

FYI® In-Depth

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2022 planning for health and welfare benefit plan operations

As the new year begins, plan sponsors should be prepared to address health and welfare compliance issues for 2022. This planner provides a discussion of key issues for consideration and a calendar outlining important deadlines. Buck's *Reporting and Disclosure Guide* rounds out our resources to help plan sponsors comply with event-based and participant-specific compliance requirements.

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Cafeteria plan and flexible spending account relief

In May 2020, as an initial response to the pandemic, the IRS issued guidance that significantly increased employer flexibility in allowing midyear election changes for cafeteria plans, health FSAs and dependent care FSAs. Under the guidance, employees could be permitted to make certain election changes without having experienced a "change-in-status" event. (See our May 14, 2020 FYI Alert.) In 2021, the Consolidated Appropriations Act, 2021 (CAA) provided relief to employees contributing to flexible spending accounts (FSAs) by giving them additional time to use their FSA funds. (See our January 6, 2021 FYI.)

Employers are required to amend their cafeteria plans to authorize any of the relief permitted by the 2020 IRS guidance and the CAA; these amendments may be retroactive. Amendments for changes made for plan years ending in 2020 were required to be adopted by December 31, 2021.

Mental Health Parity NQTL analysis

The CAA required that beginning February 10, 2021, plan sponsors of group health plans providing mental health and substance abuse benefits and medical/surgical benefits must be able to provide a comparative analysis to the DOL and HHS upon request to demonstrate their compliance with the

nonquantitative treatment limitations (NQTL) requirements of the Mental Health Parity and Addiction Equity Act (MHPAEA). Sponsors of self-insured plans should have a completed comparative analysis ready to submit if requested by the agencies. A [MHPAEA self-compliance tool](#) is available on the DOL's website as a resource for issuers and plan sponsors — section F of the tool addresses the NQTL requirements.

No Surprises Act/Transparency in Coverage rules

Passed as part of the CAA, the No Surprises Act is intended to protect patients from balance billing of emergency services, nonemergency services administered by nonparticipating providers at participating facilities and air ambulance services. Requirements that go into effect in 2022 include:

- Limiting cost sharing for out-of-network services to in-network levels, requiring cost sharing for these services to count toward any in-network deductibles and out-of-pocket maximums, and prohibiting balance billing under certain circumstances unless notice and consent requirements are satisfied;
- In the case of certain serious conditions, nonelective surgery, pregnancy or terminal illness, plans must allow participants to continue to receive care on an in-network basis from providers for up to 90 days after the provider ceases to be a participating provider; and
- The inclusion of notices regarding balance billing protections in explanations of benefits and posting on websites.

The final Transparency in Coverage (TiC) rules require non-grandfathered group health plans and insurance issuers to provide certain disclosures regarding prices and cost-sharing information.

Requirements that go into effect in 2022 include:

- The provision of updated medical ID cards that contain information regarding in-network and out-of-network deductibles, out-of-pocket maximums for the coverage and a telephone number and website address where members can seek assistance;
- More stringent rules for updating and verifying the accuracy of provider directories and responding to inquiries about a provider's status; and
- Posting the fees charged by in-network providers, out-of-network allowed amounts, and billed charges for covered items and services on their website.

Plan sponsors should review and become familiar with the TiC final rules and work with their third-party administrators (TPAs) and insurers to ensure compliance with these new standards.

Broker and consultant compensation disclosures

The CAA amended Section 408(b)(2) of ERISA to require brokers and consultants who expect to receive at least \$1,000 for their services from group health plans subject to ERISA (including dental and vision plans) to satisfy new compensation disclosure requirements. These rules are similar to those that have applied to pension plans. The disclosure requirements apply to contracts and

arrangements for services that are entered into, extended or renewed on or after December 27, 2021. Fiduciaries are expected to receive these statements in a reasonable amount of time prior to commencement of a contract so that they may determine if the compensation is reasonable and appropriate for the services to be provided. The Department of Labor recently issued a Field Assistance Bulletin setting out its temporary enforcement policy regarding the disclosure requirement. Under this policy, it will not treat a service provider as having failed to satisfy the requirement as long as it acts in good faith and reasonable interpretation of ERISA 408(b)(2). The DOL notes that even though the disclosure requirements for pension plans are not identical, it would view consideration of those requirements as a good faith and reasonable step.

