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GBS Annual Conference

Health Benefits Compliance in 2022

Dobbs, Transparency, and other Key Updates

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Health Benefits Compliance in 2022

Agenda

- COVID Emergency Declarations
- Transparency Rules
- Dobbs
- Non-discrimination: Section 1557 and Title VII of the Civil Rights Act
- ACA Employer Mandate
- Inflation Reduction Act

COVID Emergency Declarations

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COVID and the Emergency Declarations

Overview

- COVID-19 pandemic created need for new temporary rules and/or adjustments to current rules
  - Several temporary Emergency Declarations
  - Each has different start/end date and each has a different purpose

Specific Federal Emergency Declarations

Emergency	Declared By	Date
Public Health Emergency	HHS	January 2020
Emergency Use Authorization	HHS	February 2022
National Emergency	President	March 2020
Public Readiness and Emergency Preparedness (PREP) Determination	HHS	March 2020

COVID and the Emergency Declarations

Impact on Employers

Emergency Declarations Directly affecting Group Health Plans

Public Health Emergency	Included (temporary) heath coverage requirements
National Emergency	Included (temporary) extensions of ERISA deadlines

- We will review
  - Timeline/Summary for each declaration
  - Impact on employers (during and after)
  - Next Steps

COVID and the Emergency Declarations

Public Health Emergency

Summary and Timeline

- How it Works Generally
  - Secretary for the U.S. Department of Health and Human Services (HHS) has authority to declare a Public Health Emergency under the *Public Health Service Act (PHSA)*
    - Due to significant infectious disease outbreak, e.g. COVID
    - May issue temporary health care requirements
  - Public Health Emergencies last for 90 days
  - Can be renewed, terminated early, or allowed to expire
  - HHS provides at least 60 days advance notice before Emergency Declaration expires
- The COVID Public Health Emergency
  - HHS declared and set effective date at **January 27, 2020** and continued to renew it multiple times
  - Most recent renewal was on **July 15, 2022** so would expire 90 days later on **October 13, 2022**
  - However, we did not hear anything 60 days prior to October 13, 2022 so the Public Health Emergency will be renewed again and will remain at least through **mid-January 2023**

COVID and the Emergency Declarations

Public Health Emergency

Impact During Public Health Emergency

- **Requirements** for Group Health Plans:
  - Must cover COVID-19 vaccines/boosters w/o cost sharing and without pre-auth for both *in-network* and *out-of-network* providers
  - Must cover COVID diagnostic testing and testing related services w/o cost sharing and pre-auth
  - Must cover up to 8 over-the-counter (OTC) home tests per month without doctor order or prescription
    - Effective as of January 15, 2022
    - Home testing kits must be approved by the FDA
    - Can limit reimbursement cost to $12.00
- **Options** for Group Health Plans:
  - May offer stand-alone telehealth benefits to individuals who are not eligible for major medical coverage.

COVID and the Emergency Declarations

Public Health Emergency

Impact After Public Health Emergency

- **Requirements** for Group Health Plans:
  - Continue to cover COVID-19 vaccines at no cost with *in-network* providers
- **Options** for Group Health Plans:
  - Continue to cover COVID-19 vaccines at no cost (and no pre-auth) with *out-of-network* providers
  - Continue to cover COVID-19 tests (provider and/or over-the-counter) at no cost and no pre-auth

Employer Steps When Notice Public Health Emergency is Ending

If sponsor self-funded plan

- Confirm coverage requirements are still in place and decide whether to continue the optional coverage
- Check to ensure any coverage offered has parity with the Mental Health Parity and Addiction Equity Act (MHPAEA)
- Follow ERISA plan and notice rules and ensure all plan documents and participant communications accurately reflect coverage, exclusions, and limitations

COVID and the Emergency Declarations

National Emergency

Summary and Timeline

- How it Works Generally
  - The U. S. President has authority to declare a National Emergency under *Section 201 of the National Emergencies Act*
    - May last for one year but can be renewed, terminated early or allowed to expire
- The COVID National Emergency
  - Declared with effective date **March 1, 2020**
  - The DOL and Treasury issued regulations April 29, 2020 that established an "Outbreak Period"
    - The "Outbreak Period" affects certain deadlines under retirement, health and welfare plans
  - **March 1, 2021** effective date extended
  - **March 1, 2022** effective date extended
  - COVID National Emergency set to expire after February 28, 2023 unless it is extended again effective March 1, 2023

