



## Compliance Monthly Update: October 2023

*A brief update on what happened the prior month in group health plan compliance at the federal level, organized chronologically. If you would like additional information, please reach out to the GBS Compliance Team.*

**DOL blog post and internal DOL audit letter further signal the regulatory agencies' focus on MHPAEA compliance.** On October 4, the DOL released a [blog post](#) on the importance of and enforcement of the Mental Health Parity and Addiction Equity Act (MHPAEA). The DOL Office of Inspector General also published a [letter](#) dated October 25 informing that an internal audit is being initiated to assess the extent of the DOL's enforcement of MHPAEA laws and regulations, as well as its corresponding corrective actions. Along with the multitude of MHPAEA guidance that was issued and discussed in our July Compliance Update, this blog post and internal audit letter further show how MHPAEA compliance is at the top of the regulatory agencies' agendas. Group health plan sponsors should make sure they are working with their carrier or TPA to confirm their plans are complying with MHPAEA and have an updated NQTL comparative analysis documented. Of note, the DOL states in the blog post that "[despite] the law's clear promise of parity between mental health and medical or surgical benefits, that promise has not been kept. ... We're proposing new regulations, committing unprecedented resources to bringing plans into compliance with the law, and ... our enforcement program has required plans to address discriminatory practices by:

- eliminating blanket pre-authorization requirements for mental health benefits;
- ensuring comparable coverage of nutrition counseling for people with eating disorders, applied behavioral analysis therapy to treat autism, and medication-assisted treatment for opioid use disorders; and
- eliminating special gatekeepers for mental health and substance use disorder treatment."

**Court strikes down HHS drug manufacturer coupon accumulation choice.** A court set aside a 2021 HHS rule that changed how direct drug manufacturer assistance accrues towards the ACA annual limits on cost-sharing. The HHS rule that was struck down had allowed (but did not require) plans and insurers to exclude the value of a drug manufacturer's coupon towards an individual's out-of-pocket costs. This [ruling](#) may require plans to comply with a prior HHS rule that only permitted plans to exclude the value of a manufacturer's coupon from an individual's out-of-pocket maximum when there is a medically equivalent generic available and only if permitted by state law. Hopefully the IRS and HHS will issue guidance in light of this ruling to help with potential HSA-eligibility complications under the prior HHS rule that now seems to be in effect.

**Surprise billing guidance addresses recent court rulings on the IDR process.** The regulatory agencies (DOL, HHS, and IRS) issued [FAQ](#) guidance on calculating the qualifying payment amount (QPA) under the No Surprises Act (NSA) and separate [guidance](#) on the phased reopening of the federal independent dispute resolution (IDR) process under the NSA, in response to recent court rulings. Regulations implementing the NSA have faced constant litigation and disruption to the IDR process. The FAQ guidance indicates that the government will appeal the most recent court rulings, but no additional interim guidance is planned in the meantime.

**HHS increases civil monetary penalties for HIPAA, MSP, and SBC noncompliance.** HHS [announced](#) adjusted penalty amounts effective for penalties assessed on or after October 6, 2023, for violations occurring on or after November 1, 2015. The indexed amounts for violations are as follows:

- The HIPAA Privacy and Security Rules have four tiers of violations that reflect increasing levels of culpability, with minimum and maximum penalty amounts within each tier and an annual cap on penalties for multiple violations of an identical provision.
  - *No Knowledge*. For violations where the covered entity does not know about the violation (and by exercising reasonable diligence, would not have known about the violation) the penalty amount is between \$137 and \$68,928 for each violation. The calendar year penalty cap is \$2,067,813 for all violations of an identical requirement.
  - *Reasonable Cause*. If the violation is due to reasonable cause, the penalty amount is between \$1,379 and \$68,928 for each violation. The calendar year penalty cap is \$2,067,813 for all violations of an identical requirement.
  - *Willful Neglect (but corrected within 30 days)*. For corrected violations that are caused by willful neglect, the penalty amount is between \$13,785 and \$68,928 for each violation. The calendar year penalty cap is \$2,067,813 for all violations of an identical requirement.
  - *Willful Neglect (but not corrected within 30 days)*. For violations caused by willful neglect that are not corrected, the penalty amount is between \$68,928 and \$2,067,813 per violation. The calendar year penalty cap is \$2,067,813 for all violations of an identical requirement.
- Medicare Secondary Payer (MSP) rules prohibit plans from “taking into account” the Medicare entitlement of employees and dependents. The violation for offering incentives to Medicare-eligible individuals not to enroll in a plan that would otherwise be primary is \$11,162.
- Summary of Benefits and Coverage (SBC) generally must be provided to participants and beneficiaries before enrollment and during open enrollment. The penalty for a willful failure to provide an SBC is \$1,362.

**Final 2023 ACA reporting forms and instructions.** The IRS released final 2023 forms and instructions for ACA reporting under IRS Code Sections 6055 and 6056. As a reminder, Forms 1094-B and 1095-B are filed by minimum essential coverage providers (including small employers with a self-insured plan) to report coverage information in accordance with Section 6055. Forms 1094-C and 1095-C are filed by applicable large employers (ALEs) to provide information that the IRS needs to administer employer shared responsibility penalties and eligibility for premium tax credits, as required under Section 6056. Forms are required to be filed with the IRS by February 28, 2024, or April 1, 2024 (if filing electronically). The deadline to furnish forms to individuals is March 1, 2024. In prior years, employers could file their ACA reporting forms by paper if the employer was filing fewer than 250 returns—however, starting in 2024 (for the 2023 calendar year reporting), employers filing 10 or more returns must file their forms electronically with the IRS.

- [Form 1094-B](#)
- [Form 1095-B](#)
- [Form 1094-C](#)
- [Form 1095-C](#)
- [B-Series Form Instructions](#)
- [C-Series Form Instructions](#)

**CMS announces 2024 Medicare Parts A and B premiums and deductibles.** On October 12, CMS [published](#) indexed 2024 values for Medicare Parts A and B. The published CMS fact sheet contains:

- Part A deductibles and copayments as well as Part A premiums for individuals required to pay premiums for Part A.
- Part B deductible and income-related monthly adjustment amounts for individuals required to pay more than the standard part B premium based on their income level and tax filing status.