

Comprehensive Benefits & Retirement Planning

CAA 2021 | MHPAEA | OBBBA | SECURE 2.0 | Pension Surplus

Compliance | Governance | Litigation Awareness | Strategic Value

Anne Tyler Hall, Founder & Managing Partner, Hall Benefits Law

Alex Brucker, Of Counsel, Hall Benefits Law



ProVisors®

Tax Masters ProVisors Meeting | Hall Benefits Law | June 10, 2026

About Hall Benefits Law

- National ERISA and employee benefits law firm serving clients across all 50 states
- All-Partner attorney team: Atlanta, Philadelphia, New York, San Francisco, Los Angeles, Sacramento, Cleveland
- Expertise: health benefits, PBM oversight, retirement plans, executive compensation
- Representing plan sponsors across all plan types and industries

\$410M+

Penalty Abatements Since 2018

\$42M+

Negotiated Fee Savings Since 2022



Today's Speakers

Anne Tyler Hall

Founder & Managing Partner | Hall Benefits Law

athall@hallbenefitslaw.com

Health & Welfare | CAA | MHPAEA | PBM | OBBBA



Alex Brucker

"The ERISA Doctor"

Of Counsel | Hall Benefits Law

abrucker@hallbenefitslaw.com

Retirement | SECURE 2.0 | Pension Surplus | Expert Witness



Today's Themes: Compliance • Governance • Litigation Awareness • Strategic Value



The Four-Layer Risk Framework

Most organizations optimize only Layers 1-2. Layers 3-4 protect clients and create competitive advantage.

LAYER 4: STRATEGIC VALUE

Pension Surplus • SECURE 2.0 Design • Trump Accounts • LTPT

LAYER 3: LITIGATION RISK

155 Class Actions (2025) • \$350M+ Settlements • Governance = Defense

LAYER 2: FIDUCIARY GOVERNANCE

Committee Charter • Minutes • Training • Fee Reviews

LAYER 1: IMMEDIATE COMPLIANCE

OBBBA • MHPAEA • PBM • SECURE 2.0 Amendments



Health & Welfare Compliance

CAA 2021 • MHPAEA • NSA • OBBBA • PBM | Anne Tyler Hall

CAA 2021: The ERISA Fiduciary Realignment

- **Before CAA:** Group health fiduciary standards loosely defined; opaque broker/TPA compensation
- **After CAA:** Group health fiduciaries must meet same standards as retirement plan fiduciaries
- **408(b)(2) Disclosure Mandate:** Brokers, TPAs, and affiliates must disclose ALL direct and indirect compensation in writing before contract execution
- **Non-Disclosure = Prohibited Transaction:** Failure to provide disclosure exposes the arrangement to ERISA penalties
- **Fee Reasonableness Obligation:** Plan fiduciaries must solicit, evaluate, and document that fees are reasonable
- **J&J Litigation Signal:** Defense costs exceeded \$5M; participants sued alleging PBM overcharges — sponsor bore primary liability

Action: Obtain 408(b)(2) disclosures from all covered service providers • Establish annual fee reasonableness review process • Document decisions



CAA Transparency Mandates

1

Machine-Readable Files (MRFs)

Plans must publish monthly MRFs with negotiated rates for in-network services and historical OON payments. Effective 2022. Compliance requires verification with TPA.

2

Cost Transparency & ID Cards

Physical and electronic ID cards must display deductibles and OOP limits. Online cost-comparison tools must provide real-time estimate of enrollee cost-sharing.

3

Gag Clause Prohibition

Plans cannot restrict access to provider cost, quality, or claims data. Annual gag-clause attestation due December 31 each year. Review all TPA/insurer contracts.

4

RxDC Reporting

Plans must report annually: top 50 costliest drugs, total Rx spend, and rebate impact on premiums. Deadline: June 1 annually. Ensure PBM contract obligates data delivery.