COVID and the Emergency Declarations

National Emergency

The "Outbreak Period"

- On April 29, 2020 the DOL and Treasury issued regulations that established an **"Outbreak Period"** that allows the **extension of certain deadlines** related to retirement, health and welfare plans
  - The Outbreak Period
    - Began on March 1, 2020
    - Coincides with the National Emergency
    - Ends 60 days after the end of the National Emergency

Impact During the National Emergency

- Extended deadlines are in effect throughout the "Outbreak Period"
  - Extensions terminate the EARLIER of:
    - 1 year from the date the plan (or individual's) deadline period would have commenced, OR
    - The end of the "Outbreak Period" (which is 60 days after the end of the National Emergency)

COVID and the Emergency Declarations

National Emergency

"Outbreak Period" Extensions During the National Emergency

- **HIPAA Special Enrollment Rights**
  - The 30-day period (or 60-day period, if applicable) to request HIPAA special enrollment.
- **COBRA**
  - The 60-day election period for COBRA continuation coverage.
  - The date for making COBRA premium payments.
  - The date for individuals to notify the plan of a COBRA qualifying event or new disability
  - The date for plan sponsors and administrators to provide a COBRA election notice
- **Claims and Appeals**
  - The date within which individuals may file a benefit claim under a plan's claims procedures.
  - The deadlines for requesting internal and external appeals for adverse benefits determinations.

COVID and the Emergency Declarations

National Emergency

After the National Emergency ends

- The 60-day clock counting down the end of the “Outbreak Period” starts ticking
  - Example, if the National Emergency is not extended for another year in 2023
    - On February 28, 2023 the National Emergency ends
    - On April 30, 2023, the “Outbreak Period” ends and deadlines revert to regular time periods

Employer Steps When National Emergency Ends

- Set 60-day clock to determine exact date the “Outbreak Period” ends
- Remember that not every participant deadline is adjusted on the same date
  - Calculate case by case
  - Consider sending advance communications to participants with deadlines approaching
- Consider an additional short extension to deadlines to minimize the impact on participants
  - May extend deadlines up to 30 or 60 additional days for all affected participants
  - Example, if deadlines end April 2023, allowed to extend to May 2023
  - Verify extension with carrier/TPA
- Review plan documentation and participant communications to ensure all materials accurately reflect that the changes (removal of extended deadlines) and remove references to the Outbreak Period.

Transparency

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Health Benefits Compliance in 2022

Transparency Rules under TiCFR & CAA

Transparency Rules

- Collection of regulations and statutory provisions intended to improve the health care industry and protect consumers
- Adds additional disclosure obligations and reporting requirements for:
  - Health insurers/carriers/TPAs
  - Health care providers
  - **Group health plans** (and employers that sponsor them)

Intended Effect

- Open the drawn curtain on pricing and improve costs through increased transparency:
  - Increase competition within the health care industry
  - Create cost savings for both the consumer and the employer
  - Protect and help consumers make more informed health care decisions
  - Achieve improved health outcomes
  - Drive innovation

Transparency Rules under TiCFR & CAA

Origin of the Transparency Rules

- **Transparency in Coverage Final Rules (TiCFR)**
  - June 2019: Executive Order
    - President directed the HHS, DOL, IRS (Departments) to issue regulations that would increase transparency
  - November 2019: Proposed regulations issued
  - October 2020: Final Regulations issued

- **Consolidated Appropriations Act of 2021 (CAA)**
  - January 2019 H.R. Bill 133
    - Appropriations bills include wide range of government funding/budgeting/spending
    - The Bill included economic stimulus provisions addressing the impact of COVID
    - BUT also included a number of separate provisions addressing TRANSPARENCY in health care
  - December 27, 2020: Bill became law

Transparency Rules under TiCFR & CAA

Transparency Rules Overview

Transparency in Coverage Federal Rules (TiCFR)