ACA reporting deadline — proposed permanent extension

Forms 1095-B or 1095-C must be provided to individuals no later than January 31 of the year following the calendar year to which the forms relate. However, the IRS may authorize a 30-day extension for good cause shown. The IRS recently issued proposed regulations that would make this 30-day extension automatic for calendar years beginning on or after January 1, 2022, and will permit reporting entities and applicable large employers to apply it for the calendar year beginning January 1, 2021. Thus, the deadline for furnishing Forms 1095-B or 1095-C to individuals for the 2021 calendar year will be March 2, 2022.

2022 benefit limits

The IRS has issued the 2022 limits for qualified transportation fringe benefits, adoption assistance programs, health FSAs, and long-term care premiums. (See our November 10, 2021 FYI Alert.) The 2022 HSA annual contribution limits and the out-of-pocket amounts for self-only and family high-deductible health plan coverage all increased over the 2021 limits. (See our May 13, 2021 FYI.) Plan sponsors should review and consider whether to update their plan documents to reflect these limits.

In closing

Meeting 2022 compliance goals and obligations is an important step for assuring smooth plan operations throughout the year. In addition to the significant items noted above, plan sponsors should consider performing an annual “checkup” (i.e., a review of operational practices and fiduciary responsibilities) to address plan compliance and design considerations. Plan sponsors may conduct their own review or contract with an independent party. Regardless of who performs the review, identifying problems and initiating corrections in advance of any official governmental audit or inquiry is certainly the preferred course of action.

Calendar of health and welfare benefit plan compliance tasks¹

Action item	Due date
January	
Report value of health coverage on Form W-2	January 31, 2022*
Provide Massachusetts 1099-HC to employees	January 31, 2022*
February	
File ACA information reporting returns with IRS (for paper filing)	February 28, 2022*
Make any required self-insured plan payments to San Francisco for 2021	February 28, 2022*
March	
Complete CMS creditable/non-creditable coverage disclosure filing	March 1, 2022
Complete DOL Form M-1 (for MEWAs)	March 1, 2022*
Provide ACA information reporting forms 1095-C to individuals	March 2, 2022
Last day for flexible spending accounts with 2½ month grace periods	March 15, 2022
File ACA information reporting returns with IRS (for electronic filing)	March 31, 2022*
File ACA information reporting returns with state of NJ, RI, and CA	March 31, 2022*
April	
File San Francisco Annual Reporting Form for 2021	April 30, 2022*
File ACA information reporting returns with District of Columbia	April 30, 2022*
May	
File Form 990 or Form 8868 if requesting extension	May 15, 2022
July	
Provide Summary of Material Modifications for prior year amendments	July 29, 2022
File Form 720 filing and pay PCORI fee	July 31, 2022*
File Form 5500 or Form 5558 to request an extension	July 31, 2022

¹ Assumes calendar plan and sponsor tax year. Does not account for weekends, extended due dates other than for Forms 5500 and 990, short plan years, or new plans. The “weekend rule,” which extends due dates falling on weekends to the following Monday, generally applies to filing deadlines and certain other acts under tax rules.

Action item	Due date
August	
File Form 990 (if on extension) or Form 8868 if requesting additional extension	August 15, 2022
September	
Issue Summary Annual Report (if no extension)	September 30, 2022
October	
Provide notice of creditable/non-creditable prescription drug coverage to participants	October 14, 2022*
File Form 5500 if on extension	October 15, 2022
November	
File Form 990 (if additional 3-month extension)	November 15, 2022
December	
Issue Summary Annual Report (if on extension)	December 15, 2022
File Massachusetts HIRD Form	December 15, 2020
Deadline to correct DCAP discrimination test failures	December 31, 2022

* Date does not vary regardless of plan year.

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