No Surprises Act: Protections & the IDR Cost Crisis

- Effective Jan 1, 2022: Balance billing prohibited for emergency and ancillary OON services
- Patient pays in-network cost-sharing only; cost-sharing counts toward in-network deductible
- Advanced Explanation of Benefits (AEB) required after services scheduled
- Provider directories must be verified for accuracy every 90 days
- Plans must respond to network status inquiries within one business day

IDR CRISIS

2.7×

Average award vs. QPA benchmark

85%

Provider win rate (emergency IDR)

Action: Factor IDR/QPA assumptions into renewal budgets • Verify TPA indemnification clause for inaccurate directories



MHPAEA: Comparative Analysis & Compliance

- **CAA Requirement:** Plans must perform and document comparative analyses of NQTLs on MH/SUD vs. medical/surgical benefits
- **NQTLs Include:** Prior authorization, step therapy, residential limits, network adequacy, geographic restrictions

1	Identify	All NQTLs by benefit classification across all 6 categories
2	Document Design	Evidentiary standards, strategies, network composition criteria
3	Document Application	Utilization patterns, denial rates, wait times in practice
4	Comparative Analysis	Side-by-side: Is MH/SUD process comparable? Applied more stringently?
5	Document Findings	Conclusions, violations identified, individuals who performed analysis

DOL Enforcement: 59% violation rate in FY2024 (33 of 56 plans audited) • Presumption of non-compliance if analysis missing



NQTL Violations: Real Examples from DOL Audits

Prior Authorization Overreach

MH requires pre-auth for initial visit; medical screening does not

Design disparity — same service type, different gate

Network Adequacy Failure

MH average wait times 30-45+ days vs. medical 7-10 days

Operational disparity — network composition restricts access

Step Therapy Abuse

Psychiatric meds require fail-first; comparable medical treatments approved without prerequisites

Application disparity — NQTL more stringently applied to MH

Formulary Discrimination

Higher copays or prior auth tiers for psychiatric vs. medical medications

Design + application — cost-sharing disparity

Coverage Exclusions

Plans exclude autism behavioral therapy, residential treatment, IOP — no equivalent M/S exclusion

Categorical exclusion — most egregious violation type



DOL Audit Process & Defense Strategy

DOL Request

Routine request: produce comparative analysis — if missing, presumption of non-compliance applies immediately

Multi-Year Investigation

Complex plans face years-long reviews; data requests include claims, utilization, denial rates, network composition

45-Day Corrective Action

If violations found: submit corrective action plan within 45 days or face escalation

Mandatory Public Notice

Participant notification required if final noncompliance determined; Congress receives annual report of noncompliant plans

Best Defense: Engage ERISA counsel NOW for preventive comparative analysis • Document methodology • Demonstrate annual monitoring



Global Food Supply Chain Company DOL Investigation

Why it's important to engage proactive, strategic ERISA counsel.

- **DOL Audit Trigger:** Grandfather status of Acquired Company health plan
- **Key Issue:** Handling of health plan discounts for non-smokers
- **Additional DOL Audit Focus:**
 - NQTL ((Non-Quantitative Treatment Limitations) Comparative Analyses
 - Network Provider Accuracy Issues
- **Key Legal Strategy:** Recast discounts as credits
- **DOL Fine Abatement:** \$330MM+
- **After the Abatement:** HBL renegotiated the company's PBM (Pharmacy Benefit Manager) agreement, saving them approximately **\$1.05MM/yr**. They continue to engage HBL as their strategic ERISA counsel.



PBM Oversight: A Fiduciary Duty

Big 3 PBMs (Express Scripts/Cigna, CVS Caremark, OptumRx/UnitedHealth) control ~80% of U.S. prescriptions — vertically integrated with insurers and specialty pharmacies

- **Structural Conflict:** Own the insurer, PBM, and specialty pharmacy — financial incentives favor higher-cost brand drugs
- **Fiduciary Reality:** Plan sponsor (not PBM) is primary ERISA fiduciary; duty to monitor PBM performance cannot be delegated
- **Audit Rights (Non-Negotiable):** Claims data, rebate pass-through, acquisition costs, and spread pricing must all be auditable by plan sponsor
- **Annual Monitoring Required:** Review key metrics, benchmarking, network performance — document the process annually
- **J&J Case:** Defense costs exceeded \$5M; court confirmed plan sponsor bore monitoring duty — not the PBM
- **Legislative Reform:** DRUG Act, clawback bans, flat-dollar fee models, mandatory transparency reporting — landscape shifting in 2026-2027

Action: Work with ERISA counsel to review PBM contract for explicit audit rights • Request rebate pass-through data • Benchmark performance • Document annual oversight



OBBBA: Health Benefits Modernization Act

Telehealth Permanence

Effective Jan 1, 2025

First-dollar coverage permissible for HDHP/HSA; covers all remote care (behavioral, urgent, chronic conditions)

Trump Accounts

Effective July 4, 2026

\$1,000 gov't seed + up to \$2,500 employer contribution; \$5,000 annual cap; penalty-free emergency withdrawals