Consolidated Appropriations Act (CAA)

- Transparency
- No Surprises Act
- MHPAEA

Transparency Rules under TiCFR & CAA

Effect on Employer Group Health Plans

- Much of the "heavy lifting" to comply with Transparency mandates will *not* be employers

> **Fully-Insured Plans**
> Health Insurance Carriers

> **Self-Funded plans**
> Third-party Administrators (TPAs)

- Exception:
  - CAA Pharmacy/Drug Report requires a coordinated effort between the TPA, pharmacy benefit manager (PBM) and employer because each has information the others don't
  - However, PBM and/or TPA is typically still doing the "heavy lifting" (e.g. coordinating data gathering and submitting the report)

Ultimate Responsibility to Comply

- For all transparency, all employer regardless of funding are ultimately responsible for ensuring compliance

Transparency Rules under TiCFR & CAA

Employer Steps

- Become educated on the general rules
- Be aware of deadlines
- Check with the carrier/TPA/PBM to confirm process
  - Clarify what steps, if any, should be completed by the group health plan (employer sponsor) that will not be completed by carrier/TPA and/or PBM
  - Make sure to complete your responsibilities within outlined timeframes
  - Follow up with carrier/TPA/PBM to make sure deadlines are met
- Consider Amending Contracts (optional)

› Fully-insured Plans

Allowed to enter into contract with carrier to legally shift compliance responsibility from employer sponsor to carrier

› Self-funded plans

Not allowed to shift compliance responsibility but may contract with TPA to clarify tasks/timeline and add indemnification provisions to protect from errors made by TPA

Transparency Rules under TiCFR & CAA

Crash Course - What you Need to Know

1 Past Deadlines

2 Upcoming Deadlines

3 Delayed / Deferred Deadlines

Transparency Rules under TiCFR & CAA

Past Deadlines

Date	Rule	What
December 27, 2020	CAA Transparency Rules	Removal of Gag Clauses (on pricing) from contracts with carriers/insurers
February 10, 2021	CAA Mental Health Parity Reporting Rules	Departments can begin requesting MHPAEA reports from GHPs (employers)
December 27, 2021	CAA Transparency Rules	After this date, new contracts with GHP should include Section 408(b)(2)(B) ERISA compensation disclosure
January 1, 2022	CAA No Surprises Act	Claims and balance billing disclosures, Participant ID cards, Up-to-date provider directories, Public posting for participants about federal and state surprise bill protections (on website and in each explanation of benefits), and Continuity of Care (when there is a change in network) and more
Starting in 2022	CAA Transparency Rules	Group health plans must submit annual attestations that no Gag Clauses exist in any contracts with service providers (no specific 2022 date yet)
July 1, 2022	TiCFR	Disclose on public website (files 1 and 2) pricing including applicable rates with in-network providers and covered services for out-of-network providers

Transparency Rules under TiCFR & CAA

Upcoming Deadlines

Date	Rule	What
December 27, 2022	CAA Transparency Rules	Pharmacy Benefits and Drug Costs reports filed with the Departments. The first report includes both 2020 and 2021 data, but thereafter future reports include only one year and are submitted annually by June 1
January 1, 2023	TiCFR	Private disclosure to participants, first 500 items and services listed
January 1, 2023	CAA No Surprises Act	Price cost-sharing comparison tool for participants by phone and website
January 1, 2024	TiCFR	Private disclosure to participants, remaining items and services listed not included in the first 500

Transparency Rules under TiCFR & CAA

Delayed / Deferred Deadlines

Date	Rule	What
Delayed Effective Date until Guidance is Issued	CAA No Surprises Act	Advanced Explanation of Benefits and Good Faith Estimates (original effective date was 1/1/22)
Deferred Enforcement	TiCFR	Public Disclosure - File 3 (file for prescription and drug data) will be reconsidered in future rulemaking. It is possible this will be deferred indefinitely to avoid duplication with the very similar CAA pharmacy and drug costs reporting requirement (due 12/27/22)

