



Plan Now for the Busy Season!

The *lazy days of summer* are necessary to recharge & soak in sun, spend time with loved ones, and plan. Yes, plan. It's a great opportunity to plan the busy Q3 & Q4 seasons – a return to school & Open Enrollment. Tidy up your benefits compliance; below are five questions to consider to maintain healthy plans & ease OE chaos.

1. *Are you prepared for remaining 2024 compliance deadlines?*
2. *Will the plan require amendments due to changes in design?*
3. *Did you reduce benefits? Consider a SMM if changes are "material."*
4. *What plan changes should be communicated in OE materials?*
5. *Provider agreements: do you know the terms for 2024 & beyond?*



2nd Wednesday monthly at 1 pm EST

July 10 – Transparency in Coverage

August 14 – Federal FMLA

September 11 - Cafeteria Plans &
Nondiscrimination Testing

[**Register Here!**](#)

Upcoming Deadlines

- ✓ **July 31** – PCORI Fee due for self-funded plans. Complete IRS [Form 720](#)
- ✓ **July 31** - File Form 5500 or Form 5558 for an extension via [eFAST2](#)
- ✓ **September 30** – Summary Annual Report (SAR) due to participants for 1/1 plans only
- ✓ **December 31** – Gag Clause Attestation due via CMS

Access the [2024 Benefits Compliance Checklist](#) or ask your Patriot Advisor.

The Rundown

- Need to Know: [Thorny Laws That ICHRA Vendors Should Consider](#)
- IRS: [Form 8889 Instructions - Health Savings Accounts](#)
- IRS: [Form 720 - PCORI Fee & Instructions for Form 720 \(Rev. June 2024\)](#)
- Fact Sheet: [Educational Assistance Programs](#)

- [Federal Register: Health Breach Notification Rule](#)

The Federal Trade Commission (FTC) is amending the Health Breach Notification Rule that requires vendors of personal health records and related entities that are not covered by the Health Insurance Portability and Accountability Act (HIPAA) to notify individuals, the FTC, and, in some cases, the media of a breach of unsecured personally identifiable health data.

- Blog: [IRA Changes Affect Notice of Creditable Coverage Considerations](#)
- Blog: [Paternity Leave Gaining Momentum in the Modern Workplace](#)
- Blog: [Ryan S. v. UnitedHealth for the 2023 MHPAEA Proposed Rule](#)
- Blog: [Captives & Level-Funding in the U.S.](#)
- Blog: [San Francisco's Health Care Security Ordinance](#)

- [HHS Updates Change Healthcare Cybersecurity Incident FAQs](#)

HHS's Office for Civil Rights updated its FAQs addressing the investigation of Change Healthcare (a unit of United Healthcare Group (UHG) that serves as a HIPAA business associate for health plans and providers nationwide).

- CMS: [Updated Submission Instructions & User Manual](#) for the Gag Clause Prohibition Compliance Attestation (GCPCA).
- News: [Suit Challenges Admin. Requirements of Fixed Indemnity Plans](#)
- News: [ADA challenge to wellness incentives stays alive.](#)
- News: [Taking a vacation from work may soon become mandatory.](#)

Summer Webinar Schedule



July 10 – [The Transparency in Coverage Act](#) @ 1 PM EST (45 min.)

The TiC of 2020 – the Transparency in Coverage Act. Did you forget about it? It's understandable given it was quickly followed by (and confused with) the Consolidated Appropriations Act in 2021. Join Patriot's Benefits Compliance Counsel, Olivia Ash, to review two provisions of the TiC that apply to benefits plans – the Machine-Readable Files requirement & the Price Comparison Tool regulation – and discover what plans should be doing now.

August 14 – [Federal Family & Medical Leave Basics](#) & 1 PM EST (60 min.)

Another FMLA basics webinar? Yes. Since States are enhancing the federal “floor” by offering various versions of paid & unpaid protected leave, let's review the process. Join Patriot's Benefits Compliance Counsel, Olivia Ash, for a one-hour webinar to outline the FMLA process. This month Olivia welcomes a guest Leave of Absence expert to reveal how federal leave interacts with state leave (or not), including a quick glance at current & upcoming leave laws.

Medicare Part D → Change in Creditable Coverage Status May Affect Persons in HDHPs

*While legislation does not directly affect group health plans, **plan sponsors should be aware of a change to Medicare Part D's creditable coverage status for individuals enrolled in a high deductible health plan (HDHP).** Starting in 2025, out-of-pocket costs for Rx drugs under Medicare Part D will be limited to \$2,000 annually.*

Currently: "CMS provides different ways for employer-sponsored plans to make a creditable coverage determination. Most carriers will provide this information to their fully insured plans, but self-funded plan sponsors often must make the creditable coverage determination themselves or rely on another third party, such as an actuary, to assist with the determination.