Direct Primary Care (DPC)

Effective Jan 1, 2026

Monthly DPC fee (\$50-\$150) no longer disqualifies HSA eligibility; compatible with HDHP pairing

FSA Limit Increases

Effective Jan 1, 2026

Dependent Care FSA: \$7,500 (from \$5,000) • Medical FSA: \$3,750 (from \$2,500) • Indexed annually going forward

Action by June 30, 2026: Plan document amendments • SPD updates • Payroll system configuration
• Open enrollment materials



Achieving Bottom Line Savings

\$42M+

Negotiated Fee Savings Since 2022

\$410M+

Penalty Abatements Since 2018

Currently generating \$12MM+ in annual savings for our clients.

Action: Work with ERISA counsel to negotiate TPA and PBM agreements. Establish consistent compliance and governance processes to buttress the organization and mitigate fiduciary risk.



ERISA Fiduciary Governance & Retirement Plans

SECURE 2.0 • Fiduciary Litigation • Best Practices | Alex Brucker

ERISA Fiduciary Responsibilities: The Five Pillars

Exclusive Benefit

Act solely in the interest of participants and beneficiaries; cannot benefit self or employer at participants' expense

Prudent Expert Standard

Care and diligence of a prudent person familiar with such matters; courts examine PROCESS — not just outcomes

Diversification

Diversify investments to minimize risk of large losses; exception only when clearly imprudent to do so

Plan Adherence

Follow plan document terms unless inconsistent with ERISA; cannot amend plan unilaterally or inconsistently

Disclosure

Provide all ERISA-required disclosures to participants on a timely and accurate basis: SPD, statements, fee disclosures

These five pillars are the legal standards courts apply when evaluating ERISA fiduciary breach claims — not abstract principles.



The ERISA Litigation Explosion: By the Numbers

155

ERISA class actions
filed in 2025

64%

Surge in excessive
fee cases (2024-2025)

\$350M+

Settlements paid
in 2023-2024

1 in 4

Large 401(k) plans
sued in past 10 years

Defense costs: \$500K-\$750K minimum even if plan prevails • Complex cases: \$2-5M+ in legal fees
• Timeline: 3-5 years



Emerging ERISA Litigation Theories: 2024-2025

- **Forfeiture Claims:** Unvested employer contributions must offset plan fees, not be reallocated to future contributions — emerging theory creating new exposure
- **Stable Value Fund Cases:** 27 lawsuits filed in 2025; crediting rates allegedly below market alternatives; risks plan fiduciaries who selected SV funds
- **Cunningham Impact:** Supreme Court (2024) lowered bar for prohibited transaction claims — opens door to new categories of ERISA challenges
- **Prohibited Transaction Wave:** New class actions expected to surge in 2026 as litigation bar continues to lower; advisor and consultant exposure included
- **Pattern:** What courts are willing to accept as breach theory is expanding — fiduciary governance investment is now more critical than ever

Implication: Consultants and brokers can be named defendants • Even one-time advice may create fiduciary exposure • Document all recommendations



Fiduciary Best Practices: Defensible Governance

01 Committee Charter

Written document defining structure, composition, allocation of responsibilities, and meeting frequency. Creates clear governance roles and prevents ad hoc decisions.

02 Formal Meeting Minutes

Document EVERY meeting — decisions, alternatives considered, data reviewed, conflicts disclosed. This is the evidentiary record courts examine in ERISA litigation.

03 Annual Fiduciary Training

Mandatory for all committee members; required before new members cast their first vote. Documents understanding of duties. Eliminates “I didn’t know” defense in litigation.

04 Continuous Investment Monitoring

Review every fund against benchmarks annually (Hughes standard). Document the review. “Set and forget” is imprudent per ERISA and leaves you exposed to excessive fee claims.

05 Annual Fee Reasonableness Reviews

Annual benchmark; RFP every 3-5 years; document findings

Governance = Litigation Defense. Courts examine these five elements. Plans with strong governance prevail; plans without them settle.



