Compliance Monthly Update: December 2024

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.

Annual PCORI fee adjustment announced. IRS Notice 2024-83 was released on December 2 with the annual increase in the Patient-Centered Outcomes Research Institute (PCORI) fee that must be paid by health insurers and self-insured health plan sponsors. PCORI fees were established by the ACA and are used to support clinical effectiveness research. The adjusted applicable dollar amount for PCORI fees for plan years ending on or after October 1, 2024, and before October 1, 2025, is $3.47. This is a $0.25 increase from the $3.22 amount in effect for plan years that ended on or after October 1, 2023, and before October 1, 2024. PCORI fees are calculated by multiplying the applicable dollar amount for the year by the plan's average number of covered lives. And the fees are reported annually on the second quarter IRS Form 720 no later than July 31 of the calendar year immediately following the last day of the plan year to which the fee applies.

Court vacates fixed-indemnity notice requirement. As background, in April 2024, a new rule was published that required fixed-indemnity plans (in order to qualify as an excepted benefit) to provide a notice intended to protect consumers from mistakenly believing a fixed-indemnity policy is comprehensive health insurance. The notice requirement was set to go into effect for plan years beginning on or after January 1, 2025. And plans would have been required to display the notice prominently on the first page (in either paper or electronic form, including on a website) of any marketing, application, and enrollment materials that are provided to participants at or before the time participants are given the opportunity to enroll in the coverage, in at least 14-point font. However, on December 4, a Texas district court vacated this notice requirement, so the new fixed-indemnity notice requirement no longer applies for group health plans. Employers who have already provided the notice can, but are not required to, remove it from all current and future communications. It is unclear whether the government will appeal this decision or if the incoming Trump administration will take any other action or rulemaking in response to the court decision vacating the notice requirement.

Telehealth HSA relief expires. When Congress passed year-end government funding legislation, it did not include an extension of the popular COVID-era telehealth safe harbor that permitted HDHP plans to reimburse telehealth services on a pre-deductible or first dollar coverage basis without impacting HSA eligibility. Because Congress did not extend the telehealth/HSA safe harbor, that relief expired on December 31, 2024, for calendar year plans (and at the end of the 2024 plan year for non-calendar year plans). This means that for plan years beginning on or after January 1, 2025, participants in HDHPs will not be eligible to make or receive contributions to their HSA if they can receive free telehealth services or receive telehealth services for less than fair market value for non-preventive services before meeting the HDHP minimum deductible. There is bipartisan support to extend or make permanent the telehealth/HSA safe harbor in 2025, but it is unclear if or when Congress will take action. For the time being, plan sponsors will need to need to: (a) require HDHP participants to pay fair market value for non-preventive telehealth services until the participant satisfies the minimum HDHP deductible, (b) disallow HDHP participants from utilizing telehealth services for non-preventive services until they meet their HDHP deductible, or (c) eliminate telehealth services from the HDHP.

ACA reporting relief legislation. On December 23, President Biden signed two pieces of legislation, the Paperwork Burden Reduction Act (PBRA) and the Employer Reporting Improvement Act (ERIA), that modify the ACA employer mandate and minimum essential coverage reporting rules and provides additional time and relief with respect to the employer mandate penalty process. These changes are effective immediately for the current 2024 forms due in early 2025. Aside from the changes specified in the legislation, all other ACA reporting requirements remain the same.

- The PBRA provides an alternative method of furnishing Forms 1095-B and 1095-C to individuals. Employers are no longer required to distribute the forms to individuals if the employer posts a clear, conspicuous, and accessible notice on their website that provides an email and physical address where requests can be sent to request a copy of the form by the later of (a) January 31 or (b) 30 days after the request. Note that this legislation only impacts federal ACA reporting requirements—state laws requiring distribution of the forms to individuals continue to apply.
- The ERIA provides additional ACA reporting relief including:
    - For self-insured plans, employers may use an individual's date of birth to be substituted if the individual's tax identification number (TIN) or social security number (SSN) is not available.
    - Previously, employers were permitted to provide forms to individuals electronically if the individual consents to receive them electronically. The ERIA provides that an individual is deemed to have consented to receive forms electronically if they have affirmatively consented at any prior time unless that consent is revoked in writing.
    - Requires the IRS to give large employers at least 90 days to respond to letters 226-J that propose employer shared responsibility payment (ESRP) amounts. Previously, employers had 30 days to respond.
    - Establishes a six-year statute of limitations for collecting employer mandate penalties. Previously, there was no statute of limitations.

Proposed changes to the HIPAA Security Rule. On December 27, HHS issued a notice of proposed rulemaking (NPRM) along with a fact sheet on proposed modifications to the HIPAA security rule with the intent to increase cybersecurity for electronic protected health information (ePHI). The proposed rule (if finalized) would strengthen the Security Rule's standards and implementation specifications for covered entities and business associates with new proposals and clarifications, including the following:

- Removes the distinction between "required" and "addressable" implementation specifications. Instead it makes all implementation specifications required (with specific, limited exceptions).
- Updates definitions and revises implementation specifications to reflect changes in technology and terminology.
- Adds compliance time periods and documentation requirements.
- Requires greater specificity for conducting a risk analysis.
- Implements notice requirements for workforce access termination status changes.
- Revises requirements for contingencies and security incident responses.
- Mandates new security controls, including encryption of ePHI at rest and in transit and the required use of multi-factor authentication.
- Requires regulated entities to conduct a compliance audit at least once every 12 months to ensure their compliance with the Security Rule.