Many employers use the [simplified determination method](#) to determine whether coverage is creditable. CMS provides a set list of standards, and a plan [is] creditable if the plan's prescription drug plan design meets all the stated standards. The simplified determination method, while straightforward forward, is not available for some plan designs, such as high deductible health plans (HDHPs).

If the employer cannot use the simplified determination method to determine the creditable coverage status of the prescription drug plan, they must make an actuarial determination to determine if coverage is creditable. This determination should be completed annually."

Beginning 2025: The Inflation Reduction Act "decreases the out-of-pocket maximum (OOPM) limit from \$8,000 in 2024 to \$2,000 in 2025. This IRA change may affect whether a group health plan's prescription drug coverage is creditable, particularly for HDHPs that have minimum deductibles set by the Internal Revenue Service."

Note: *In the [CMS Part D Redesign Instructions](#), CMS stated the simplified determination method would no longer be a "valid methodology to determine whether an entity's prescription drug coverage is creditable or not." However, CMS revised Section 90 of the [Final Instructions](#) released in April to state that they will continue to permit the use of the simplified determination methodology, without modification to the existing parameters, for CY 2025. The Final Instructions specify that CMS will re-evaluate the continued use of the existing creditable coverage simplified determination method, or establish a revised one, for CY 2026.*

[Source](#)

Fiduciary Corner

The Department of Labor (“DOL”) recently released a final regulation (the “Fiduciary Rule”) redefining “investment advice” under the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) and section 4975 of the Internal Revenue Code of 1986, as amended (the “Code”). Although the Fiduciary Rule is largely aimed at retirement plans, DOL declined to provide an express exception for health and welfare plans as requested by many commentators. As a result, the Fiduciary Rule is applicable to ERISA-covered health and welfare plans that include investments and Health Savings Accounts (“HSAs”). [Read more at Groom Law.](#)

[The Dos and Don'ts of ERISA Document Requests](#)


- Don't ignore requests.
- Ask for help.
- Don't overshare.
- Reflect & correct.

[Do We Have to Furnish the SBC in Languages Other Than English?](#)

- *The SBC must be presented in a “culturally & linguistically appropriate” manner.* Click the link above for details on guidelines.

[7 Actions for Employers Learned from Fiduciary Litigation](#)

1. Review PBMs.
 2. Understand provider compensation.
 3. Establish a Health & Welfare Committee
 4. ...more at the link above
- ✓ **If you're a Patriot advisor**, click on the upper right image to access our 2-page handout: [Fiduciary Best Practices](#), & chat with clients.
 - ✓ **If you** want to [review top strategies for benefits plans](#), click the image at the bottom right.



PATRIOT
GROWTH INSURANCE SERVICES
COMPLIANCE

FIDUCIARY BEST PRACTICES

KNOW 'EM. PRACTICE 'EM.

Who, or what, is a fiduciary?

The word “fiduciary” is based on the Latin word meaning to *hold something in trust, confidence, or reliance*. A *fiduciary* is a trusted individual or entity, responsible for proper management of a plan, program, or funds. To understand this word in the context of benefit plans, we look to ERISA’s definition of fiduciary:

A person using discretion in administering & managing a plan or controlling the plan’s assets is a fiduciary to the extent of that discretion or control. Fiduciary status is based on the functions performed for the plan, not just a person’s title.

ERISA is the federal regulation that sets minimum standards for both retirement and health & welfare plans in private industry, with the goal of protecting individuals in those plans. For health & welfare plans, ERISA fiduciaries include plan sponsors and plan administrators. Additionally, *persons who act with discretionary decision making regarding the plan* will likely be considered **functional fiduciaries**, even if unnamed in a plan document or designated as a plan fiduciary.

¹ Employee Retirement Income Security Act of 1974

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What are ERISA’s fiduciary duties?

The **5 fiduciary responsibilities**:

1. **Act** solely in the interest of plan participants & their beneficiaries with the exclusive purpose of providing benefits to them;
2. **Perform** duties prudently;
3. **Follow** the plan documents;
4. **Hold** plan assets in trust; and
5. **Pay** only reasonable plan expenses.

What decisions are fiduciary in nature?

- **Overseeing** the creation, distribution, & maintenance of plan documents, including updating participants on plan changes (e.g., *drafting, amending, & updating forms; & distributing open enrollment materials*).
- **Following** the written terms of the plan document(s), including contributions, rebating, & claims provisions.
- **Deciding** who & why a person was chosen to act on the plan’s behalf.
- **Making** discretionary administrative & claims decisions (*especially for self-funded plans who are often named plan administrators & handle protected participant information*).
- **Selecting** plan providers & negotiating contracts.
- **Evaluating** performance of plan providers (e.g., *TPAs, PBMs, COBRA administrators, & consultants*).
- **Maintaining** the financial health of the plan, including diversifying plan assets.



Benefitfocus®

2024 State of Employee Benefits™ Report



How today’s top employers can develop impactful benefits strategies, enable winning benefits experiences and prepare for what’s next.