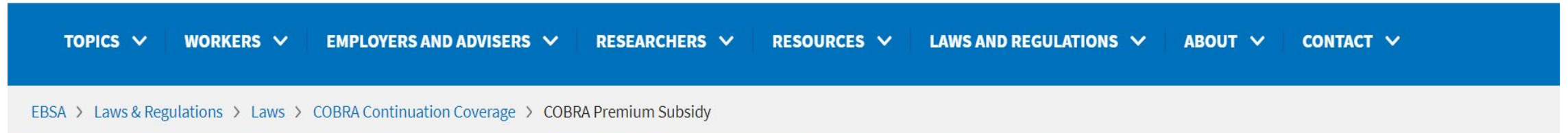
- Artificially reduced SE contributions
- ME pensioners made whole
- Solves ME plans' insolvency
- Subsidized COBRA premium
- 10 execs from 5



# First administrative task for employers under ARPA-21

<https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra/premium-subsidy>

COBRA Premium Subsidy | U.S. Department of Labor



# Federal Regulations



# Federal agencies regulations and enforcement

IRS, DOL, PBGC & HHS

- Electronic disclosure
- Missing participants
- Lifetime income safe harbor illustrations
- “Two-fer” for plan administration
  - Longer life expectancy tables
  - RMD to age 72 (at least in 2021)
- So many others, not enough time...



# Fiduciary Lawsuits

And examples of complaints

# Fiduciary lawsuits

97 filed in 2020

Fee and Investment Litigation 2015-2020

3. *Coviello v. BHS Management Services, Inc.*, No. 3-20-cv-30198 (D. Mass. Dec. 2020), ECF No. 1; *Harding v. Southcoast Hospitals Grp., Inc.*, No. 20-cv-12210 (Mass. Dec. 14, 2020), ECF No. 1; *Nicholson v. Wakemed*, No. 20-cv-00662 (E.D. Dec. 8, 2020), ECF No. 1; *Lafreniere v. R.R.Donnelley & Sons, Inc.*, No. 20-cv- (N.D. Ill. Dec. 3, 2020), ECF No. 1; *Milano v. Cognizant Tech. Solutions US C* No. 20-cv-17793 (D.N.J. Dec. 2, 2020), ECF No. 1; *Jones v. Coca-Cola Consolida Inc.*, No. 20-cv-0654 (W.D.N.C. Nov. 24, 2020), ECF No. 1; *Allison v. L Brands*, No. 20-cv-6018 (S.D. Ohio Nov. 23, 2020), ECF No. 1; *Matousek v. Midamer Energy Company*, No. 20-cv-00352 (S.D. Iowa Nov. 15, 2020), ECF No. 1; *Sla v. Meritor Inc.*, No. 20-cv-13047 (E.D. Mich. Nov. 13, 2020), ECF No. 1; *Gars Alticor, Inc.*, No. 20-cv-1078 (W.D. Mich. Nov. 9, 2020), ECF No. 1; *Callaway v Northern Trust Co.*, No. 20-cv-6497 (N.D. Ill. Nov. 2, 2020), ECF No. 1; *Sbu Quad/Graphics, Inc.*, No. 20-cv-1645 (E.D. Wis. Oct. 30, 2020), ECF No. 1; *Cui v. The Allstate Corp.*, No. 20-cv-6463 (N.D. Ill. Oct. 30, 2020), ECF No. 1; *Guj Nestle USA, Inc.*, No. 20-cv-1560 (E.D. Wis. Oct. 9, 2020), ECF No. 1; *Johnson v PNC Fin. Servs. Grp., Inc.*, No. 20-cv-1493 (W.D. Pa. Oct. 2, 2020), ECF No. 1; *L v. Faith Technol. Corp.*, No. 20-cv-1534 (E.D. Wis. Oct. 2, 2020), ECF No. 1; *Huang v. Trinet Inc.*, No. 20-cv-1534 (E.D. Wis. Oct. 2, 2020), ECF No. 1; *Peterson v. Insurance Co. of North America*, No. 20-cv-1534 (E.D. Wis. Oct. 2, 2020), ECF No. 1; *McGowan v. National Health Inc.*, No. 20-cv-1534 (E.D. Wis. Oct. 2, 2020), ECF No. 1; *Johnson v. Duke Energy Corp.*, No. 20-cv-00528 (W.D.N.C. 23, 2020), ECF No. 1; *Khan v. PTC Inc.*, No. 20-cv-11710 (D. Mass. Sept. 17, 2020), ECF No. 1; *Khan v. Board of Directors of Pentegra Defined Contribution Plan* 20-cv-7561 (S.D.N.Y. Sept. 15, 2020), ECF No. 1; *Pentegra Defined Contribution Plan*, No. 20-cv-7561 (S.D.N.Y. Sept. 15, 2020), ECF No. 1; *Campbell v. Prime Healthcare Servs.*, No. 20-cv-8888 (S.D. Cal. Sept. 11, 2020), ECF No. 1; *Rosenkrantz v. Altisource*, No. 20-cv-10111 (D.N.D. Sept. 9, 2020), ECF No. 1; *Bonicarolo v. Sutter Health*, No. 20-cv-00877 (Cal. Sept. 4, 2020), ECF No. 1; *McNeilly v. Spectrum Health System*, No. 20-cv- (W.D. Mich. Sept. 4, 2020), ECF No. 1; *Smith v. Sboe Show, Inc.*, No. 20-cv- (M.D.N.C. Sept. 3, 2020), ECF No. 1; *Gamble v. Biogen Inc.*, No. 20-cv-1162 (Mass. Aug. 31, 2020), ECF No. 1; *Tobias v. NVIDIA Corp.*, No. 20-cv-6081 (N.D. Aug. 28, 2020), ECF No. 1; *Nunez v. B. Braun Medical Inc.*, No. 20-cv-4195 (E.D. Aug. 26, 2020), ECF No. 1; *Walker v. iHeart Communications, Inc.*, No. 20-cv- (N.D. Tex. Aug. 19, 2020), ECF No. 1; *In re Prime Healthcare Servs., Inc. E Litig.*, No. 20-cv-1529 (C.D. Cal. Aug. 18, 2020), ECF No. 1; *Bailey v. LinkedIn C* No. 20-cv-5704 (N.D. Cal. Aug. 14, 2020), ECF No. 1; *Woznicki v. Aurora H Care, Inc.*, No. 20-cv-1246 (E.D. Wisc. Aug. 14, 2020), ECF No. 1; *Glick v. Theda Inc.*, No. 20-cv-1236 (E.D. Wisc. Aug. 12, 2020), ECF No. 1; *Corcoran v. Everse Energy Service Co.*, No. 20-cv-1154 (D. Conn. Aug. 11, 2020), ECF No. 1; *Lan Infinity Healthcare Physicians, S.C.*, No. 20-cv-0737 (W.D. Wisc. Aug. 7, 2020), ECF No. 1; *Marvin v. Mercy Health Corp.*, No. 20-cv-50293 (N.D. Ill. Aug. 6, 2020), ECF No. 1; *Hill v. Mercy Health Corp.*, No. 20-cv-50286 (N.D. Ill. Aug. 4, 2020), ECF No. 1; *Watson v. Medstar Health, Inc.*, No. 20-cv-2250 (D. Md. Aug. 4, 2020), ECF No. 1; *Maisonette v. Omnicom Grp., Inc.*, No. 20-cv-6007 (S.D.N.Y. July 31, 2020), ECF No. 1; *Rice v. Quest Diagnostics Inc.*, No. 20-cv-9540 (D.N.J. July 28, 2020), ECF No. 1; *Gandy v. Estee Lauder*, No. 20-cv-5779 (S.D.N.Y. July 24, 2020), ECF No. 1; *Sargony v. Sutter Health*, No. 20-cv-1007 (E.D. Cal. July 21, 2020), ECF No. 1; *Gonzalez v. Northwell Health, Inc.*, No. 20-cv-3256 (E.D.N.Y. July 21, 2020), ECF No. 1; *Kinder v. Koch Industries*, No. 20-cv-2973 (N.D. Ga. July 16, 2020), ECF No. 1; *Nobara v. Prevea Clinic, Inc.*, No. 20-cv-1079 (E.D. Wis. July 16, 2020), ECF No. 1; *Covington v. Biogen Inc.*, No. 20-cv-11375 (D. Mass. July 14, 2020), ECF No. 1; *O'Driscoll v. Plexus Corp.*, No. 20-cv-1065 (E.D. Wis. July 14, 2020), ECF No. 1; *Cotter v. Matthews Int'l*, No. 20-cv-1054 (E.D. Wis. July 13, 2020), ECF No. 1;

Six law firms filed 85 of the 97 cases  
Many are “copycat”