SECURE 2.0: Staggered Implementation Timeline

2023-2024 <i>Already In Effect</i>	2025 <i>In Effect Now</i>	Jan 1, 2026 <i>⚠ CRITICAL</i>	Dec 31, 2026 <i>⚠ HARD DEADLINE</i>
RMD excise tax 50%→25% Roth accounts: no lifetime RMD Cashout limit raised to \$7K Student loan matching Emergency savings (\$1K/yr)	Super Catch-Up (ages 60-63) Auto-enrollment (new plans) LTPT: 500 hrs / 2 years Pension-linked emergency savings	ROTH CATCH-UP MANDATE High-earner catch-up MUST be Roth-only Payroll changes required NOW	ALL PLAN AMENDMENTS DUE BY THIS DATE Missing = operating in violation

Critical: Roth catch-up payroll system changes must be COMPLETE by December 31, 2025 — not after the January 1, 2026 effective date.



DOL Fiduciary Rule: The Regulatory Environment

- **Biden Rule (2024):** Stayed by Texas federal court in July 2024; Trump DOL withdrew the appeal — rule is currently blocked
- **Current Law:** 1975 five-part test governs; one-time advice generally not fiduciary — major gap in protection
- **Rollover Gap:** ~\$700B rolled from plans into IRAs in 2022 with no fiduciary standard applied to the recommendation
- **Expected:** Trump DOL may propose replacement rule by May 2026 — likely less stringent but with some best-interest language
- **Best Practice Regardless of Rule:** Apply best-interest standards to all advice; document process; litigation risk remains elevated

Regulatory uncertainty ≠ No liability: ERISA fiduciary litigation occurs regardless of whether a formal “fiduciary rule” applies.



Unlocking Trapped Capital in Defined Benefit Pensions

The Strategic Playbook for Surplus Management | Alex Brucker

The Pension Surplus Opportunity

- **Surplus** = Plan assets exceed Projected Benefit Obligation (PBO) — the present value of all future benefits earned to date
- **ERISA Exclusive Benefit Rule:** Surplus assets are legally dedicated to participants — creating a “trapped capital” constraint
- **Three Pillars of Overfunding:** Investment returns, interest rate environment, and demographic assumptions
- **Interest Rate Leverage:** Most powerful lever — rising rates shrink PBO because fewer dollars are needed today to fund future promises
- **2026 Environment:** Elevated discount rates maintain surpluses in many plans — favorable window for strategic planning

Rates ↑ = Surplus ↑

Discount rate +1%
= PBO shrinks
= Surplus grows

126.4%

Avg. funded status of
large DB plans (2024)

Strategic Urgency: Many employers sit on significant untapped capital. Rates may not stay elevated. Now is the time to model scenarios and develop a strategy.



Strategic Pathways for Surplus Deployment

Section 420 Transfers	QRP 401(k) Transfer	Benefit Enhancements	M&A Plan Merger	Direct Reversion
0% Tax	20% Tax	0% on Increase	0% Tax	50% Tax
Transfer pension assets to fund retiree medical and life insurance. No excise tax. Addresses major unfunded liability.	Transfer 25% of surplus to 401(k). Reduces excise on remaining withdrawal from 50% to 20%. Best for large surpluses.	Pro-rata increases via COLAs, lump-sum options, survivor benefits. No excise on the enhancement portion.	Overfunded buyer offsets underfunded target. Effectively reduces acquisition cost by the surplus amount.	LAST RESORT ONLY. Triggers 50% excise tax + 20% withholding. Net value: ~22 cents per dollar.

Optimal Strategy: Layer multiple pathways. Example: Section 420 addresses retiree health (0%) + QRP enhances 401(k) (20%) + benefit enhancement improves morale (0%).



Section 420: Retiree Health Funding at 0% Excise Tax

- **What It Is:** Transfer excess pension assets to fund retiree medical and life insurance benefits — zero excise tax
- **IRS Requirement:** Transfer amount must reasonably equal the present value of unfunded retiree benefit cost; cannot exceed actual obligations
- **Who Benefits:** Any plan sponsor with unfunded retiree health obligations — very common in both public and private sectors
- **Public Company Impact:** Reduces retiree health liability on balance sheet (ASC 715/706) — can be a material accounting benefit
- **Example:** \$100M surplus + \$60M retiree health obligation = \$60M transferred at 0% excise tax; remaining \$40M available for other strategies
- **Timeline:** 4-6 months typical; requires actuarial analysis, plan amendment, and DOL/IRS coordination

Action: Audit retiree health and life insurance obligations • Calculate present value • Engage ERISA counsel 4-6 months before targeted deployment date.



