

COMPLIANCE News to Know

News from September 30th - October 31st, 2023 V2.16



PATRIOT
GROWTH INSURANCE SERVICES
COMPLIANCE ✓

Upcoming...

November 16 - Patriot EB Webinar: **Business Associate Liability Under HIPAA**: Register Here: **BAA Liability**

December 14 - Patriot EB Webinar: **Fines & Penalties in Benefits Compliance**: Register Here: **Fines & Penalties**

December 31 - First Gag Clause Attestation filing due. Plans and Issuers **file via CMS' HIOS Portal**

Year-End Compliance Reminders

Compliance Reminders for Calendar-Year Plans

- **Nondiscrimination Testing**

Employers offering Cafeteria Plans must test & pass Sections 105(h), 125, and 129 (as applicable) nondiscrimination testing. The Plan must be in compliance annually. This testing is complex; consider hiring a third party vendor who specializes in such testing to assist.

- **12/15/23 - Summary Annual Report (SAR) Extended Deadline**

Employers required to file a Form 5500 must provide participants with a summary of Form 5500 data, i.e., the SAR.

- **12/31/23 - Gag Clause Prohibition Compliance Attestation**

Plans and issuers are required to attest that they have not entered into contracts or agreements containing restrictive language regarding cost and quality of care data. **Complete the attestation form** via CMS' website.

- **01/01/24 - Price Comparison Data - Remaining Items and Services**

Plans & issuers subject to the Transparency in Coverage Act (TiC) (e.g., Non-grandfathered & Grandmother Plans) must make **price comparison data** available via Internet, paper, and phone. **FAQ 61** clarifies reporting of Rx drug Machine-Readable Files (MRFs) is no longer deferred & no safe harbor exception applies. Fully insured plans should verify the MRF data will be posted by the carrier, and Self-funded plans should consult with TPAs/PBMs on who will post. Data must be updated in real time.

HHS Announces Civil Monetary Penalties for HIPAA, MSP, and SBC Violations

The department of Health and Human Services (HHS) **released** cost-of-living adjusted (+1.07745%) penalty amounts, effective for penalties assessed on or after October 6th 2023.

D.C. Court's ruling permits, but does not require, Plans and issuers to exclude drug coupons.

A **D.C. court opinion** vacated the 2021 Notice of Benefits and Payment Parameters for a “contradictory reading” and lack of definite guidance by agencies. Effectively, plans and issuers must decide whether to exclude the counting of drug manufacturer coupons towards deductibles.

Federal Agencies Release FAQ Part 62 to Address Corrections to IDR Process

Fully insured plans may rely on issuers to comply with revisions to the Independent Resolution Process (IDR) as an outcome of the US District Court's decision in *TMA III*. Self-funded plans should monitor TPAs and other plan administrators if in the IDR process to ensure proper calculation of the Qualifying Payment Amount (QPA) and timelines per **FAQ 62**.

CMS Releases 2024 Medicare Premiums and Coinsurance Amounts

The Centers for Medicare & Medicaid Services (**CMS**) **released** the 2024 premiums, deductibles, and coinsurance amounts for the Medicare Part A and Part B programs, and the 2024 Medicare Part D income-related monthly adjustment amounts.

IRS Releases New PCORI Fee for Self-Funded Group Health Plans

The **IRS released** the Patient Centered Outcomes Research Institute Fee (PCORI) applicable to self-funded (and level-funded) group health plans and some HRAs for plan years ending on or before Oct. 1, 2023, and before Oct. 1, 2024. **The PCORI fee is \$3.22 per covered life per year and is due by July 31, 2024 for self-funded plans.** Carriers pay the fee for insured policies.

IRS Releases Final 2023 ACA Reporting Forms and Instructions (1094/1095 Series)

Updated forms and instructions for ACA reporting are now available via the IRS' website. Applicable Large Employers (ALEs) must file with the IRS and furnish to employees to report offers of coverage. **Electronic filing for 10+ forms is due April 1, 2024, and must be furnished to employees by March 2, 2024.** No significant changes were made to the forms; however, most employers must file forms electronically with the IRS. Penalties for failure to file apply, and run \$310 per statement.

Non-ALEs: **Instructions with hyperlinks to Forms 1094-1095 B**

ALEs: **Instructions with hyperlinks to Forms 1094-1095 C**