Fee and Investment Litigation 2015-2020

*Crauford v. CDI Corp.*, No. 20-cv-3317 (E.D. Pa. July 7, 2020), ECF No. 1; *Reed v. Medstar Health, Inc.*, No. 20-cv-1984 (D. Md. July 6, 2020), ECF No. 1; *Smith v. Commonsprout Health*, No. 20-cv-95 (E.D. Ky. July 2, 2020), ECF No. 1; *Miller v. Astellas US LLC*, No. 20-cv-3882 (N.D. Ill. July 1, 2020), ECF No. 1; *Garibwait v. Eversource Energy Serv. Co.*, No. 20-cv-00902 (D. Conn. June 30, 2020), ECF No. 1; *McIntire v. Psysbex, Inc.*, No. 20-cv-6445 (W.D.N.Y. June 30, 2020), ECF No. 1; *Johnson v. Quest Diagnostics Inc.*, No. 20-cv-7936 (D.N.J. June 29, 2020), ECF No. 1; *Kong v. Trader Joe's Co.*, No. 20-cv-05790 (C.D. Cal. June 29, 2020), ECF No. 1; *Soulele v. Costco Wholesale Corp.*, No. 20-cv-937 (E.D. Wisc. June 23, 2020), ECF No. 1; *Bilello v. Estee Lauder, Inc.*, No. 20-cv-4770 (S.D.N.Y. June 23, 2020), ECF No. 1; *Dearing v. IQVIA, Inc.*, No. 20-cv-0574 (M.D.N.C. June 23, 2020), ECF No. 1; *Dover v. Yanfeng US Automotive Interior Systems, I LLC*, No. 20-cv-11643 (E.D. Mich. June 23, 2020), ECF No. 1; *Albert v. Olin Corp.*, No. 20-cv-0901 (E.D. Wisc. June 16, 2020), ECF No. 1; *Johnson v. Quest Diagnostics Inc.*, No. 20-cv-7936 (D.N.J. June 15, 2020), ECF No. 1; *Johnson v. Quest Diagnostics Inc.*, No. 20-cv-7936 (D.N.J. June 15, 2020), ECF No. 1; *Stare v. KeyCorp.*, No. 20-cv-01254 (N.D. Ohio June 4, 2020), ECF No. 1; *Luense v. Konica Minolta Business Solutions U.S.A., Inc.*, No. 20-cv-6827 (D.N.J. June 4, 2020), ECF No. 1; *Tepper v. Omnicom Grp., Inc.*, No. 20-cv-4420 (S.D.N.Y. June 4, 2020), ECF No. 1; *Parmer v. Land O'Lakes, Inc.*, No. 20-cv-4420 (S.D.N.Y. June 4, 2020), ECF No. 1; *Turner v. Schneider Elec. Holdings*, No. 20-cv-1569 (S.D. Mass. May 26, 2020), ECF No. 1; *Gerken v. Mantech Int'l Corp.*, No. 20-cv-0350 (E.D. Va. May 15, 2020), ECF No. 1; *Kennedy v. Aegis Media Am., Inc.*, No. 20-cv-3624 (S.D.N.Y. May 8, 2020), ECF No. 1; *Berkelhammer v. ADP TotalSourceGrp., Inc.*, No. 20-cv-5696 (D.N.J. May 7, 2020), ECF No. 1; *McCaffree Fin. Corp. v. ADP, Inc.*, No. 20-cv-5492 (D.N.J. May 4, 2020), ECF No. 1; *Santiago v. Univ. of Miami*, No. 20-cv-21784 (S.D. Fla. Apr. 29, 2020), ECF No. 1; *Clark v. Cerner Corp.*, No. 20-cv-2194 (D. Kans. Apr. 14, 2020), ECF No. 1; *Kendall v. Pharmaceutical Product Development, LLC*, No. 20-cv-0071 (E.D.N.C. Apr. 15, 2020), ECF No. 1; *Ahmed v. Liberty Mut. Grp., Inc.*, No. 20-cv-30056 (D. Mass. Apr. 10, 2020), ECF No. 1; *Sweeney v. Nationwide Mut. Ins. Co.*, No. 20-cv-1569 (S.D. Ohio Mar. 26, 2020), ECF No. 1; *Edwards v. Nationwide Mut. Ins. Co.*, No. 20-cv-1525 (S.D. Ohio Mar. 24, 2020), ECF No. 1; *Becker v. Wells Fargo & Co.*, No. 20-cv-1803 (N.D. Cal. Mar. 13, 2020), ECF No. 1; *West v. BOKF, N.A.*, No. 20-cv-0101 (N.D. Okla. Mar. 12, 2020), ECF No. 1; *Davis v. Salesforce.com, Inc.*, No. 20-cv-1753 (N.D. Cal. Mar. 11, 2020), ECF No. 1; *Roban v. Saint Luke's Health Sys., Inc.*, No. 20-cv-0179 (W.D. Mo. Mar. 10, 2020), ECF No. 1; *Silva v. Evonik Corp.*, No. 20-cv-2202 (D.N.J. Feb. 28, 2020), ECF No. 1; *Baker v. John Hancock Life Ins. Co.*, No. 20-cv-10397 (D. Mass. Feb. 27, 2020), ECF No. 1; *Cbiappa v. Cumulus Media, Inc.*, No. 20-cv-0847 (N.D. Ga. Feb. 26, 2020), ECF No. 1; *Kurtz v. Vail Corp.*, No. 20-cv-0500 (D. Colo. Feb. 24, 2020), ECF No. 1; *Pinnell v. Teva Pharmaceuticals USA, Inc.*, No. 19-cv-5738 (E.D. Pa. Feb. 8, 2020), ECF No. 1; *Glasscock v. Serco, Inc.*, No. 20-cv-0092 (E.D. Va. Jan. 28, 2020), ECF No. 1; *Harmon v. Shell Oil Co.*, No. 20-cv-0021 (S.D. Tex. Jan. 24, 2020), ECF No. 1; *Freck v. Cerner Corp.*, No. 20-cv-00043 (W.D. Mo. Jan. 21, 2020), ECF No. 1; *Buescher v. Brentnag North America, Inc.*, No. 20-cv-0147 (E.D. Pa. Jan. 8, 2020), ECF No. 1.

BENEFITS LAW JOURNAL

20

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# Fiduciary lawsuits

From 2015 to 2020

- Lawsuit settlements 2015-2020: ~\$1 billion
  - ~\$670 million for plaintiffs
  - ~\$330 million in legal fees
- Plan sponsors accused
  - Large Corporations (Lockheed, Home Depot)
  - Mid-sized (Konica-Minolta)
  - Universities (Vanderbilt, Georgetown, Duke)
  - Not for Profits (Spectrum Health System)
  - TPAs by participants (Fidelity, Vanguard, etc.)



*\*Source : Benefits Law Journal, Volume 34, No, 1 – with permission*

# Four examples of complaints

1

Index funds “higher fees/underperformance” as compared to plaintiffs’ handpicked comparable (“High” fee definition: \$3 per \$10,000 invested)

2

Stable value funds overlooked, favored capital preservation

3

“Alternative” and actively managed investments offered

4

Service providers use of participant data to market related services

*\*Source : Benefits Law Journal, Volume 34, No, 1 – with permission*

# News for fiduciaries on April 14<sup>th</sup> from DOL

<https://www.dol.gov/sites/dolgov/files/ebsa/key-topics/retirement-benefits/cybersecurity/best-practices.pdf>



**EMPLOYEE BENEFITS SECURITY ADMINISTRATION** UNITED STATES DEPARTMENT OF LABOR

## CYBERSECURITY PROGRAM BEST PRACTICES

ERISA-covered plans often hold millions of dollars or more in assets and maintain personal data on participants, which can make them tempting targets for cyber-criminals. Responsible plan fiduciaries have an obligation to ensure proper mitigation of cybersecurity risks.

The Employee Benefits Security Administration has prepared the following best practices for use by recordkeepers and other service providers responsible for plan-related IT systems and data, and for plan fiduciaries making prudent decisions on the service providers they should hire. Plans' service providers should:

1. Have a formal, well documented cybersecurity program.
2. Conduct prudent annual risk assessments.
3. Have a reliable annual third party audit of security controls.
4. Clearly define and assign information security roles and responsibilities.
5. Have strong access control procedures.
6. Ensure that any assets or data stored in a cloud or managed by a third party service provider are subject to appropriate security reviews and independent security assessments.
7. Conduct periodic cybersecurity awareness training.
8. Implement and manage a secure system development life cycle (SDLC) program.
9. Have an effective business resiliency program addressing business continuity, disaster recovery, and incident response.
10. Encrypt sensitive data, stored and in transit.
11. Implement strong technical controls in accordance with best security practices.
12. Appropriately respond to any past cybersecurity incidents.

# Legislative Outlook other than SECURE 2.0

Federal and state labor law changes coming to an employer plan near you

# Infrastructure proposal in less than four words

Plans impacted? What about NQPP?

- Effective in 2022?
- FICA increase over \$400,000?
- NQPP accelerated FICA recognition?