Transparency Rules under TiCFR & CAA

Employer Steps

- [x] Become educated on the general rules
- [x] Be aware of deadlines
- [ ] Check with the carrier/TPA/PBM to confirm steps will be completed
  - Clarify what steps, if any, should be completed by the group health plan (employer sponsor) that will not be completed by carrier/TPA and/or PBM
  - Make sure to complete your responsibilities within outlined timeframes
  - Follow up with carrier/TPA/PBM to make sure they meet deadlines
- [ ] Consider Amending Contracts (optional)

Fully-insured Plans

Allowed to enter into contract with carrier to legally shift compliance responsibility from employer sponsor to carrier

Self-funded plans

Not allowed to shift compliance responsibility but may contract with TPA to clarify tasks/timeline and add indemnification provisions to protect from errors made by TPA

Dobbs

Dobbs v. Jackson Women's Health Organization

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Health Benefits Compliance in 2022

Dobbs v. Jackson Women's Health Organization

What is *Dobbs v. Jackson*

- On June 24, 2022, the U.S. Supreme Court decision in *Dobbs v. Jackson Women's Health Organization*. overturned *Roe v. Wade* and *Planned Parenthood v. Casey*
  - The prior decisions in *Roe* v. Wade (1973) and *Planned Parenthood v Casey (1992)* confirmed a (federally) protected right to abortion services
  - The *Dobbs* decision eliminates that (federally) protected right

What Happens Next

- Each state must decide how to address abortion within its borders
- *Dobbs* has likely affected, or will affect, your group health plan(s)
  - But does not prohibit group health plans from covering abortion-related expenses
  - Options depend on type of group health plan funding and other factors

Dobbs v. Jackson Women's Health Organization

Impact of Funding Differences

Fully-insured Plans

- Insured plans are governed by state insurance laws
- Generally, you don't have discretion over whether abortion is covered in your plan
- The insurance carrier will be primarily responsible for making any necessary changes to comply with changes in state laws
- Communicate with insurance carrier to determine whether there are any steps you should take.

Self-funded plans

- Self-funded plans are governed by federal ERISA law
- ERISA generally preempts state laws and state insurance laws
- You have discretion over whether abortion is covered and can offer this benefit but make sure to include language that the services must be performed (or the medication obtained) in a state where it is legal.
- Discuss with your TPA any additional desired options/benefits you'd like to offer and ask if TPA has ability to administer or if any issues that would limit that ability

Dobbs v. Jackson Women's Health Organization

FAQ: We cannot include abortion services in our group health plan. Are there alternatives?

- May offer reimbursement for traveling to, and lodging in, a state where an abortion is legal
  - Examples of reimbursement options:
    - Traditional HRA (Health Reimbursement Arrangement) - see FAQ 5, 11, 13
    - EBHRA (Excepted Benefit HRA) - see FAQ 12, 13
    - Health FSA (Health Flexible Spending Account) - see FAQ 11, 13
    - HSA (Health Savings Account) - see FAQ 14, 15
    - EAP (Employee Assistance Program) - see FAQ 16.
- For specifics, see our GBS FAQs in our learning center
  - https://gbsbenefits.com/abortion-impact-on-employers-faq/
- May also consider offering a benefit after tax
  - After-tax travel/lodging fund - see FAQs 20 and 21

Dobbs v. Jackson Women's Health Organization

FAQ: What are Other Employers Doing?

- Some employers express a desire to equalize access to abortion services for all employees
  - regardless of whether employee is enrolled in the group health plan
  - regardless of the state in which employee resides
- These benefits would typically be taxed (offered post tax)
  - Examples
    - Taxable reimbursement for travel/lodging expenses incurred by an employee (general relief fund)
    - Taxable reimbursement for "wellness" related travel/lodging (wellness travel fund)
    - Taxable reimbursement for "abortion specific" travel/lodging
- For more information, see our GBS FAQ 20, 21 in our Learning Center at: https://gbsbenefits.com/abortion-impact-on-employers-faq/

Dobbs v. Jackson Women's Health Organization

All Options Come with Pitfalls

- Currently, there is NO single coverage option that comes without pitfalls
  - We will be operating with some uncertainty for the foreseeable future
  - Federal and state litigation, state laws, applicability of current federal regulations, future federal regulations will over time clarify
- In the meantime:
  - Consider a wait-and-see approach OR
  - Consider moving forward despite unsettled

