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Déjà Vu: Biden's 2025 Budget Nearly Identical on Health, Retirement

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On March 11, 2024, President Biden released his budget for Fiscal Year 2025. Hewing closely to proposals in its last budget, the Administration's new budget proposes a number of major tax increases, including the following:

- An increase in the top corporate tax rate from 21% to 28%;
- An increase in the top individual tax rate from 37% to 39.6%;
- An increase from 3.8% to 5% in the net investment tax rate and the additional Medicare tax rate for high-income taxpayers and extension of the taxes to pass-through business income of high-income taxpayers;
- A 25% minimum income tax (including on unrealized capital gains) on households worth more than $100 million; and
- An increase from 1% to 4% in the corporate stock repurchase excise tax enacted in the Inflation Reduction Act of 2022.

Many of the FY 2025 budget proposals track those made in prior Biden Administration budgets. Although most of these proposals are unlikely to be considered or become law in this Congress with Republicans holding a very slim majority in the House of Representatives and Democrats holding a very slim majority in the Senate, they do reflect the Administration's budget priorities heading into the November presidential and congressional elections and the upcoming expiration of many of the tax provisions of the Tax Cuts and Jobs Act of 2017.

Below, we outline key health, retirement, and benefits-related provisions in the budget.

I. Retirement, Executive Compensation, and Welfare Benefit Funding Provisions

- *Accelerate and tighten rules on excess employee remuneration*. The budget proposes a number of changes to the $1 million per person cap on deductible employer compensation (Code section 162(m)):
  - Applying the section 162(m) rules to all C corporations – publicly held and privately held – and to all compensation paid by the corporation in excess of $1 million to any employee;

  - Accelerating the effective date of the expanded definition of "covered employees" from December 31, 2026 to December 31, 2024;
  - Adding an aggregation rule that would treat all members of a "controlled group" (within the meaning of Code sections 414 (b), (c), (m), and (o)) as a single employer for purposes of determining the covered employees and applying the deduction disallowance for compensation paid to these employees in excess of $1 million;
  - Ensuring that otherwise deductible compensation paid to a covered employee is considered applicable employee remuneration, whether or not paid directly by the publicly held corporation; and
  - Expanding the Secretary's regulatory authority in order to carry out the purposes of section 162(m) and prevent avoidance of the rule.
- *Prevent excessive accumulations by high-income taxpayers in tax-favored retirement accounts and make other reforms*. The budget proposes raising $23.6 billion in revenue over 10 years by:
  - Requiring certain high-income taxpayers with an aggregate vested account balance in tax-favored retirement accounts that exceed $10 million as of the last day of the preceding calendar year to distribute a minimum of 50% of that excess; if such a taxpayer's aggregate vested account balances exceed $20 million, the budget requires the individual to first withdraw Roth account balances in either the amount necessary to reach $20 million or the balance of the Roth accounts, whichever is less;
  - Limiting rollovers and conversions to designated Roth retirement accounts or to Roth IRAs for high-income taxpayers, and prohibiting Roth conversions of after-tax contributions within qualified plans or IRAs for all taxpayers;
  - Clarifying that the individual for whom an IRA is maintained is always a disqualified person for purposes of the prohibited transaction rules;
  - Prohibiting an IRA from holding an interest in a DISC or FSC that receives a payment from an entity owned by the IRA owner; and
  - Extending the statute of limitations from three years to six years for:
    - a substantial error relating to valuation of assets with respect to an IRA, and
    - the excise tax on prohibited transactions.
- *Require employers to withhold tax on failed nonqualified deferred compensation ("NQDC") plans*. The budget requires employers to withhold the 20% additional income tax and additional interest tax on the NQDC included in an employee's income due to a 409A violation, thereby raising $2.5 billion over 10 years. As a result, IRS agents would have an easier time collecting the 409A penalties when violations are identified in a corporate tax audit.
- *Shift timing of PBGC single employer premiums*. In an effort to reduce plan sponsor confusion and administrative complexities, the budget repeals a legislative provision that requires the accelerated payments of fiscal year 2026 single employer premiums into fiscal year 2025.
- *Implement SECURE 2.0 provisions.* The budget authorizes $4.7 million and 12 full-time employees to allow DOL to continue implementing SECURE 2.0's "broad collection" of provisions.
- *Rationalize funding for post-retirement medical and life insurance benefits.* The budget requires post-retirement benefits to be funded over the longer of the working lives of the covered employees on a level basis or 10 years unless the employer commits to maintain those benefits over a period of at least 10 years. Accordingly, an employer could no longer pre-fund the entire liability for already retired employees in a single year on a currently deductible basis.
- *Clarify tax treatment of on-demand pay arrangements*. The budget creates a Code definition of on-demand pay arrangements, clarifies that the payroll period for on-demand pay arrangements are treated as weekly payroll and that on-demand pay arrangements are not loans for federal tax purposes, among other details.