# Wrap Up

Impact of laws and regulations on plan sponsors

# The Real Wrap Up

## Employer Plan Administration



**Don't underestimate** the amount of administrative work necessary to meet the federal agency requirements

- Employers need to assess *mandatory vs. voluntary* compliance matters



### **Employer HR systems**

- Might need to be retooled
- Communication of changes to affected employees may need more than federal agency safe harbor language



Obstacles will come up as federal regulations are issued, which are more authoritative than federal notices from IRS or DOL

# Speculation

(in case we have time)

# Other Speculation

- No further changes to the funding (contribution) rules for DB plans
- Increase in corporate federal (or state) income tax rate could affect the timing of employer plan cash contributions to a specific tax year
- Overtime Pay threshold\* proposed increase from \$35,568 to \$82,732 by 2026 could increase retirement plan/labor costs
  - Will exempt employees become non-exempt (OT eligible)?
  - Definition of participants in your qualified plans



\*Source: Fair Labor Standards Act of 1938

# Other Speculation

## Employer mandate (ACA) and Form 1095-C encore?

- Employer's Penalty for not reporting to IRS = \$0
- Some states' tax filing laws still mandate such reporting

## State savings plans

- *If an employer has an eligibility waiting period,*

New state after-tax contribution plans may require proof of ERISA qualified savings plan exempting the need to provide access

- CalSavers decision in the 9th Circuit



# Appendix

SECURE 2.0 Details

# SECURE 2.0: House bill H.R. 2954

## Permissible auto escalation cap

- Safe harbor plans: 15%;
- Non-safe harbor plans: 10% prior to 2025, for 2025 and later years: 15%

## Allow 403(b) plans to invest in collective investment trusts

**Increase in RMD ages:** 72 to 73 in 2022; 73 to 74 in 2029, 74 to 75 in 2032.

## Retirement plan catch-up contributions must be made as ROTH contributions

- The special catch-up contributions permitted by reason of attaining age 50 must be made on a ROTH basis under 401(k) and 403(b)
- Catch up contributions for ages 62, 63 and 64 increase to \$10,000 (with COLA updates)

# SECURE 2.0: House bill H.R. 2954

## **Treatment of student loan payments as elective deferrals for purposes of matching contributions**

- Matching contributions to 401(k) or 403(b) plan to “qualified student loan payments” are permissible and will satisfy nondiscrimination testing and safe harbor rules
  - There must be consistency with current plan vesting schedule

## **Safe harbor for corrections of employee elective deferrals**

- Allows grace period of 9 ½ months after the end of the plan year in which mistakes were made to correct, without penalty, reasonable errors in administering automatic enrollment and automatic escalation features that are favorable to the participants

## **Long-term part-time workers 401k plan eligibility testing period**

- Two years instead of three years as enacted under the SECURE
- Pre-2021 service is disregarded for vesting purposes if the plan provides employer contributions for LT-PT employees (but is not required)



# SECURE 2.0: House bill H.R. 2954

## Recovery of retirement plan overpayments

- Permits retirement plan fiduciaries to decide to not recover overpayments mistakenly made to retirees.
  - Limitations and protections on the amount of the recovery would apply where fiduciaries choose to recover the overpayments.
- Retiree rollovers of overpayments would remain valid.

## Performance benchmarks for target date funds

- DOL is directed to modify its regulations so that an investment that uses a mix of asset classes can be benchmarked against a blend of broad-based securities market indices.

## Unenrolled employees

- Unenrolled employees (eligible employees not electing to participate in the employer savings plan) would cease to be required to receive plan notices other than an annual reminder notice of the participation eligibility

# SECURE 2.0: House bill H.R. 2954

## Reporting and disclosure requirements recommendations

- Treasury, DOL and PBGC must review the current ERISA and IRC reporting and disclosure requirements and make recommendations to Congress 18 months after the date of enactment to consolidate, simplify, standardize and improve such requirements.

## Retirement savings lost and found

- Data that employers are already required to report to Treasury will be used create a national, online lost and found for Americans' retirement accounts.
- The cash-out limit increases to \$6,000 from \$5,000
- Directs DOL to issue regulations on what plan fiduciaries need to do to satisfy their fiduciary duties in trying to find missing participants.

# SECURE 2.0: House bill H.R. 2954

## Self-correction of inadvertent plan and IRA violations

- All inadvertent errors can self-correct under EPCRS without a submission to the IRS
  - Exception: if the IRS discovers any violation on audit and the employer has not at that point taken actions that demonstrate a commitment to correct the violation.

## Exclusion of certain disability-related first responder retirement payments

- Allows first responders to exclude service-connected disability pension payments from gross income after reaching retirement age.

## Annual DC plan paper benefit statement

- For DC plans relying on the e-delivery regulations, unless a participant elects otherwise, the plan is required to provide a paper benefit statement at least once annually.

## Triennial DB plan paper benefit statement

- For DB plans relying on the e-delivery regulations, unless a participant elects otherwise, the statement that must be provided once every three years must be a paper statement.

# SECURE 2.0: House bill H.R. 2954

## Qualified birth or adoption distribution (QBAD)

- The period during which a QBAD may be repaid and qualify as a rollover contribution is changed to within three years of the date that the distribution was received.

## Self-certification of hardship

- Employees are permitted to self-certify that they have had an event that constitutes a deemed hardship for purposes of taking a hardship withdrawal from a 401(k) plan or a 403(b) plan.
- Codification of rule permitting self-certification that the amount of the distribution is not in excess of the need.

## Domestic abuse withdrawals

- Certain penalty-free withdrawals in the case of domestic abuse are permitted.

# SECURE 2.0: House bill H.R. 2954

## Retroactive amendments

- Certain retroactive amendments to increase benefits for a year to be made by the due date of the employer's tax return for that year.
- Excluded are matching contributions.

## Matching contributions permitted to be made on a Roth basis

- Employees may elect for some of all of their matching contributions in 401k or 403b to be treated as Roth contributions

## Plan amendment dates

- Plan amendments for HR 2954 must be made by the end of 2023
- HR 2954 also conforms the plan amendment dates under the SECURE Act, the CARES Act, and the Taxpayer Certainty and Disaster Tax Relief Act of 2020 to these new dates to the end of 2023

# Bonus Slide: Acronyms

- **DOL:** Department of Labor
- **Ed and Labor:** House Education and Labor Committee
- **EPCRS:** IRS Employee Plans Compliance Resolution System
- **ESI:** employer sponsored insurance (employer health insurance plans)
- **FICA:** Federal Insurance Contributions Act, i.e., the payroll tax of 6.2% for Social Security retirement benefits
- **FML:** Family Medical Leave
- **HELP:** Senate Health, Education, Labor and Pensions Committee
- **H.R. 2954:** House of Representatives bill #2954 from the Ways and Means Committee
- **LT-PT:** Long-time part-time employees in the SECURE Act
- **MEPs:** multiple employer plans
- **NQPP:** Non-Qualified Pension Plan
- **RMD:** Required minimum distribution
- **§162(m):** Internal revenue code section 162(m)



# Thank you

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# Health & Group Benefits: Strategic Considerations in Uncertain Times

2021 Client Conference

Garry Simmons

Tammy McAllister

MAY 19, 2021





# Presenters



**Garry Simmons**

Director  
Health & Group Benefits



**Tammy McAllister**

Regional Director  
Health & Group Benefits

# Agenda

**1**

**Improving the cost and quality of health care**

**2**

**Designing benefits to be more relevant**

**3**

**Pulling it all together**

# Improving the cost and quality of health care



# LIVE POLL

What are your TOP 2 benefits priorities in planning for 2022?

- a. Pharmacy spend
- b. Provider network solutions
- c. Chronic care management
- d. Communication strategy
- e. Leveraging data analytics
- f. Benefits administration/  
HR Efficiencies