If moving forward, make fully informed decision

› From the list of alternatives, compile short list of options you prefer
› With internal key decision makers:
  - Consider requirements, compliance issues and pitfalls *(see FAQs)*
  - Weigh pros and cons
  - Consider your level of risk tolerance v. desire to implement
  - Move forward making sure to maintain compliance with rules that are settled

Dobbs v. Jackson Women's Health Organization

Example of Comparisons when Decision-Making

Option	Is it a group health plan *(must follow ERISA rules)*	Does ERISA Preemption Apply *(protection from application of state laws)*	Is it ACA Compliant	Do HIPAA Privacy Rules Apply	Does MHPAEA Apply	Does COBRA Apply
Abortion-Specific Travel / Lodging Benefit *Post-Tax (or pre-tax with $ limits per IRC section 213)*	Yes	Likely Yes	No does not meet Preventive Services & Annual Lifetime Limits (unless integrated with major medical group health plan)	Yes	Yes	Yes
General Relief Fund Travel / Lodging Benefit *Post-Tax*	Likely No	Likely No	Yes	Likely no, but information should still be kept confidential	No	No
Employee Assistance Program (EAP) *Pre-Tax*	Yes	Likely Yes	Yes, as long as the EAP qualifies as an excepted benefit	Yes	No, as long as the EAP qualifies as an excepted benefit	Yes

Non-Discrimination

Section 1557 &
Title VII of the Civil Rights Act

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Non-Discrimination under ACA Section 1557 & Title VII

Issue

- Non-Discrimination
  - Is a group health plan discriminating if it fails to cover services related to sexual orientation and/or gender identity ?

Applicable Laws

1. The Affordable Care Act (ACA) section 1557
2. Title VII of the Civil Rights Act

Non-Discrimination under ACA Section 1557 & Title VII

Affordable Care Act (ACA) Section 1557

- Rule
  - Prohibits health programs or facilities (*that receive federal funding*) from discriminating (meaning excluding or denying benefits) based on race, color, national origin, age, disability, or sex.
  - Effective July 2016

Applies To:

› (Most) Fully-insured Plans

Section 1557 applies

Carriers/insurers typically receive federal funding

Does Not Apply To:

› (Most) Self-funded plans

Section 1557 does not apply

Most self-funded plans do not receive federal funding

Non-Discrimination under ACA Section 1557 & Title VII

Title VII of the Civil Rights Act

- Rule
  - It is unlawful for an employer to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment based on an individual's race, color, religion, sex, or national origin.
  - Effective 1964

Applies To:

- Title VII of the Civil Rights Act applies to employers with 15 or more employees
- Includes eligibility for, and services offered within, an employer's group health plan

› **Fully-insured Plans**

Title VII applies

› **Self-funded plans**

Title VII applies

Non-Discrimination under ACA Section 1557 & Title VII

Update

- **Federal Regulations**
  - ACA section 1557 regulations unsettled, thus application of rule has been difficult
  - July 2022, HHS issued regulations in attempt to resolve confusion and clarify
    - Regulations interpret Section 1557's ban on sex discrimination to include sexual orientation, gender identity (and pregnancy-related conditions)
- **Federal Courts**
  - Title VII of Civil Rights Act:
    - U.S. Supreme Court decision in ***Bostock v. Clayton County (2020)*** held that an employer who fires an individual because they are gay or transgender violates the Title VII ban on sex discrimination
  - ACA Section 1557:
    - Federal courts have applied ***Bostock*** analysis to interpret sex discrimination under ACA Section 1557 concluding a plan is discriminating if not covering gender identity services
- **Equal Employment Opportunity Commission (EEOC)**
  - Enforces Title VII of the Civil Rights Act to help eliminate unlawful discrimination in employment
    - The EEOC is applying the ***Bostock*** analysis to sexual orientation and gender identity cases under Title VII

