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FINANCIAL GROUP

**NEWSALERT**

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## Coverage Trend

# Enrollment in High Deductible Plans Falls for First Time

**A**FTER ENROLLMENT in high-deductible health plans soared during the last decade, 2022 marked the first year that enrollment in these plans has fallen among American workers since 2013, according to a new report by *ValuePenguin*.

The insurance-review website found that 54% of U.S. workers signed up for HDHPs in 2022, compared to 56% in 2021. The dip, while small, represents millions of workers that have opted for other plans their employers are offering, including preferred provider organizations (PPOs) and health maintenance organizations.

Additionally, fewer are exclusively offering HDHPs to their employees. In 2022, 9% of employers with 20,000 or more workers offered HDHPs exclusively, a drop from 22% in 2018, according to Mercer's "National Survey of Employer-Sponsored Health Plans."

### Signs of weariness

There are signs that some workers are growing weary of high out-of-pocket expenses and are willing to pay a little more premium in exchange for lower deductibles.

Indeed, workers who are enrolled in HDHPs are 30% less confident that they will know what their health care costs will be, compared to those who are enrolled in PPOs, which usually have lower deductibles, according to research by Arizent, a health insurance news publisher. Seven in 10 HDHP enrollees also found their health care costs too expensive.

Offering employees a choice of at least one other type of plan besides an HDHP can avoid blowback. It can create bad feelings if staff think their health plan offers little coverage thanks to a high deductible.

### A happy medium

People who have chronic conditions are not good candidates for these plans. A huge deductible before receiving coverage year after year can be a barrier to receiving care.

HDHPs can be a real value for young and healthy individuals, as the Affordable Care Act requires them to cover a number of preventive care procedures, like checkups, vaccinations and screenings with no cost-sharing on the part of the enrollee.

Fortunately, there are many HDHPs with relatively low deductibles. Under the law, for a plan to qualify as an HDHP it has to have a deductible of at least \$1,600 for single coverage and \$3,200 for family coverage.

If you can offer an HDHP with a deductible at or near the minimum, along with an attached health savings account that you partially fund, the plan would be less burdensome for employees.

HSAs are tax-advantaged accounts funded by employee and employer contributions. Funds can be used to reimburse for qualified medical expenses and saved over time. Withdrawals are not taxed. ❖



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Groundbreaking Decision

# New FTC Rule Bans Non-Compete Agreements

**T**HE FEDERAL Trade Commission on April 23 approved a new rule that bans employers from requiring new employees to sign non-compete agreements. The rule will take effect in August 2024, after the commission voted 3-2 to approve it.

Besides banning future non-compete agreements, the new rule also nullifies all existing non-competes and requires employers to inform current and past employees that they will not be enforced.

Obviously, employers will need to scramble to comply with the new rule as the ramping up period is relatively short. However, it should be noted that the day after the regulations were announced, the U.S. Chamber of Commerce and other business groups filed lawsuits to block the rule from taking effect.

This new federal rule comes after four states — California, Minnesota, North Dakota and Oklahoma — banned non-competes and 13 others have laws limiting their use.

Under the FTC's new rule, existing non-compete agreements for the vast majority of workers will no longer be enforceable after its effective date.

Existing agreements for senior executives — who represent less than 0.75% of workers — can remain in force under the final rule. The rule defines senior executives as workers earning more than \$151,164 annually and who are in policy-making positions.

That said, employers are banned from entering into or attempting to enforce any new non-competes, even if they involve senior executives.

Employers will be required to provide notice to workers other than senior executives who are bound by existing non-competes that they will not be enforcing the agreements.

## The next step

Since the rule has already been challenged in court, a judge may put a stay on it while litigation proceeds, but employers can't count on that.

Time is quite short to prepare for the new rule. If you have any current non-competes, or if you require new employees to sign one, you should consult with your legal counsel to discuss your procedures going forward and the steps you'll have to take to comply with the new rule.

To help employers adhere to the requirement that they inform current and former employees that their non-compete agreements are null and void, the FTC has included model language in the final rule.

The commission said that employers have several alternatives to non-compete agreements that still enable firms to protect their investments without having to enforce a non-compete.

Trade secret laws and non-disclosure agreements both provide employers with well-established means to protect proprietary and other sensitive information. Researchers estimate that over 95% of workers with a non-compete already have an NDA. ❖



# Firms Push Preventive Care to Affect Costs, Staff Health

**C**HRONIC CONDITIONS and overall poor health are a key cost-driver of health care costs, which is hitting the pocketbooks of both individuals and employers.