# Pharmacy

Key concerns for Plan Sponsors



**Cost Management**

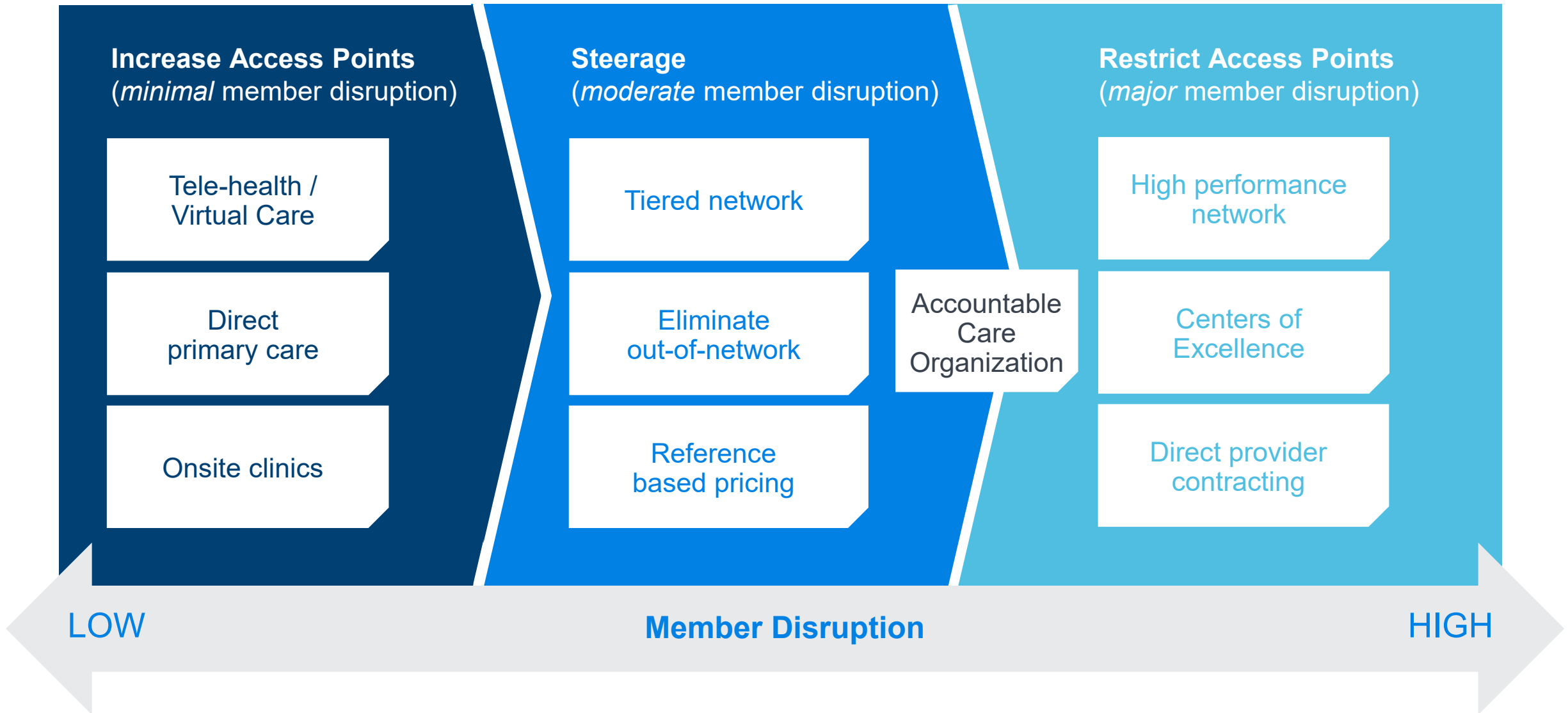


**Specialty Drugs**



**Price Transparency**

# Network Solutions



# Direct Primary Care

Expanding and driving access

## Key Elements

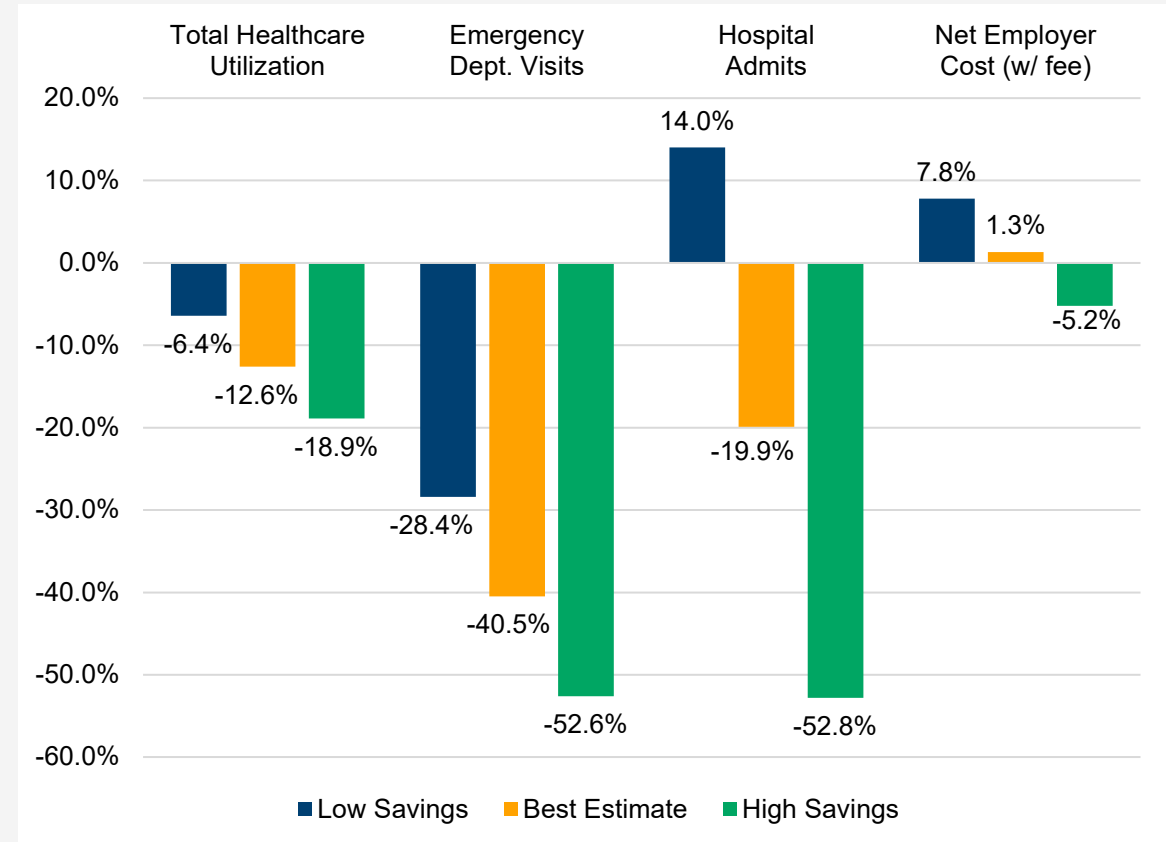
- Small patient panels – longer OVs
- Greater access to primary care/Rx
- Monthly PMPM fee structure
- Clinics often serve multiple employers
- Intended to reduce downstream healthcare costs

## Employer Considerations

- Define your objectives
- Clinic placement
- Benefit design – driving engagement
- Operational effectiveness
- Financial results

## Case Study

2,000 employees – 900 employees in a DPC model plan\*



\* Milliman Article: "Direct Primary Care: A unique healthcare solution for employers", April 2021

# Telehealth

- Cost efficiency, less down-time & lost production time
- Create appropriate incentives to drive engagement
- Convenience and enhanced member experience
- Consider expanded services delivered virtually
  - Mental health
  - Musculoskeletal
  - Cardiac
  - Diabetes
- We've gained momentum – need to maintain it





# Focused care management - finding the right mix of solutions

## Assessment

Based on data analytics, corporate goals and cultural alignment

1

2

## Digital Strategy



Chronic Care Management



Targeted Conditions  
(e.g., Preventing diabetes, MSK, cardiac)



Network Steering / COE



Decision Support / Cost Transparency



Emotional Wellbeing



Financial Wellbeing

3

## Advocacy and Guidance

4

## Improved Employee Outcomes & Experience

# Designing benefits to be more relevant



# LIVE POLL 2

What do you see as your employees' greatest concern today?

- a. Physical Wellbeing
- b. Emotional Wellbeing
- c. Financial Wellbeing
- d. Social Wellbeing

# Holistic Wellbeing

Programs that support all segments of employee needs



# Diversity

Programs that support all generations of employee needs



# Equity – Social determinants of health and health equity

Possible employer action steps to improve health equity

## Key Social Determinants

- Income
- **Healthcare**
- Transportation
- **Childcare**
- **Nutrition**
- Housing



### Healthcare

- Employee contributions tiered by income
- Tiered deductibles based on income
- Expanded access to virtual care / telehealth
- Onsite or near-site clinic model
- Offering medical coverage to all – including part-time.



### Childcare

- Dependent care FSA
- Onsite or near-site childcare centers
- Subsidized childcare
- Flexible work schedule or virtual work opportunities



### Nutrition

- Partner with local grocer for employee discount on nutritious foods
- Offer discounted (subsidized) grocery delivery services
- Bring local produce market onsite

# Inclusion

Your LGBTQ population deals with numerous issues that could result in needed care being avoided. Does your program create opportunities to overcome these challenges?