Non-Discrimination under ACA Section 1557 & Title VII

Example: Federal Court

- A TPA for a self-insured group health plan informed the employer in 2016 that it was removing exclusions for gender identity disorder and “sex change” surgery from the plans that it administered, in response to regulations issued under **ACA Section 1557.**
- The employer concluded that its self-insured plan was not subject to **ACA Section 1557** and declined to remove the exclusions from the plan, despite the TPA’s recommendation to do so.
- A transgender employee seeking coverage for gender-confirming surgery later sued the employer.
- The federal court held in favor of the employee, and specifically:
  - Did not apply **ACA section 1557**
  - Did apply **Title VII of the Civil Rights Act**
    - Applied the ***Bostock*** analysis
    - Concluded that the group health plan had violated Title VII of the Civil Rights Act
    - The group health plan discriminated ”on the basis of sex” because it excluded gender identity disorder and “sex change” surgery

Non-Discrimination under ACA Section 1557 & Title VII

Employer Steps

Employers that sponsor self-funded plans should:

- [x] Be aware of current trajectory
  - **Even if the ACA Section 1557 does not apply to a group health plan,**
  - **Title VII of the Civil Rights Act would likely still apply**
- [ ] Review current plan documents to determine whether the group plan includes sexual orientation and gender identity procedures and services
- [ ] Understand that omitting these services from the group health plan could invite costly legal (litigation) and/or regulatory (EEOC) challenges
- [ ] Discuss issue with key decision makers within company and make adjustments to plan, if applicable.

ACA Employer Mandate

Key Updates

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Health Benefits Compliance in 2022

ACA Employer Mandate

Background

- The U.S. Department of the Treasury (IRS) may impose penalties on employers when ALL the following factors exist:
  - An employer is an “applicable large employer” (ALE)
  - That employer fails to offer affordable, minimum value health coverage to at least 95% of its full-time employees and their dependents
  - A full-time employee purchases coverage in the ACA Exchange/Marketplace and qualifies for a subsidy called the Premium Tax Credit (PTC) that helps reduce the cost of the monthly premium
    - Eligibility for the subsidy is based on household income between 100% - 400% of FPL
    - Generally, households do not qualify for subsidy if employer offers affordable, minimum value coverage

The Penalties

- The ACA Employer Mandate penalty has two possible penalties

A Penalty

Failing to offer Minimum Essential Coverage (MEC) to at least 95% of full-time employees and their dependents (spouses not required)

B Penalty

Offering MEC to at least 95% but the plan offered does not meet affordability and minimum value requirements

ACA Employer Mandate

2022 Change/Update

- Penalty A
  - **The American Rescue Plan Act (ARPA) of 2021**
    - Temporarily (through 2022) expanded household income range to determine eligibility for the ACA Exchange/Marketplace subsidy
    - Original household income range is between 100% - 400% of Federal Poverty Level (FPL)
    - Temporary household income range is above 400% of the Federal Poverty Level (FPL)
  - **The Inflation Reduction Act of 2022**
    - Temporarily extends the ARPA expansion another 3 years through 2025

Impact on Applicable Large Employer (ALE)

The expanded eligibility for Exchange / Marketplace subsidy → Increases the number of individuals who will qualify for subsidy → Increases possibility more employees will qualify for the subsidy → Increases ALE exposure to ACA Employer Mandate affordability penalty

Note that generally, an employee is not eligible for Exchange/Marketplace subsidy if employer offers employee an affordable, minimum value plan

ACA Employer Mandate

2022 Change/Update

- Penalty B Background
  - To meet affordability, the monthly premium cost paid by a full-time employee (based on single coverage) must not exceed 9.5% of household income
  - The 9.5 % affordability percentage is adjusted each year for inflation
  - Sometimes the adjustment is an increase and sometimes a decrease
- Penalty B Change
  - The percentage was adjusted for **2023 plan years to 9.12%**
  - This percentage is the lowest ever affordability percent threshold

Impact on Applicable Large Employer (ALE)

- Because it is so low, the 2023 affordability percentage may affect an ALE's affordability threshold and affordability safe harbor
  - May need to reduce the employee monthly premium contribution amount
  - May need to reevaluate and change selected affordability safe harbor

