Compliance Recap | December 2024

Jan. 5, 2025

December brought two bills easing employer ACA reporting requirements. President Biden stepped away from proposed changes to the birth control opt-out for moral objections. The pre-deductible status of telehealth in HSA plans expired, and the CAA 2024 Gag Clause Attestation submission took effect.

Two Bills Impacting ACA Reporting Requirements

Two recent bills signed into law by President Biden are set to ease the Affordable Care Act (ACA) reporting requirements for employers. The Paperwork Burden Reduction Act and the Employer Reporting Improvement Act introduce significant changes to the way employers handle Forms 1095-B and 1095-C, used to report health benefits to both employees and the Internal Revenue Service (IRS).

The Employer Reporting Improvement Act includes several key provisions:

- Employers have the option to provide coverage notices electronically, streamlining the process.
- Employee birthdates may be used in place of Social Security numbers when the latter are unavailable.
- The time frame for employers to respond to IRS warning letters regarding health insurance reporting failures has been extended from 30 days to 90 days.
- The Act imposes a six-year limitation on the IRS's ability to collect assessments related to health benefits reporting failures, offering some protection for employers from long-term penalties.

The Paperwork Burden Reduction Act addresses the reporting of Forms 1095-B. Previously, employers were required to send these forms to all employees, and the IRS permitted employers to make the forms available only upon request. The new law codifies this approach, easing the paperwork burden on employers. Furthermore, the bill allows employers to apply the same approach to Form 1095-C, meaning these forms can be provided only when employees request them, rather than being automatically distributed to all employees.

These changes are aimed at reducing administrative burdens and improving efficiency for employers while maintaining compliance with ACA health coverage reporting requirements.

Biden Administration Withdraws Proposed Birth Control Benefits Regulations

The Biden Administration has suspended its efforts to limit which employers can cite moral objections to birth control use as a reason for not providing these benefits under the Affordable Care Act (ACA). The Administration announced it would withdraw the draft birth control benefits regulations that were proposed in February 2023, aimed at reversing policies from the previous administration.

The Biden Administration's proposed changes aimed to:

- Remove an exemption allowing employers with moral objections to birth control to avoid offering coverage, although it would have maintained the exemption for religious employers.
- Allow employees of religious employers to access birth control at no cost through an alternative pathway.

After receiving more than 44,000 comments on the proposal, the Administration decided to withdraw the proposal to focus its efforts on other priorities and allow more time to review the feedback. While the withdrawal pauses the proposed changes, officials indicated that the agencies could propose similar rules in the future.

The history of the ACA's contraceptive coverage mandate has undergone many legal and regulatory changes. After the ACA was enacted, the Obama Administration faced significant challenges in implementing the birth control coverage requirement, including disputes over how to accommodate religious organizations. In 2014, the Supreme Court ruled in the *Hobby Lobby* case that closely held private companies could refuse to provide birth control coverage based on religious objections. During the Trump Administration, regulations were further loosened, allowing both religious and moral objections to serve as grounds for exemptions. The Biden Administration's proposed rule sought to reverse some of these changes.

As President Biden's administration nears its end, advocates for reproductive rights are closely watching the unfolding political dynamics, knowing that efforts to restrict access to birth control and abortion care may intensify under the incoming Republican-controlled Congress.

Telehealth Safe Harbor Expires

Pre-deductible coverage for telehealth in high deductible health plans (HDHPs) has expired, causing some uncertainty for plan sponsors and participants. Despite efforts by Congress to extend the telehealth safe harbor, which would allow HDHPs to cover telehealth services before a plan participant meets their deductible, the American Relief Act of 2025, signed into law on December 21, 2024, did not include an extension of this provision. As a result, effective January 1, 2025, employers will no longer be able to cover telehealth services for HDHP participants before they meet their deductible without jeopardizing their eligibility to contribute to a health savings account (HSA).

This telehealth safe harbor, which was originally created by the CARES Act in 2020, allowed HDHPs to offer telehealth and remote care services without first requiring participants to meet their plan's deductible. The

provision was extended multiple times by Congress, including through the end of 2024, but it will not carry into the new year unless revived in future legislation. Under current law, if telehealth services are covered before the deductible is met, the HDHP would lose its HSA-qualified status, and participants would not be able to contribute to an HSA for that plan year.

Employer Considerations

Plan sponsors need to ensure that telehealth services provided in 2025 and beyond are subject to cost-sharing unless they fall under preventive services as defined by the Affordable Care Act, such as telehealth visits for preventive prescriptions.

While there is a possibility that the issue could be revisited by Congress in the future, any potential action may take several months. In the meantime, plan sponsors should communicate with plan administrators and employees and amend plan documents where necessary to align with the new rules.

Gag Clause Attestation Due Dec. 31

Beginning in 2023, insurance carriers and plan sponsors of group health plans were required to submit information to the Centers for Medicare and Medicaid Services (CMS) by December 31 attesting that their plans do not include prohibited gag clauses.

As a reminder, a gag clause directly or indirectly restricts types of data and information that a plan or issuer can make available to another party. These clauses may be found in agreements between a plan or carrier and any of the following parties:

- A health care provider
- A network or association of providers
- A third-party administrator (TPA)
- A service provider offering access to a network of providers

The next due date is December 31, 2025.

Employer Considerations

Fully insured group health plans can rely on the carrier to submit the Attestation, but only after verifying that the carrier will take responsibility. Confirmation of this is vital, as carriers and groups share responsibility for submission.

Self-funded and level-funded plans are responsible for submission of the Gag Clause Attestation. Plan sponsors may enter into a written agreement with a TPA or pharmacy benefit manager to submit the attestation on behalf of the plan.

Question of the Month

Q. An employee's spouse has family coverage under an HDHP and has an HSA, where contributions are deducted from his paycheck. Can the employee also have an HSA at work and have contributions deducted from their paycheck without being enrolled in the employer-sponsored HDHP or will they have to enroll in that plan?

A. If the employee is enrolled in the spouse's family HDHP, the spouse can contribute to their HSA and the employee can contribute to their own HSA. The combined contributions cannot exceed the family HSA limit. (See the IRS training manual on HSA requirements.)