**Physical health**

**Transgender care**

**Inclusion support**



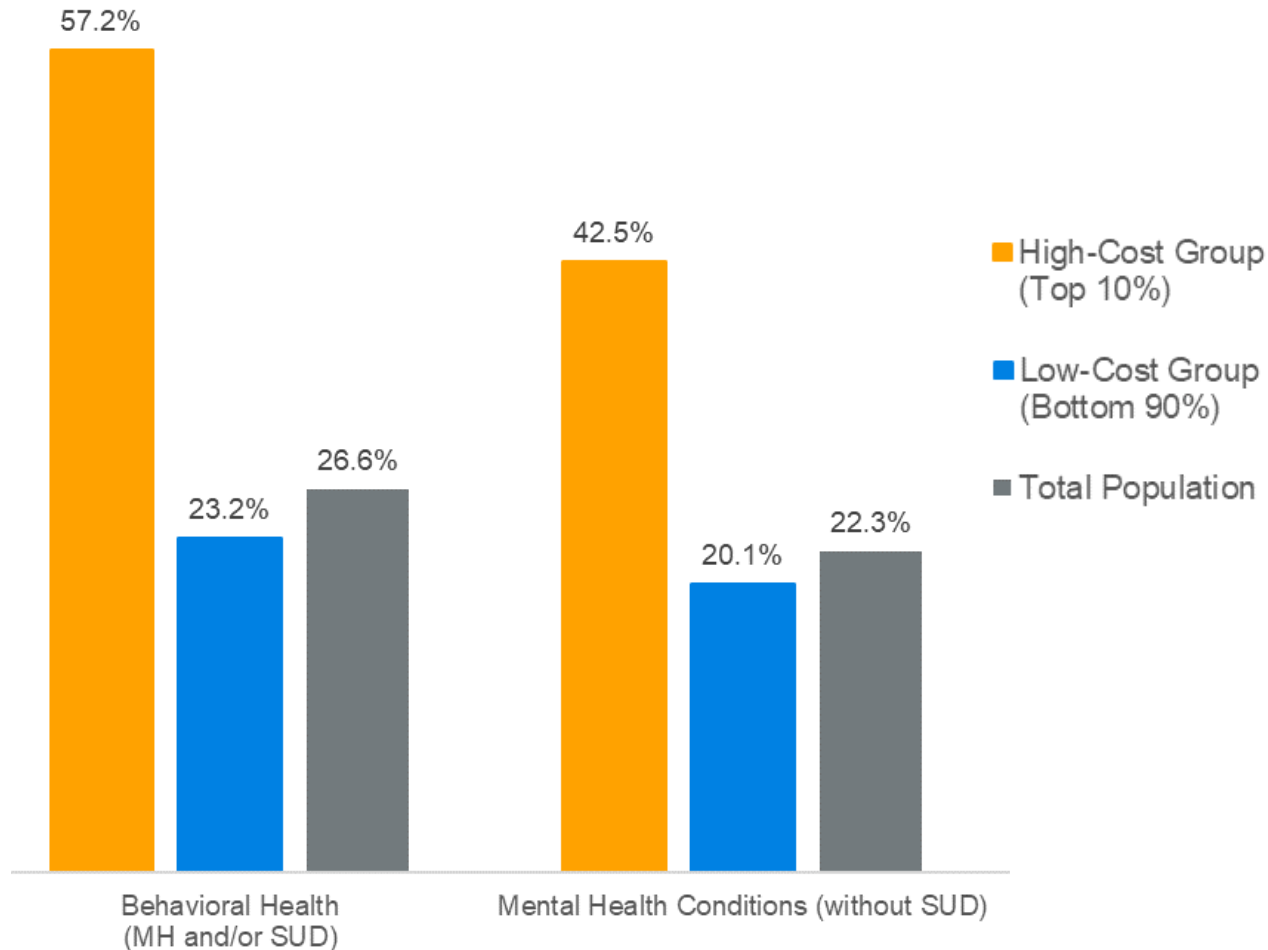
**Emotional wellbeing**

**Family planning**

**Benefits navigation**

# Emotional wellbeing – correlation with high-cost claimants

Milliman study\* of more than 21 million insured lives – Prevalence of behavioral health conditions in top 10% of most expensive claimants (“High-Cost Group”)



- **57.2%** (1.2 million lives) of this “high-cost group” had an identifiable Behavioral Health condition with **Mental Health** clearly predominant.
- This subset group was only 5.7% of the total population yet equated to **44%** of overall healthcare spend.
- In a risk adjusted comparison, those with an identified behavioral health condition had annual costs for Med/Surg treatment that were **3 to 3.5 times higher** than those without behavioral health conditions.

\* Milliman report (Aug 2020): “How do individuals with behavioral health conditions contribute to physical and total healthcare spending?”



# Emotional wellbeing

Comprehensive approach to addressing the issue

## Strategic Checklist

- ✓ Improve access to care
- ✓ Remove the stigma – lead from the top
- ✓ Communicate extensively to enhance early engagement of resources
- ✓ Focus on “collaborative care” provider networks through your carrier
- ✓ Compliance check – Parity Audit (quantitative and non-quantitative)

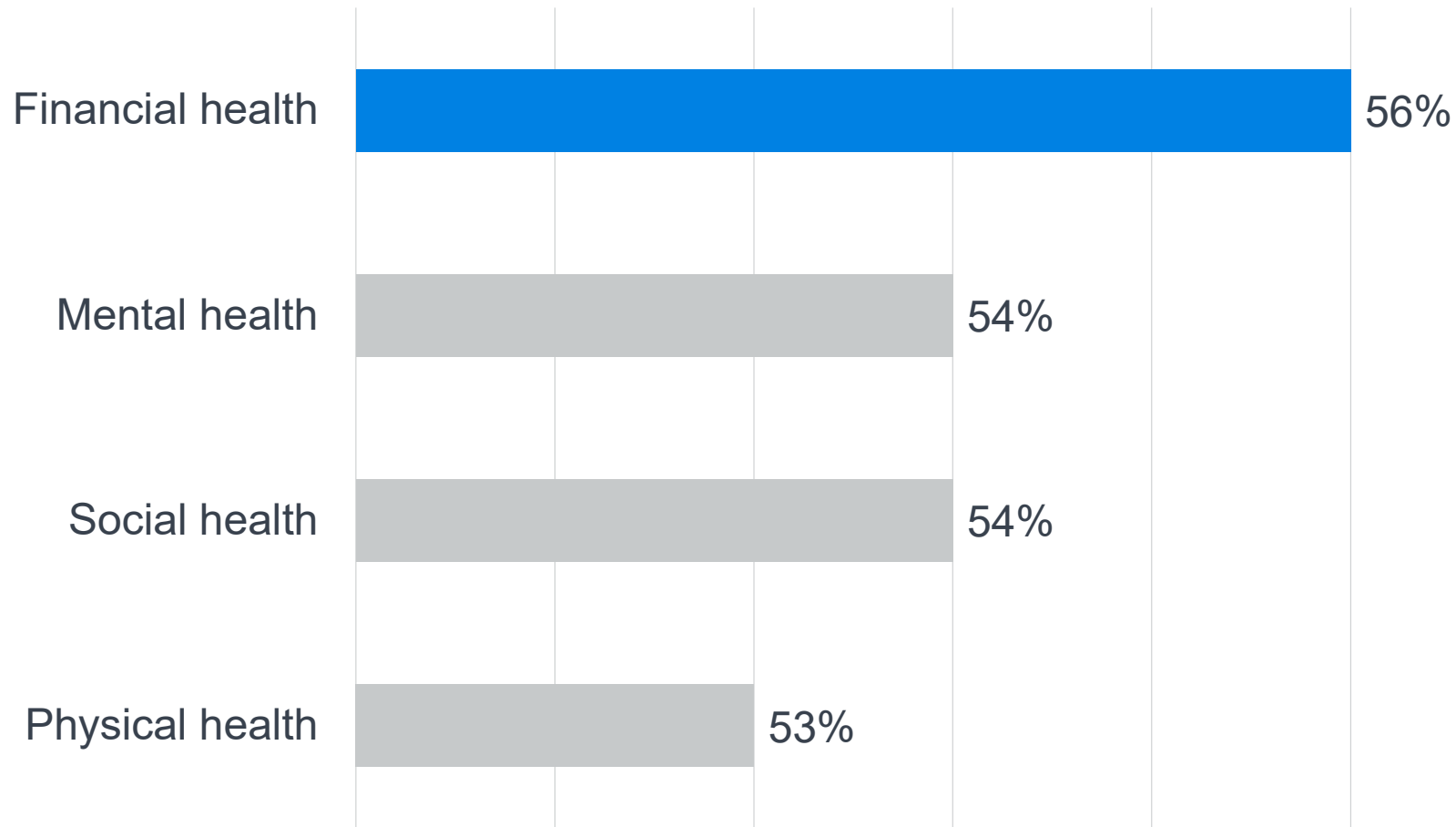


## Considerations

- Evaluate provider network alignment with collaborative care by market offered through your carrier/TPA
- Review third party digital solutions uniquely focused in this space
- Normalize the conversation in corporate communications – incorporate it into general discussion of healthcare and benefits

# Employee wellbeing priorities have shifted

Financial Health has been the greatest concern for employees during the COVID-19 pandemic and a top contributor to poor mental health



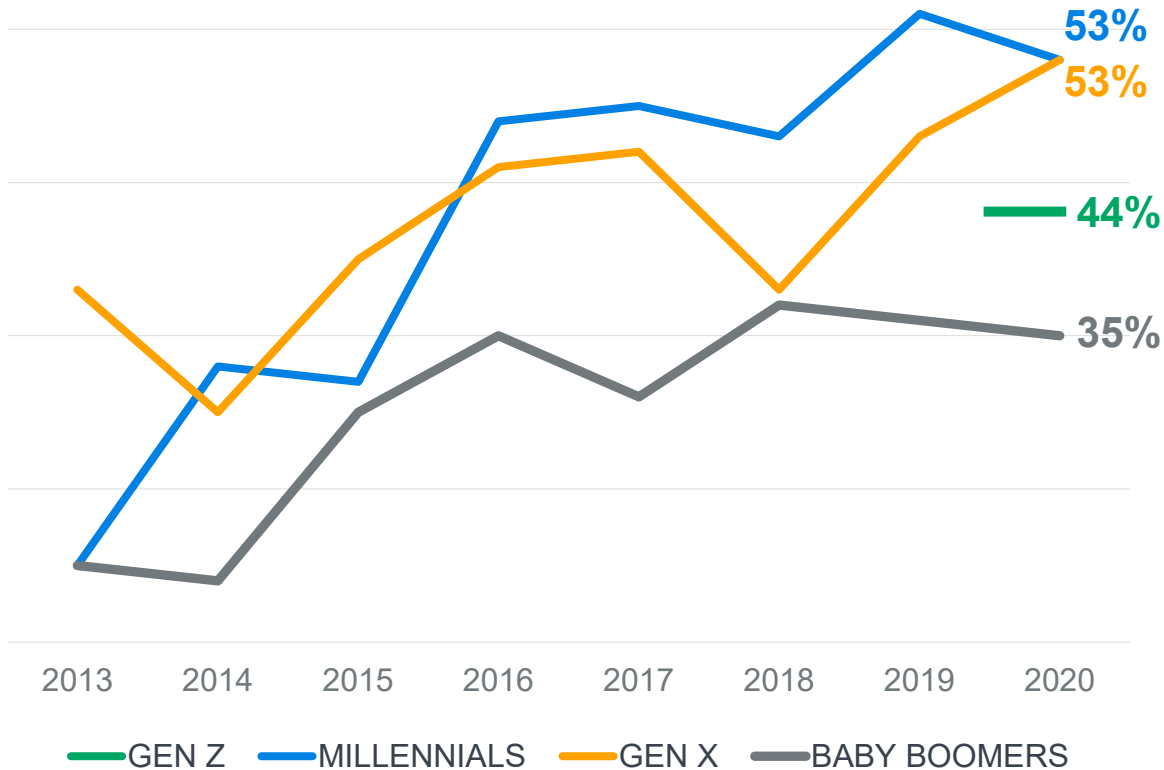
Percentage of employees that are concerned about these elements of wellbeing due to COVID-19