QRP, Benefit Enhancements & M&A Synergies

Qualified Replacement Plans (QRPs)

- Transfer 25% of surplus to 401(k)
- Excise tax drops from 50% to 20%
- Net value: ~60 cents per dollar
- Best for: Large surpluses (\$50M+)
- Timeline: 4-6 months

M&A Synergies

- Buyer surplus offsets target deficit
- Effective acquisition cost reduction
- 0% excise tax on plan merger
- Best for: Overfunded acquirers
- Timeline: 6-12 months post-close

Benefit Enhancements

- Use surplus to fund COLAs, lump-sum payout options, or enhanced survivor benefits — 0% excise tax on the enhancement
- Pro-rata rule: at least 20% of surplus allocated to benefit increase; remainder available for other strategies
- Best for: Frozen plans, morale-building, retiree satisfaction; creates goodwill at minimal cost relative to surplus size



Direct Reversion: The 90% Loss Phenomenon

\$100M

Gross Pension Surplus

- \$50M

50% Federal Excise Tax

- \$20M

20% Income Tax Withholding

- \$8M

FICA Taxes (employer+employee)

= \$22M

Net Cash to Employer = 22¢ per dollar

IRS Policy Intent: 50% excise tax is deliberately punitive to discourage direct reversion and force participant-beneficial deployment.



Surplus Deployment Decision Framework

Pathway	Tax Impact	Complexity	Best For
Section 420 Transfer	0% excise	Moderate (4-6 mo)	Sponsors with retiree health obligation
Benefit Enhancement	0% on increase	Low-Moderate (3-4 mo)	Morale/retention; frozen plans
Qualified Replacement Plan	20% excise	Moderate (4-6 mo)	Large surpluses + 401(k) enhancement
M&A Plan Merger	0% on merger	High (6-12 mo)	Strategic acquisitions; overfunded buyers
Direct Reversion	50% excise	Low (last resort)	AVOID unless surplus is minimal



2026 Pension Surplus Outlook & Action Timeline

- **Market Environment:** Elevated interest rates (2024-2026) maintain surpluses in many plans — favorable window for strategic planning
- **Rate Sensitivity:** Model scenarios with rates +1%/-1% to understand surplus durability; if rates fall, surplus may shrink — act while window is open
- **“Surplus in Motion” Legislation:** Proposals to ease deployment rules, expand Section 420, reduce excise tax — may pass in 2026-2027
- **Planning Principle:** Develop strategy under current rules now; any legislative relief will only improve your position
- **Q1-Q2 2026:** Audit funding status, model scenarios, identify strategic priorities, engage ERISA counsel
- **Q3-Q4 2026:** Finalize pathway selection, execute plan amendments, coordinate DOL/IRS notifications, implement

Start Now: Surplus modeling and pathway selection typically requires 4-9 months from first analysis to implementation.



IRS, DOL & ERISA Controversies: Litigation, Disputes & Expert Witness Support

- IRS and DOL audits, investigations, negotiations, and settlements
- ERISA and tax litigation counsel/co-counsel support
- Expert witness experience in federal and state court benefits cases
- Fiduciary governance, plan compliance, and dispute-resolution strategy

Experience Matters: Nearly five decades of ERISA experience helping clients navigate agency investigations, tax and benefits disputes, fiduciary litigation, and expert witness support.



Key Takeaways: The Four-Layer Framework

LAYER 1: IMMEDIATE COMPLIANCE (Q1-Q2 2026)

OBBA amendments by June 30 • MHPAEA comparative analysis • PBM audit rights • SECURE 2.0 plan amendments by Dec 31, 2026

LAYER 2: FIDUCIARY GOVERNANCE (Ongoing)

Committee charter • Formal meeting minutes • Annual fiduciary training • Investment monitoring • Annual fee reasonableness reviews

LAYER 3: LITIGATION RISK (Trending Up)

155 ERISA class actions in 2025 • \$350M+ settlements • Cunningham lowers bar for prohibited transactions • Strong governance is your best defense

LAYER 4: STRATEGIC VALUE (Underutilized)

Pension surplus strategies (Section 420, QRP, M&A) • SECURE 2.0 design levers • Trump Accounts • LTPT • DPC • FSA increases

The climate necessitates engaging proactive, strategic ERISA counsel.

Address all four layers systematically in 2026.

Compliance protects. Governance defends. Litigation awareness guides. Strategy creates value.

Thank You + Q&A

Hall Benefits Law

Anne Tyler Hall: athall@hallbenefitslaw.com

Alex Brucker: abrucker@hallbenefitslaw.com

www.HallBenefitsLaw.com

Comprehensive benefits and retirement plan compliance counsel serving plan sponsors nationwide.