There are a number of factors that are driving this, including poor lifestyle choices, poor diets, lack of exercise and hereditary issues. But another reason for Americans’ declining overall health is the cost of accessing health care, not keeping up with checkups and vaccinations and having a poor understanding of their health insurance coverage.

Employers are recognizing the effects their employees’ poor health is having on the insurance premiums they and their staff pay, and some are taking it into their own hands to help their workers through various programs that help them better utilize their benefits.

## Declining health

Recent research from *Arizent*, an employee benefits news publisher, found that 65% of employers feel their staff are generally healthy, but only 35% of employers with less than 100 workers think the health of their employees has improved over the past few years, which they directly correlate with rising health plan premiums.

The survey also found that 40% of employers have seen an uptick in the use of sick days and medical leave by their staff.

“However, increased use of medical leave does hint at more serious health challenges popping up for workers,” the report says. “Moreover, approximately one-third of employers are seeing a rise in disability leave and the overall prevalence of chronic illnesses.”

This suggests that more employees need time off for their health. These may be warning signs of declining health among workers.

Besides taking more sick and leave time off, less healthy workers may also not be as productive, may have greater instances of presenteeism and cause group health premiums to grow.

## What employers are doing

**Focusing on preventive care** — Overall, 89% of employers surveyed are taking steps to control health care costs, with a majority focusing on improving preventive care access.

## INCENTIVIZING EFFORTS

Businesses are incentivizing preventive care in a number of ways:

- 39% host vaccination sessions at the office,
- 32% host educational talks or webinars about preventive care,
- 31% host disease screenings,
- 28% provide monetary incentives, and
- 26% offer PTO specifically for primary care appointments.

## Employers see results

One in five employers that do some or all of the above say that the health of their staff has improved over the last few years.

*Source: Arizent*

**Improving health care literacy** – Studies have shown that most group health plan enrollees have a poor understanding of their insurance coverage, and how to use it. Many do not understand what deductibles, copays and coinsurance are and how they work.

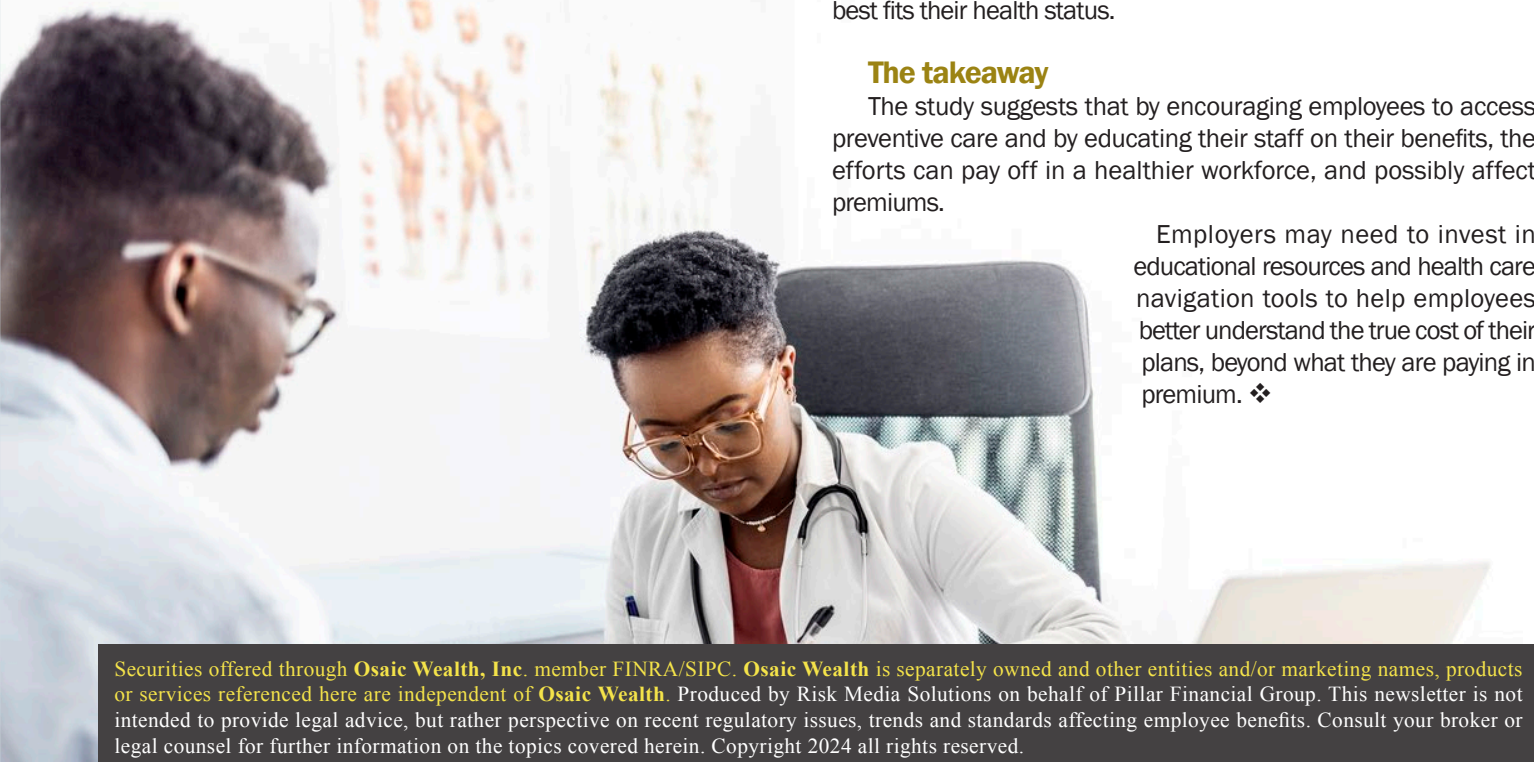
Choosing the wrong plan can result in significant out-of-pocket layouts for care, which can further suppress a person’s financial ability to pay for it. Other studies have found that more and more Americans are skipping doctor’s appointments and forgoing necessary care due to the costs and their current health care debts.

