



# EMPLOYEE BENEFITS

IN FOCUS

FOR CLIENTS & FRIENDS

NOVEMBER 25, 2025 EDITION

## **CHANGES TO HIPAA NOTICE OF PRIVACY PRACTICES EFFECTIVE FEBRUARY 2026**

On April 26, 2024, the U.S. Department of Health and Human Services published a final rule modifying the Standards for Privacy of Individually Identifiable Health Information under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH). The final rule, Privacy Rule To Support Reproductive Health Care Privacy (“Final Rule”) requires certain changes to be made to covered entities’ (“CE”) Notice of Privacy Practices (“NPP”). Among these required changes to the NPP are updates in connection with substance use disorder (“SUD”) treatment. Note, the Final Rule originally also required CEs to update their NPPs to include a description of prohibited disclosures related to reproductive health information. However, this part of the Final Rule was vacated nationwide by the U.S. District Court for the Northern District of Texas in *Purl v. United States Department of Health and Human Services*, No. 2:24-cv-00228-Z (N.D. Tex. June 18, 2025). The case can be [read here](#). As a result, CEs are no longer required to update their NPPs regarding the reproductive health privacy requirements.

By way of background, the NPP is a notice that informs individuals about how their protected health information may be used or disclosed, outlines their rights, and explains the obligations of the CE responsible for safeguarding that information. Under HIPAA, CEs include health plans, health care clearinghouses and health care providers who transmit and maintain health information in connection with certain transactions (e.g., billing, referrals and other medical records). The NPP distribution rules vary based on the nature of the CE. For instance, in the case of a health plan, the NPP must be (i) provided at the time of enrollment or when the individual first becomes covered under the plan, (ii) made available upon request and (iii) provided when there are material changes to the plan’s policies and procedures as reflected in the NPP. In addition, health plans are required to remind enrollees of the availability of their NPPs as well as how to obtain a copy at least once every three (3) years. Further, a health plan that makes material changes to its privacy practices or its patient rights and does not have a website or does not post those changes on its website must make timely updates and redistribute the NPP within sixty (60) days of the material revision.

The surviving provisions of the Final Rule require CEs that receive or maintain records from hospitals, clinics, and other entities that receive federal funding or are regulated by a federal agency and engage in activities related to SUD treatment or

referrals to update their NPPs. The update must reflect a CE's permissible uses and disclosures under general or specific patient authorization in connection with the SUD treatment or referrals and outline the CE's legal duties regarding these records. If the records are used, the NPP must include a statement that the records will not be used in legal or administrative proceedings against the patient unless the patient consents or a court order is issued after proper notice and an opportunity to contest. If CEs intend to use SUD information for fundraising, the NPP must disclose this and provide a clear opt-out option.

The Final Rule requires that NPPs must be updated by February 16, 2026. The Final Rule can be [read here](#).

**COURT RULES THAT 401(K) PARTICIPANTS  
CAN ADVANCE CLAIMS AGAINST INVESTMENT  
MANAGER BUT NOT AGAINST THEIR PLAN SPONSOR**

On September 25, 2025, the District Court for the District of Nevada (the "Court") held that participants in the Caesars Entertainment Corporation Savings & Retirement Plan (the "Plan") may advance their class action claims against the Plan's investment manager, but not the Plan sponsor, for alleged breaches of fiduciary duty under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). The case is *Wanek v. Russell Invs. Tr. Co.*, No. 2:21-cv-00961 (D. Nev. Sept 25, 2025).

Plaintiffs are representatives of a certified class of participants and beneficiaries ("Plaintiffs") who sued the Plan sponsor, Caesars Holdings, Inc. and its investment committees (collectively, "Caesars Defendants") as well as the Plan's investment manager, Russell Investments Trusts Company ("Russell"). According to the undisputed facts, in November 2016, following solicitation for request for proposals, the Plan investment committee approved Russell's proposal to serve as the Plan's investment manager under Section 3(38) of ERISA. Caesars Defendants and Russell executed an agreement whereby Russell would provide investment management services in exchange for an allegedly product-agnostic "cost plus" services fee, which would remain the same regardless of whether Russell selected its own funds for the Plan. Russell took over the Plan's investment menu in August 2017. The menu included Russell "Lifecycle" target date funds ("TDFs"), which served as the Plan's default investment alternative, in addition to nine asset class funds.

Plaintiffs alleged that from August 1, 2017 through December 17, 2021 Russell breached its duties of loyalty and prudence by swapping the Plan's investment options for inferior Russell funds costing Plaintiffs over \$100 million in potential investment earnings. Plaintiffs further alleged that the Caesars Defendants had breached their duty

of prudence by contracting with Russell and failing to monitor them as appointed fiduciaries.

The Court denied summary judgment to Russell, agreeing with Plaintiffs that Russell plausibly breached its duty of loyalty by choosing its own investment options at a time when it desperately needed assets under management (“AUM”). Although Russell argued that the “cost plus” fee arrangement provided no financial benefit to Russell for selecting Russell funds, the Court found sufficient evidence, including internal emails, suggesting that Russell made the “cost plus” arrangement with Caesars *because* it needed the AUM. The Court also found a genuine issue of fact as to whether Russell breached its duty of prudence, as evidence suggested that Russell “employed unsound methods” in deciding to include Russell funds in the Plan.