ACA Employer Mandate

Affordability: Historical Breakdown

Year	Affordability Percentage
2014	9.5 %
2015	9.56 %
2016	9.66 %
2017	9.69 %
2018	9.56 %
2019	9.86 %
2020	9.78 %
2021	9.83 %
2022	9.61 %
2023	**9.12 %**

ACA Employer Mandate

Avoiding the Penalties

Employer Steps

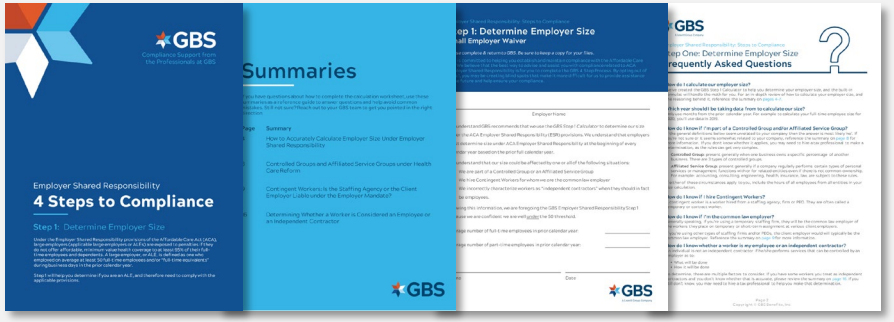
- Complete *GBS 4 Step Process* to help avoid penalties
  - **Step 1**: Determine employer size
  - **Step 2**: Determine effective date (date first exposed to penalties)
  - **Step 3**: Confirm affordability and minimum value
    - Check affordability for your current 2022 plan year
    - Just prior to your 2023 plan year, check affordability and select an affordability safe harbor
  - **Step 4**: Establish eligibility policy using ACA Look Back Safe Harbor
    - Select measurement method cycles and dates and create written Safe Harbor policy
    - Use the Look Back Safe Harbor policy to ensure identification of all eligible employees
- Bonus: No extra work but at same time helps prepare for ACA 1094/1095 Form reporting
  - Need an appropriate affordability safe harbor (Step 3)
  - Need appropriate measurement method cycles and dates (Step4)

ACA Employer Mandate

GBS Tools

Employer Mandate

GBS 4 Steps to Compliance Toolkit



1094/1095 Reporting

GBS Annual Line-by-line Webinar

Inflation Reduction Act

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Health Benefits Compliance in 2022

Inflation Reduction Act

The Inflation Reduction Act (IRA)

- In August 2022, the Inflation Reduction Act became law
  - Most provisions focus on fighting inflation, investing in domestic energy production/manufacturing, and reducing carbon emissions
  - BUT a few IRA provisions impact health care
    - Expanded eligibility for ACA Exchange/Marketplace Premium Tax Credit (subsidy)
    - Medicare prescription drug cost reductions/restrictions
    - Insulin-Related HDHP Safe Harbor

Inflation Reduction Act

Expanded ACA Premium Tax Credit

Expanded eligibility for ACA Exchange/Marketplace Premium Tax Credit (subsidy)

- Background
  - The ACA requires all states to have an Exchange/Marketplace for individuals/families to purchase health coverage
  - Individuals/families with household income between 100% - 400% of FPL qualify for subsidies that help reduce the cost of monthly premium
  - Subsidies are significant because employers are exposed to ACA employer mandate penalties if
    - An employer is an “applicable large employer” (ALE)
    - That employer fails to offer affordable, minimum value health coverage to at least 95% of its full-time employees and dependents
    - A full-time employee(s) purchases coverage in the Exchange/Marketplace and qualifies for a subsidy
- Change in 2021
  - The **American Rescue Plan Act (ARPA)** temporarily expanded subsidy eligibility to certain households with income beyond the original cap of 400% of Federal Poverty level (FPL)
  - Expansion effective only for 2021 and 2022

Inflation Reduction Act

Expanded ACA Premium Tax Credit

Changes due to the Inflation Reduction Act

- Continues the temporary eligibility changes under the **American Rescue Plan Act (ARPA)**
- Expands subsidy eligibility for ACA Exchange/Marketplace to certain households living above 400% of Federal Poverty Level (FPL)
- Effective for three more years: 2023, 2024 and 2025