*\*MetLife's 19th Annual U.S. Employee Benefit Trends Study 2021*

# Financial wellbeing

## Integrating health and wealth

Employees who think it's likely they'll need to use money held in retirement plans for expenses other than retirement.

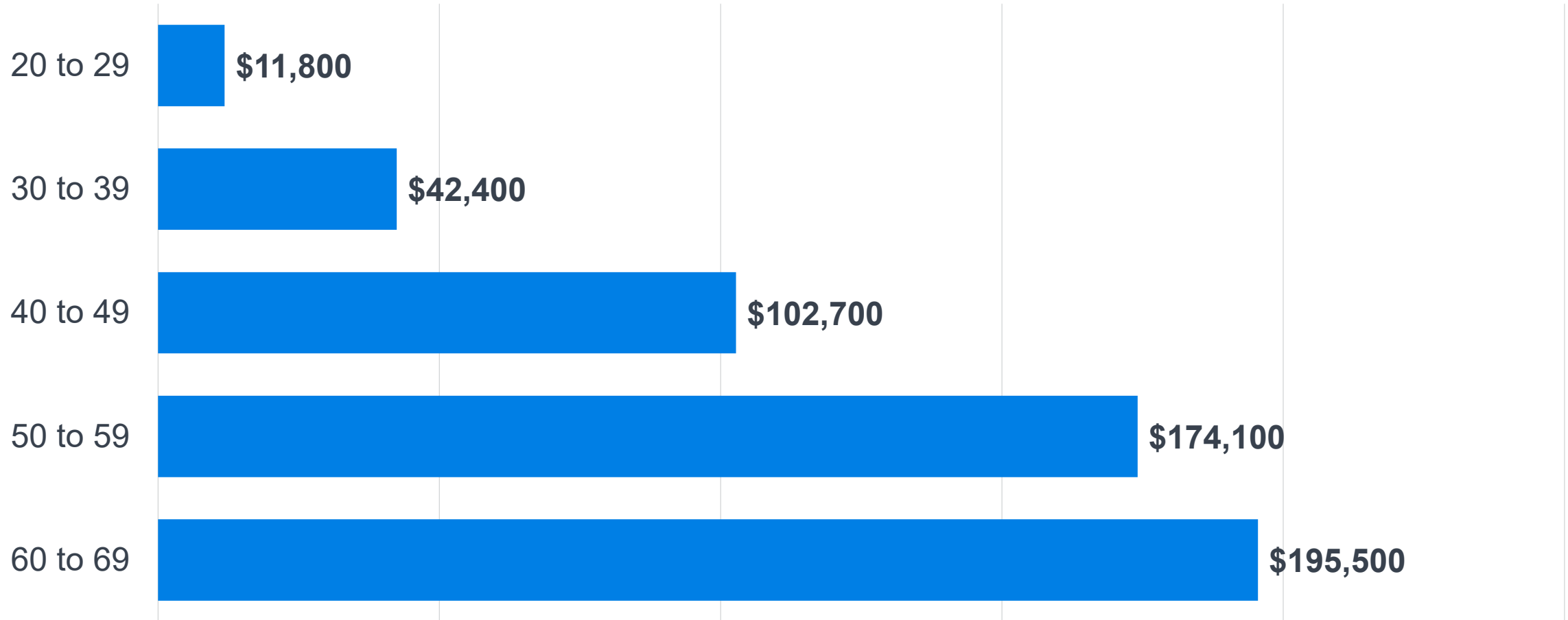


What is the main reason you think it's likely that you'll need to use money held in your retirement plans to pay for expenses other than retirement?

	GEN Z	MILLENNIAL	GEN X	BABY BOOMER
To deal with an unexpected medical expense	54%	55%	55%	49%
To pay medical bills	20%	21%	21%	22%
To pay off credit cards	7%	11%	10%	9%
To pay for education expenses	3%	4%	4%	2%
To buy a home	12%	6%	5%	2%
Other	4%	3%	6%	16%

# Financial wellbeing

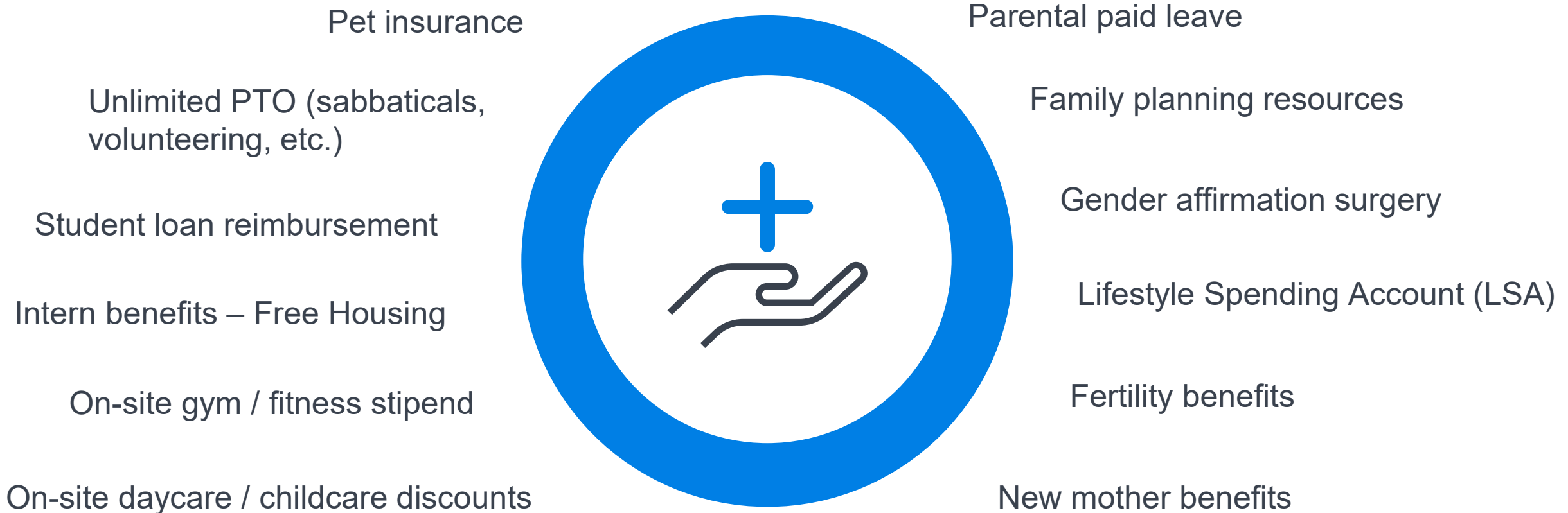
How much do Americans have in their employer-sponsored retirement plans?