By contrast, the Court granted the Caesars Defendants’ motion for summary judgment, finding that they exercised prudence as a matter of law. First, the Court noted that the Caesars Defendants utilized a consultant to assist in hiring an asset manager and underwent a “rigorous” request for proposal process, involving selecting and thoroughly evaluating candidates, conducting additional due diligence to select an asset manager, screening for conflicts of interest, meeting finalists in person, and negotiating lower fees. Second, the Caesars Defendants outsourced investment selections to Russell and hired Russell to manage investments in the Plan’s best interest with no obligation to use Russell funds. Finally, the Court held that 2017 to 2021 was too short a period for the Caesars Defendants to draw conclusions about performance, stating that “[r]equiring the Committee to quickly veto Russell’s investment menu without a meaningful opportunity to test its performance would defeat the purpose of delegating investment selection authority.”

**INTERNAL REVENUE SERVICE ISSUES FINAL**  
**VERSIONS OF FORMS 1095-C, 1094-C, 1095-B AND 1094-B**

On November 5, 2025, the Internal Revenue Service (“IRS”) issued the final versions of health insurance coverage reporting Forms 1095-C, 1094-C, 1095-B, and 1094-B and their corresponding instructions for calendar year 2025. Generally, these forms are used by employers, plan sponsors, and group health insurers to report their offers of health coverage as well as their employees’ and/or participants’ coverage during applicable periods as required under the Affordable Care Act.

As a reminder, in accordance with [IRS guidance](#) that was released in February 2025, filers of both Forms 1095-C and 1095-B are no longer required to automatically send the Forms to every eligible individual or other covered individual. Instead, absent an affirmative request from an individual that the filer provide a copy of the applicable Form,

the filer can meet its obligation of providing Forms 1095-C and 1095-B by posting a clear, conspicuous, and accessible notice on their website stating that the filer will provide the Forms upon request. A filer that posts such a message by January 31, 2026 will be considered to have timely supplied the Forms 1095-C or 1095-B to all required individuals.

## **A FEW REMINDERS**

**(Based on calendar-year plans)**

These reminders are for informational purposes only and are not intended to replace your regular compliance calendar as they do not include all deadlines that may be applicable to your plan.

### **NOVEMBER**

#### **DEFINED BENEFIT PLANS**

- **PBGC Form 10**
  - November 14, 2025 was the deadline by which to file the Form 10 if the defined benefit plan: 1) has more than 100 participants; 2) missed its October 15<sup>th</sup> required contribution and the contribution remained unpaid as of November 14<sup>th</sup>; 3) could not have satisfied the contribution by a prefunding or carryover balance election; and 4) had not filed a PBGC Form 200 for the same incident.

#### **DEFINED CONTRIBUTION PLANS**

- **Periodic Pension Benefit Statement**
  - November 14, 2025 was the deadline by which a participant-directed plan must have furnished the third calendar quarter's benefit/disclosure statement and statement of plan fees and expenses actually charged.

### **DECEMBER**

#### **HEALTH AND WELFARE PLANS**

- **Summary Annual Report ("SAR")**
  - December 15, 2025 is the deadline by which health and welfare plans must distribute the SAR to all plan participants if the Form 5500 deadline was extended by Form 5558 or because of a corporate tax filing extension.
- **Gag Clause Prohibition Compliance Attestation**

- December 31, 2025 is the deadline by which health and welfare plans must file the annual Gag Clause Prohibition Compliance Attestation with the Centers for Medicare and Medicaid Services.

### **DEFINED BENEFIT PLANS**

- **SAR**
  - December 15, 2025 is the deadline by which defined benefit plans must distribute the SAR to all plan participants if the Form 5500 deadline was extended by Form 5558 or because of a corporate tax filing extension.
- **Actuary's Certification of 2025 Adjusted Funding Target Attainment Percentage ("AFTAP")**
  - December 31, 2025 is the deadline by which the actuary must certify the 2025 AFTAP to avoid a presumed AFTAP of less than 60%.

### **DEFINED CONTRIBUTION PLANS**

- **401(k) Plan Annual Safe Harbor Notice for 2026 Plan Year**
  - December 2, 2025 is the deadline by which the 401(k) Plan Annual Safe Harbor Notice for the 2026 Plan Year is due.
- **Annual Auto-Enrollment Notice(s) for 2026 Plan Year**
  - December 2, 2025 is the deadline by which the annual auto-enrollment notice(s) for the 2026 Plan Year are due.
- **Annual Qualified Default Investment Alternative ("QDIA") Notice for 2026 Plan Year**
  - December 2, 2025 is the deadline by which the annual QDIA Notice for the 2026 Plan Year must be furnished.
- **SAR**
  - December 15, 2025 is the deadline by which the SAR must be distributed to all plan participants if Form 5500 deadline was extended by Form 5558 or because of a corporate tax filing extension.
- **Ongoing Required Minimum Distributions**
  - December 31, 2025 is the deadline by which eligible participants must receive their ongoing required minimum distributions for 2025.

### **THANKSGIVING MESSAGE**

As the Thanksgiving Holiday begins, Pitta LLP would like to extend our sincere thanks and gratitude to all of our clients and friends for their confidence and friendship throughout this year and always. May you all celebrate a healthy, peaceful, and happy Thanksgiving and may you enjoy this Thanksgiving and the coming year with all good things in abundance.

**WE WISH YOU AND YOUR FAMILIES A HAPPY AND HEALTHY THANKSGIVING!**

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