Impact on Applicable Large Employer (ALE)

The expanded eligibility for Exchange / Marketplace subsidy → Increases the number of individuals who will qualify for subsidy → Increases possibility more employees will qualify for the subsidy → Increases ALE exposure to ACA Employer Mandate affordability penalty

Inflation Reduction Act

Medicare Prescription Drug Costs

Medicare prescription drug cost reductions/restrictions

- Background
  - Prescription drug costs are a significant factor in high health care costs
  - In past, the pharmaceutical industry has successfully prevented government rules on pricing negotiations between drug manufacturers and pharmacies/PBMs

Changes Due to Inflation Reduction Act

- Gives the federal government authority to negotiate certain drug prices in Medicare, caps insulin co-pays for Medicare Part-D, slows price increases in Medicare, caps out-of-pocket drug costs, and generally improves costs for Medicare beneficiaries

Impact on Employers

- Indirect impact on private group health plans may include:
  - Possible increase in drug costs (to make up for the revenue loss)?
  - Possible effect on whether employer-sponsored prescription drug coverage is “creditable” ?

Inflation Reduction Act

Medicare Prescription Drug Costs

Prescription Drug Provisions Implementation Timeline

2023
- Copays for insulin will be capped at $35 per month in Medicare Part D
- Manufacturers must pay Medicare a rebate if average prices of certain drugs increase faster than inflation
- Reduces costs and improves adult vaccines for Medicare Part D, Medicaid and CHIP

2024
- Expands Medicare Part D subsidy for low income
- Eliminates 5% coinsurance for Medicare Part D catastrophic coverage

2025
- Medicare Part D out-of-pocket prescription drug costs annual cap at $2,000

2026
- HHS must negotiate 10 Medicare Part D drugs

2027
- HHS must negotiate another 15 Medicare Part D drugs

2028
- HHS must negotiate another 15 Medicare Part B and Part D drugs

2029
- HHS must negotiate another 20 Medicare Part B and Part D drugs

Inflation Reduction Act

Insulin-Related HDHP Safe Harbor

High Deductible Health Plan (HDHP) Coverage of Insulin Products

- Background
  - To be eligible to contribute to an HSA, an individual must be covered by an HDHP.
  - In order to qualify as an HDHP, a health plan generally cannot provide any coverage prior to satisfaction of the plan's deductible.
  - Exception to rule (Safe Harbor)
    - Allows for coverage (reimbursement via HSA) of certain preventive care for chronic health conditions before meeting the HDHP deductible - without adversely affecting HSA eligibility

Change Due to Inflation Reduction Act

- Expands the exception to the rule (Safe Harbor) by adding additional selected insulin products
  - Permits coverage of a broader range of insulin, prior to satisfaction of the deductible, without adversely affecting a participant's eligibility to contribute to a health savings account (HSA).
- Applies to plan years beginning on or after December 31, 2022

Inflation Reduction Act

Employer Steps

Steps to Address Expanded ACA Exchange/Marketplace Subsidy

- Prior to the beginning of your 2023 plan year, confirm you will offer affordable, minimum value plan to at least 95% of full-time employees (dependents)
  - The GBS ACA 4 Steps helps you confirm affordability (*see Step 3)* and identify eligible full-time employees *(see Step 4)*

Steps to Address Medicare Prescription Drug Costs Changes within Medicare

- Plan for possible future increase in drug/pharmacy costs
- Pay attention to (and make sure to accurately determine) whether your prescription drug coverage is creditable (creditable = coverage is at least as good as Medicare Part D prescription drug coverage)

Steps to Address New Insulin-Related HDHP Safe Harbor

- If offer HDHP with HSA, review (and amend if applicable) plan coverage under preventive services to ensure broader range of insulin can products that can be reimbursed prior to meeting the deductible

GBS Annual Conference

Health Benefits Compliance in 2022

- COVID Emergency Declarations
- Transparency
- Dobbs
- Non-discrimination: Section 1557 and Title VII of the Civil Rights Act
- ACA Employer Mandate
- Inflation Reduction Act

Health Benefits Compliance in 2022

Questions?

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