The *Arizent* report advises employers to educate their workforce about their coverage and how to choose the group health plan that best fits their health status.

## The takeaway

The study suggests that by encouraging employees to access preventive care and by educating their staff on their benefits, the efforts can pay off in a healthier workforce, and possibly affect premiums.

Employers may need to invest in educational resources and health care navigation tools to help employees better understand the true cost of their plans, beyond what they are paying in premium. ❖



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# DOL Rescinds Trump-Era Association Health Plan Rule

**T**HE DEPARTMENT of Labor on April 29 issued a final rule rescinding Trump-era regulations that expanded the number and types of employers that could band together to create association health plans to cover their employees.

The 2018 rules, which have been in legal limbo since 2019, also allowed these association health plans avoid many consumer-protection elements of the Affordable Care Act, which critics said would open the door to participating employers offering insufficient coverage.

The DOL said it rescinded the regulation due to concerns about the potential for fraud and mismanagement in association plans. It said that the new rules limit these plans to “true employee benefit plans” that are not an effort to skirt consumer protections built into the ACA.

Once the final regulation takes effect in late May, employers that want to create an association plan will have to comply with much stricter rules that narrowly define these plans and limit the instances under which they can be formed.

## Background

Prior to 2018, groups or associations that could meet three criteria below would be considered a single group health plan, which in turn would determine whether they must comply with small-group market or large-group market rules under the ACA:

**Business purpose standard** – Whether the group or association has a business or organizational purpose and function that is unrelated to providing health insurance benefits.

**Commonality standard** – Whether the employers share a

commonality of interest and genuine organizational relationship unrelated to the provision of benefits. For example, a trade group for auto shops could qualify since all of the members have a common interest.

**Control standard** – Whether the employers participating in the benefit program exercise control over the program, both in form and in substance.

## Trump rules never took off

The Trump-era rules turned the earlier regulations on their head, particularly the first two standards:

**Business standard** – Under the 2018 rule, a group of employers could have formed bona fide associations that had as their primary purpose the provision of health coverage.

**Commonality standard** – The 2018 rule would have let associations meet the commonality standard solely through the geographic proximity of its members, such as being located within the same state or city, without having any other common interests.

The 2018 rule also eliminated requirements that these plans comply with essential patient protection elements of the ACA.

In 2019, the U.S. District Court for the District of Columbia held that a large portion of the rule was based on an unreasonable interpretation of the Employee Retirement Income Security Act and inconsistent with “congressional intent.”

It later stayed action on the case and ordered the DOL to reassess its rulemaking.

After that, White House administrations changed, and the department last year proposed the rule that was just finalized. ❖