Source: Fidelity study 2020

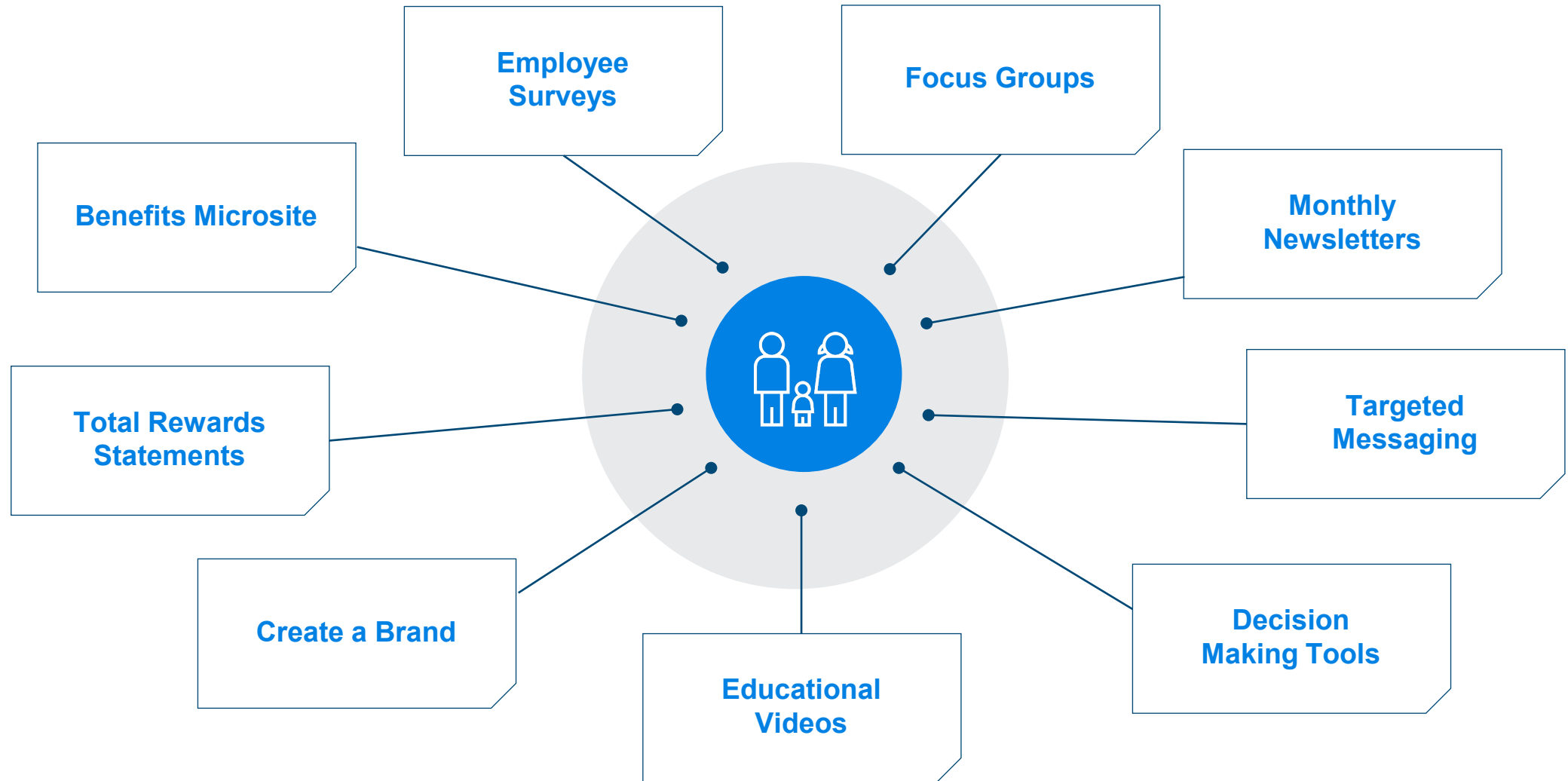
# Non-traditional benefits and programs

Build an inclusive benefits offering where every employee feels supported

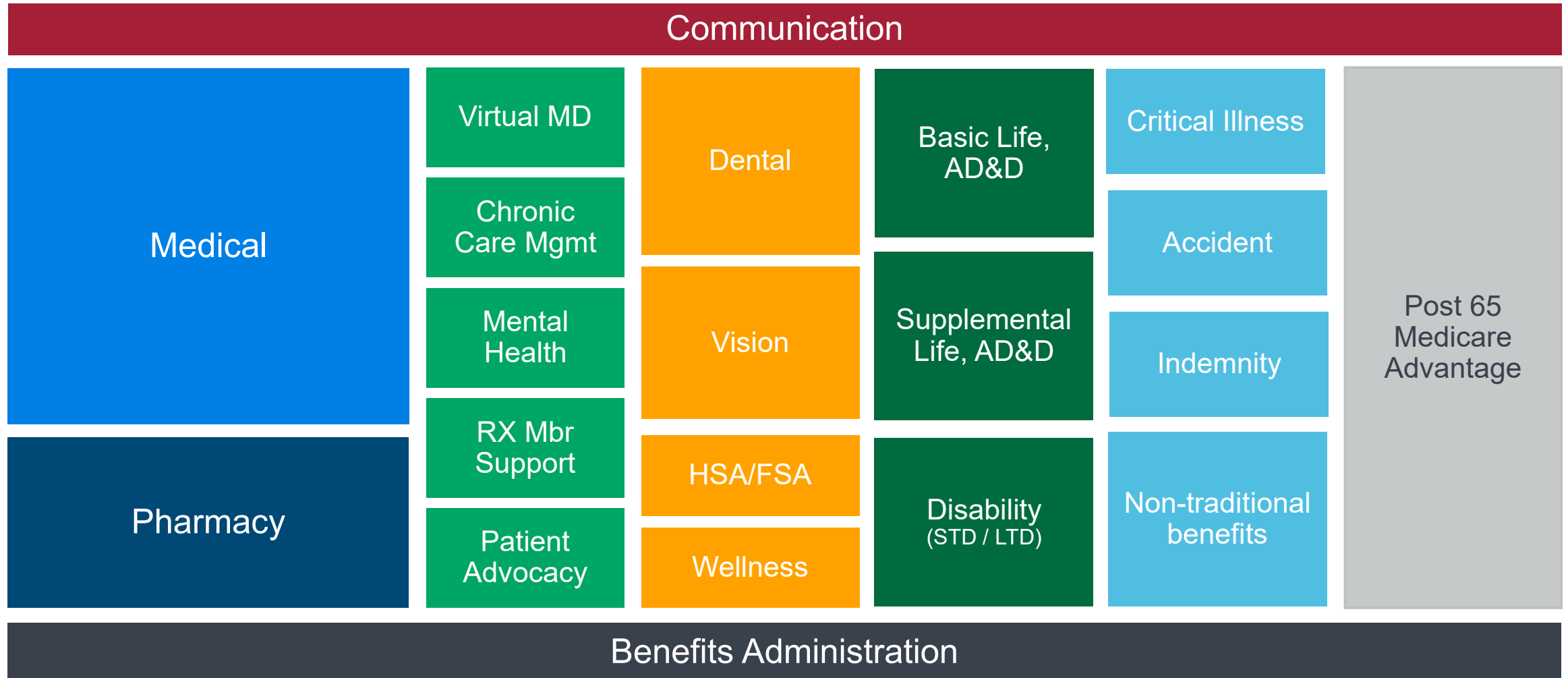


**Pulling it all together...**

# Communication Strategies to Drive Engagement



# Designing the perfect benefits program is its own challenge







# Thank you

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# Disability Insurance Update

2021 Client Conference

Daniel Skwire

MAY 19, 2021



# Contents

## Hot Topics in Disability

- COVID-19
- Paid Family and Medical Leave Expansion
- Outsourcing Leave Management

## Adding Value and Saving Cost

- Benefit Design
- Shared Contributions
- Auto-Enrollment
- Supplemental Benefits
- Pro Tips for RFPs and Market Checks