II. Health Provisions

A. Mental Health

- *Improve behavioral healthcare access in the private insurance market.* According to the budget, all health plans and issuers, including group health plans, must provide mental health and substance use disorder benefits and must rely on medical necessity criteria for behavioral health services that are consistent with the criteria developed by nonprofit medical specialty associations. The budget further authorizes the Secretaries of Labor, Treasury, and Health and Human Services (collectively, "the tri-agencies") to regulate behavioral health network adequacy and to issue regulations concerning parity in reimbursement rates based on the results of comparative analyses submitted by plans and issuers.
- *Require commercial insurance coverage of three behavioral health visits and three primary care visits without cost-sharing.* Citing data that says that about half of American adults have put off medical care because of cost, the budget requires all plans and issuers to cover three behavioral health visits and three primary care visits each year without charging a copayment, coinsurance, or deductible-related fee.
- *Require Medicare to cover three behavioral health visits without cost-sharing*. Beginning in 2025, the budget requires Medicare to cover up to three behavioral health visits per year without cost-sharing when furnished by participating providers, at a cost of $1.5 billion over a decade.
- *Provide mandatory funding for state enforcement of mental health parity requirements.* The budget seeks $125 million for grants to states to enforce mental health parity requirements.
- *Apply Mental Health Parity and Addiction Equity Act ("MHPAEA") to Medicare Advantage.* In a clear statement of the Biden Administration's focus on mental health, the budget extends the Mental Health Parity and Addiction Equity Act to cover Medicare Advantage plans. Additional items in the budget not covered here, such as eliminating psychiatric inpatient stay limitations for Medicare recipients, echo the President's emphasis.
- *Modernize Medicare mental health benefits*. The budget builds on the Consolidated Appropriations Act of 2023's Medicare coverage of marriage and family therapists and mental health counselors by further extending coverage to clinical social workers, peer support workers, and certified addiction counselors.
- *Strengthen DOL enforcement.* The budget provides $275 million over 10 years for DOL to perform additional nonquantitative treatment limitations ("NQTL") audits (including investigating reimbursement rates as NQTLs). Imposing civil monetary penalties for MHPAEA noncompliance raises $35 million. The budget also authorizes DOL to pursue parity violations by entities that provide administrative services to ERISA group health plans.

B. Prescription Drug Pricing

- *Cap insulin cost sharing at $35 in commercial plans.* The Inflation Reduction Act capped cost-sharing for insulin at $35 for Medicare participants. The budget extends that cost-sharing limit to the commercial market.
- *Limit Medicare Part D cost-sharing on certain generic drugs to $2*. The budget creates a new permanent Part D benefit by requiring all Part D plans, including both standalone prescription drug plans and Medicare Advantage prescription drug plans, to offer a standard list of generic drugs at a maximum copayment of $2 for a 30-day supply until the beneficiary reaches the out-of-pocket maximum. This proposal has an estimated cost of $1.3 billion over 10 years.
- *Expand Medicare prescription drug price negotiation*. The Inflation Reduction Act allowed Medicare to directly negotiate with drug manufacturers for certain drugs. The budget increases the number of drugs subject to negotiation and makes drugs eligible for negotiation sooner after their launch.
- *Expand Medicare drug inflationary rebates to include the commercial market.* The Inflation Reduction Act limited cost increases of certain Medicare Part B and Part D drugs to the rate of inflation with the manufacturer required to pay any difference to the government.
- *Authorize HHS to negotiate Medicaid supplemental rebates on behalf of states*. In an effort to further reduce prescription drug spending, the budget establishes a process under which the Centers for Medicare and Medicaid Services and participating state

Medicaid programs partner with a private sector contractor to negotiate supplemental rebates from drug manufacturers. This produces an estimated $5.2 billion in savings over 10 years.

C. Healthcare Affordability

- *Permanently extend enhanced premium tax credits.* The President's budget proposes spending $272 billion over 10 years to permanently extend the enhanced premium tax credits originally established in the American Rescue Plan Act ("ARPA"). The proposal has several prongs:
  - Eliminating the required contribution for individuals and families making 100% to 150% of the poverty level;
  - Limiting the maximum income contributions towards benchmark plans to 8.5% of income;
  - Removing the 400% of the poverty level ($120,000 for a family of four) cap on premium tax credit eligibility; and
  - Eliminating the annual indexing of the required contribution percentage, making it simpler for consumers to calculate their required share of health insurance premiums.
- *Replenish and extend No Surprises Act implementation fund*. The budget seeks $500 million to fund ongoing compliance and analysis work as the tri-agencies continue to administer the No Surprises Act.
- *Extend surprise billing protections to ground ambulances*. Beginning in 2026, the budget extends the No Surprises Act to ground ambulances, meaning that patients that take an out-of-network ambulance will only be subject to their in-network ambulance cost-sharing. Disagreements between plans or issuers and an ambulance provider will be handled through the dispute resolution process outlined in the No Surprises Act. The proposal raises $800 million over 10 years.
- *Ban "facility fees" for telehealth and certain outpatient services in commercial insurance*. This proposal would prohibit hospitals from billing unwarranted facility fees for telehealth services and for certain other outpatient services, for a savings of $2.3 billion over a decade.