# Hot Topics in Disability

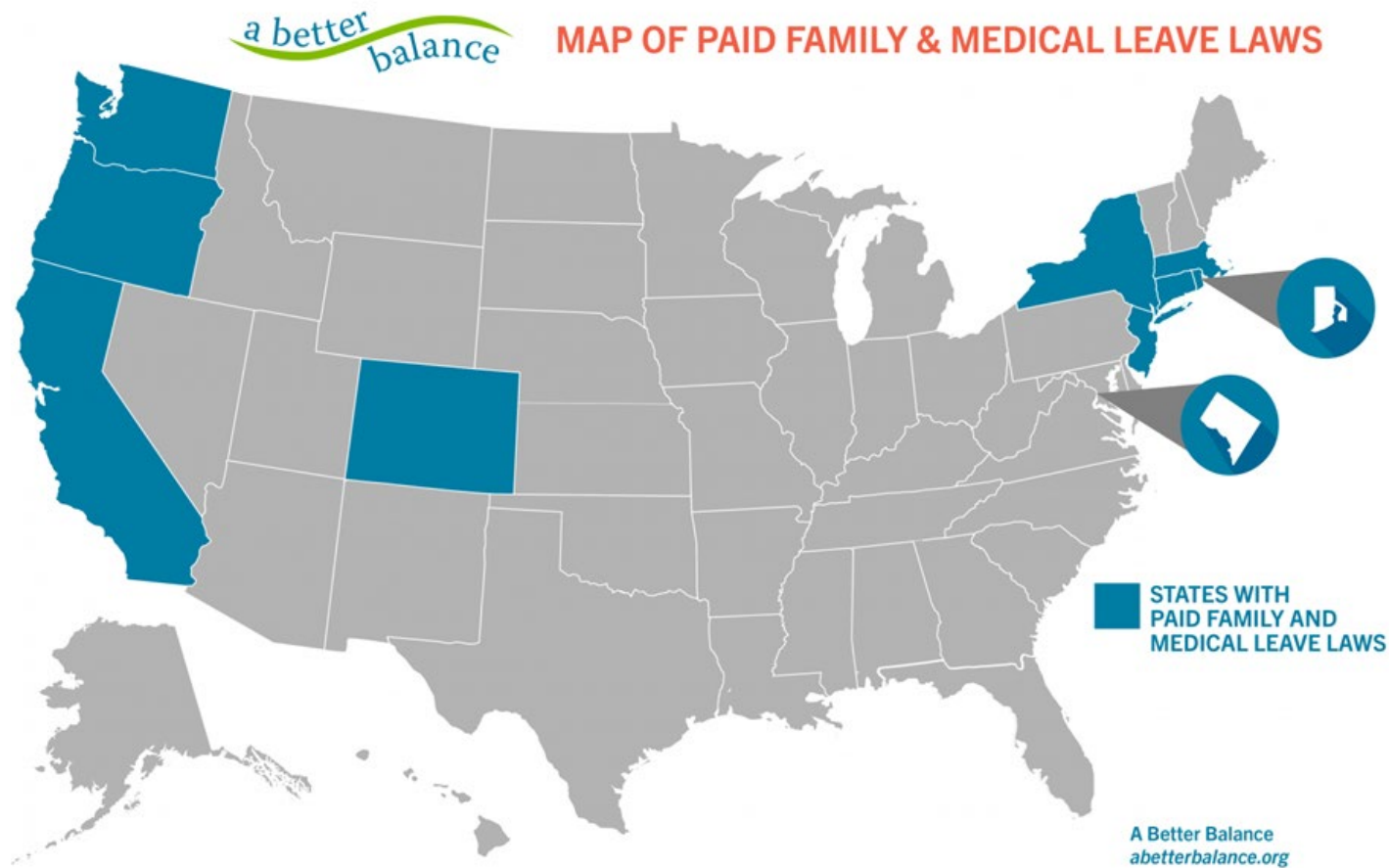
# The Impact of COVID-19

What have insurers and employers seen in their claim experience?

Product	Early Impact (Q1-Q2 2020)	Current Impact (Q3 2020 – Q1 2021)	Future (Q2 2021+)
SHORT-TERM DISABILITY	↓ Lower Claims	↑ Higher Claims	Reducing Impact
LONG-TERM DISABILITY	No Impact	Small Increase	Indirect Impact*
GROUP LIFE	↑ Higher Claims	↑ Higher Claims	Reducing Impact

\* Economic trends and impact of previously deferred care

# Expansion of Paid Family and Medical Leave



## Legend

- **Active:** CA, DC, NJ, NY, RI, WA
- MA (2021)
- CT (2022)
- OR (2023)
- CO (2024)

# Outsourcing Leave Management

Employers are increasingly outsourcing leave admin to deal with compliance and complexity

## Traditional Model



- Fully insured LTD
- Fully insured or self-insured STD
- Self-insured STD may or not have outsourced admin
- Employers administer all other leave programs



## Outsourced Model

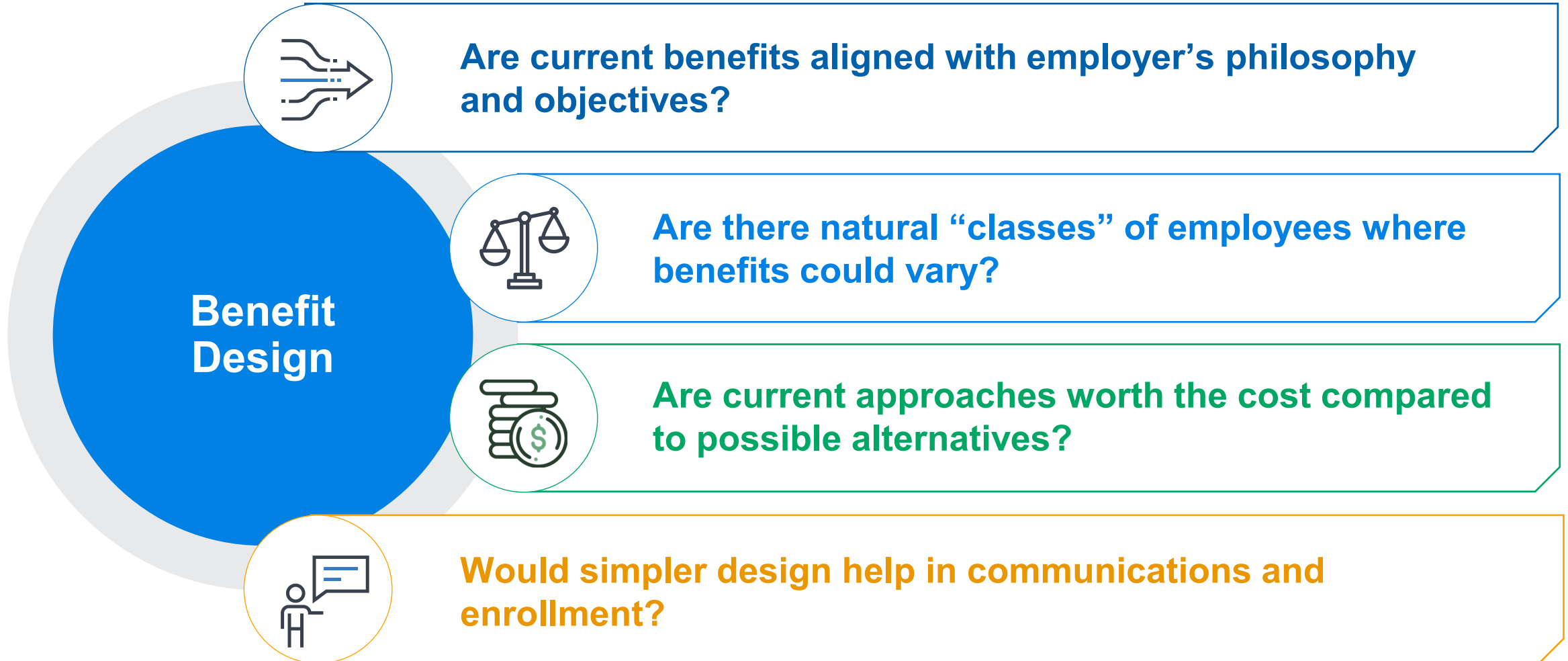
- Compliance issues pose a burden
  - FMLA, ADAAA, new leave laws
- Insurers building more complete leave systems and services
- Employers look to disability insurers or TPAs for help
- Significantly reduced burden for HR staff

**Adding Value and Saving Cost**



# Benefit Design

Consider the unique needs of your employees—not just the results of benchmarking studies



# Shared Contributions for Disability Plans

Three approaches to sharing long-term disability costs

## Traditional

- **ER Paid LTD:** 60% benefit to \$10,000
- **EE Paid LTD:** None

## Core-Buyup

- **ER Paid LTD:** 60% benefit to \$5,000
- **EE-Paid LTD:** 60% of the next \$10,000

## Supplemental Individual Plan

- **ER Paid LTD:** 60% benefit to \$10,000
- **EE-Paid Individual Disability:** 75% benefit to \$25K, minus existing group LTD

# Auto-Enrollment improves participation and lowers costs

## Enrollment Methods

- **Traditional Enrollment**  
Employees must take action to enroll.
- **Auto-Enrollment**  
Employees are enrolled by default and must take action to opt out.

## Case Study

Large hospital with voluntary LTD plan



- **Traditional enrollment** = 40% participation
- Introduced **auto-enrollment** for new hires
  - Total participation 40% → 55%
  - Insurer prospectively reduced rates by 5%
  - Now 80% of new hires participate each year
  - Received additional 5% rate decrease and expected to get another 5-10% soon

# Supplemental Benefits

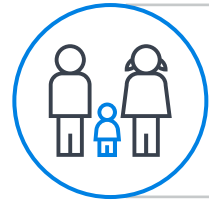
## Supplemental Benefits

Provides additional coverage paid for by the employee through payroll deduction

### Common benefits

- Accident insurance
- Critical illness
- Hospital indemnity benefits

## How it Helps



**Employees:** Helps fill in coverage gaps from core benefits, including high deductible medical plans



**Employers:** Minimal complexity, other than facilitating the payroll deductions

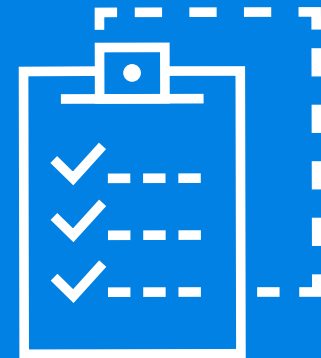


**Insurers:** Provides an additional source of revenue and margin, which can ease the pressure on pricing lower-margin core benefits

# Tips for RFPs and Market Checks

A little preparation goes a long way, but a lot of preparation goes even further...

- ☑ Determine your philosophy and objectives
  - Price? Service? Redesign?
- ☑ Have an implementation timeline in mind from the beginning of the process.
- ☑ Pre-qualify carriers with expertise in the right products, industry, and size category.
- ☑ Do your financial homework (or ask the actuary to help)!
- ☑ Consider the insurer's perspective and promote the positives.
- ☑ Don't just ask for lower premiums—**explain why** you deserve them.





# Thank you

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# Wrap-up



# LIVE POLL

Which is your preferred organization?

- American Association for Access, Equity and Diversity
- Facing History and Ourselves
- Human Rights Campaign



# Diversity, Equity, and Inclusion Non-profit Organizations



Advocate. Educate. Activate.



FACING  
HISTORY  
AND  
OURSELVES

Challenging teachers and their students to stand up to bigotry and hate.



HUMAN  
RIGHTS  
CAMPAIGN<sup>®</sup>

Equality for ALL not for some.



# Thank you

See you tomorrow at 9 am PT.