D. Medicare & Medicaid Provisions

- *Permanently extend coverage to low-income individuals in states that have not expanded Medicaid.* The budget allocates $200 billion over a decade to provide "Medicaid-like coverage" to individuals in states that have not expanded Medicaid under the Affordable Care Act. This proposal also includes financial incentives to ensure states that have already expanded Medicaid maintain those expansions.
- *Require 12 months of Medicaid postpartum coverage*. The budget requires states to provide 12 months of postpartum coverage for Medicaid and CHIP recipients. Currently 45 states and the District of Columbia do so. This comes at a cost of $707 million over 10 years.
- *Improve access and coverage for beneficiaries dually eligible for Medicare and Medicaid*. The budget aligns income and asset determination procedures across the two programs to facilitate maximum participation in the eligible population, at a cost of $4.3 billion over a decade.

III. Worker & Family Policies

- *Provide national, comprehensive paid family and medical leave.* The budget proposes to establish a national, comprehensive paid family and medical leave program administered by the Social Security Administration. The program would cover parental leave, caregiving leave, medical leave, spousal military deployment leave, bereavement leave, and domestic violence leave, for a cost of $325 billion over ten years.
- *Expand the child tax credit ("CTC"), with permanent refundability and option for monthly payment*. The budget proposes making the following changes to the existing child tax credit for a cost of $429 billion:
  - For taxable years beginning after December 31, 2023, and ending before January 1, 2026, the budget:

    - Increases the maximum credit per child to $3,600 for qualifying children under age six and to $3,000 for all other qualifying children;
    - Phases out the portion of the credit in excess of $2,000 for certain earners; and
    - Increases the maximum age to qualify for the CTC from 16 to 17.
  - For taxable years beginning after December 31, 2023, the budget makes the CTC fully refundable, regardless of earned income.
  - For taxable years beginning after December 31, 2024, the budget implements an optional advance monthly payment program for taxpayers who prefer that over a lump sum.
- *Permanently expand and improve Earned Income Tax Credit ("EITC") for workers without qualifying children.* The budget makes permanent the ARPA changes to the EITC for workers without children, at a cost of $163 billion over 10 years.
- *Increase the employer-provided childcare tax credit for businesses.* The budget increases the existing tax credit to 50% of the first $1 million of qualified care expenses for a maximum total credit of $500,000 per year, for a cost of $393 million over a decade.
- *Expand access to affordable, quality child care for low- and middle-income families*. The budget introduces a new program to guarantee affordable childcare from birth to kindergarten for families earning under $200,000, at a cost of $424 billion over a decade.
- *Increase the statute of limitations on assessment of the COVID-related paid leave and employee retention tax credits*. The budget extends and makes uniform the five-year limitations period for the assessment of COVID-era leave tax credits paid in error, raising $1 billion over ten years.

IV. Life Insurance Provisions

- *Limit tax benefits for private placement life insurance and similar contracts.* The budget proposes changes to the tax treatment of private placement life insurance and annuity contracts, an issue Senate Finance Committee Chairman Ron Wyden (D-OR) has recently become interested in. Available primarily to ultra high net worth individuals, these products allow an individual to invest in unregistered hedge funds or private equity funds inside a life insurance "wrapper" and thus avoid taxation. Stating that such contracts do not meet the public policy goals associated with conventional life insurance, the budget seeks roll back the preferential tax treatment these products currently enjoy, raising $185 million over ten years. This proposal would not apply to annuity contracts issued to tax-favored retirement plans and IRAs.
  - Under the proposal, life and annuity contracts that constitute "covered contracts" generally would be taxed in the same manner as non-qualified annuities:
    - Amounts paid before the annuity starting date – and policy loans and pledges – would be treated as if made from income under the contract up to the contract's "investment value. A similar tax scheme would apply to death benefits in excess of the beneficiary's investment in the contract;
    - An additional tax equal to 10% of the otherwise taxable amount would be imposed to account for "tax deferred benefits" with no exceptions; and
    - New reporting requirements would apply to insurance companies and policyholders.
  - The proposal would apply to taxable years beginning after December 31, 2024, including to contracts issued on or after March 1, 2024, the date the Green Book was released.
- *Impose ownership diversification requirement for small insurance company election*. The package continues to include a proposal to expand the pro rata interest expense disallowance rule (sec. 264(f)) for corporate-owned life insurance by eliminating the exception for contracts covering employees, officers, and directors, generally for policies issued after December 31, 2024.