TAC Benefits Group

Challenge the status quo

Escalating Health Plan Requirements in 2022 and Beyond

Affordable Care Act

ACA – What's New

- **30-day deadline delay – not granted for 2021 filings**
  - Furnishing employee forms is now **due 1/31/22**
  - No changes to IRS Transmittals: paper due 2/28; e-file due 3/31
- **Good faith relief, filing failures – not granted for 2021 filings**
  - Failure to file correct information (TINs, names)
  - Failure to file timely, failure to furnish corrected forms
  - Previously, a good faith effort could avoid penalties
  - Penalties up to $280 x 2 per form ($550 x 2 for intentional disregard)

ACA – What's New

IRS Proposed regs – lower e-file thresholds

- Effective for 2021 returns
- Applies to information returns (1095, 1099, W2)
- **100 return threshold** for due dates during calendar year 2022
- **10 return threshold** for due dates during calendar year 2023+
- Aggregation of information returns for counts
- ALEs will easily surpass threshold (50 forms 1095 + W2)
- Will eliminate paper filing for almost all employers by 2023

ACA – What's New

- **Tighter Enforcement of ACA ESR Provisions in 2022 after IRS Ends Good-Faith Transition Relief**
  - Good-faith transition relief accepted from 2015-2020 tax years.
  - Impacts ALE's who fail to file or incorrectly file 1094-C/1095-C
  - IRS likely used six-year transition period to gain insight into how to examine ACA reporting requirements in more detail for discrepancies.

What happens if an ALE does not file a 1094-C/1095-C on time?

- ALEs could be subject to penalties under 6721 and 6722 of the IRC. These are the same penalties that other information returns are subject to, such as W-2s, if the returns are not filed accurately and timely.
- If a business is an ALE and does not file 1094-C/1095-C, the IRS can still accurately determine if that business is large enough to be an ALE.
- The IRS is expected to be stricter with employers in terms of meeting reporting requirements and requiring employers to substantiate information provided.

ACA – Enforcement

- **Non-filing enforcement letters in 2021 (IRS Letter 5699)**
  - Pre-penalty assessment letter (penalties could be $280 x 2)
  - Could be triggered by number of W2s (as defined by 4980H)
  - IRS 226J penalty letter Employer Shared Responsibility (ESR) could follow if determined as ALE
- **ESR penalties are increasing annually**
  - $2,750 ("A" penalty) multiplied by all Full-Time (FT) employees
  - $4,120 ("B" penalty) multiplied by each FT employee receiving PTC
  - *2015 penalties started at $2,080/$3,120*
- **Affordability threshold continues to be more difficult to meet**

ACA – Enforcement

- **Respond quickly to notifications from the IRS!!!**
- Absent any information from the employer the IRS bases the amount of the penalty on the presumption that the W-2 count for the employer is the same as the 1095-C count.
- Late 1094-C/1095-C filing could still trigger an employer shared responsibility payment (ESRP) assessment based on the information filed on the 1094-C/1095-C.
- If the information filed on those forms is accurate, then the Employer Shared Responsibility Provision (ESRP) assessment would be the correct amount the employer owes the IRS under the provision. If the information returns were not filed accurately, late or not, could require another response to the IRS.

ACA – Affordability

Employer Shared Responsibility (ESR) Penalties

- Applies to applicable large employers (average of 50 FTEs)
- IRS affordability safe harbor methods
  - **Federal poverty level** – minimum $ contribution
  - **Rate of pay** – based on hourly rate or monthly salary
  - **W2** – based on box 1 of W2
- Affordability % changes annually (9.61% for 2022)
- Based on the lowest-cost single only coverage plan that provides “Minimum Value”

ACA – Penalty Exposure

- ESR (Employer Shared Responsibility) penalty amounts have been increasing annually
- Affordability % reduction in 2022 (9.83% ⇨9.61%)
- Layoffs, furloughs, sick leave impacting hours/pay
  - EEs may seek exchange coverage while eligible for ER coverage
  - Staffing Industry is impacted due to turnover rates
- American Rescue Plan Act
  - No income limit to qualify for Premium Tax Credit (PTC) in 2021/2022
  - Cap on exchange premiums in 2021/2022 to 8.5% (incentivizes EE's to seek individual coverage via state exchanges
  - Reconciliation package may extend these through 2025

Employer Filing and Furnishing Penalties

Failure to File Penalty- IRC 6721: Failure to file correct information returns. If the return is not filed by the late filing August 1 deadline, the full penalty is assessed per applicable individual return not filed.

Failure to Furnish Penalty- IRC 6722: Failure to furnish correct payee statements. If the ACA-mandated health insurance information is not provided to applicable employees by the deadlines established by the IRS, the penalties are assessed per applicable individual not receiving this information.

Time Returns Filed/Furnished	2016	2017	2018	2019	2020	2021
Not more than 30 days late	$50 per return - $529,500 max	$50 per return - $532,000 max	$50 per return - $536,000 max	$50 per return - $545,500 max	$50 per return - $556,500 max	$50 per return - $571,000 max
31 days late – Aug. 1	$100 per return - $1,589,000 max	$100 per return - $1,596,500 max	$100 per return - $1,609,000 max	$100 per return - $1,637,500 max	$110 per return - $1,669,500 max	$110 per return - $1,713,000 max
After Aug. 1 – or not at all	$260 per return - $3,178,500 max	$260 per return - $3,193,000 max	$260 per return - $3,218,500 max	$270 per return - $3,275,500 max	$270 per return - $3,339,000 max	$280 per return - $3,426,000 max
Intentional disregard	$520 per return – No limitation	$520 per return – No limitation	$520 per return – No limitation	$520 per return – No limitation	$520 per return – No limitation	$520 per return – No limitation

**All fine and maximum fine amount have been adjsted for inflation

ACA – Employer Mandate Penalties

The "A" Penalty - IRC 4980H(a)

Employer Shared Responsibility Payment for Failure to Offer Minimum Essential Coverage. On a monthly basis, applies to each month that the employer failed to offer Minimum Essential Coverage to at least 95% of a company's full-time employees and their dependents) amd at least one full-time employee received a Premium Tax Credit for purchasing coverage through the marketplace for that month.

	2016	2017	2018	2019	2020	2021	2022
Monthly Penalty Per Employee	$180.00	$188.33	$193.33	$208.33	$214.16	$225.00	$229.17**
Annual Penalty Per Employee	$2,160	$2,260	$2,320	$2,500	$2,570	$2,700	$2,750**
MEC Offer % of FT	95%	95%	95%	95%	95%	95%	95%
FT Headcount Reduction	30	30	30	$99.75	30	30	30

*** Note: The March 2021 enactment of the American Rescue Plan, which temporarily reduces the affordability cap to no more than 8.5% of household income for 2021 and 2022, may result in the IRS lowering the corresponding IRC Section 4980H(b) penalty threshold to 8.5%, instead of the prior 9.83% for 2021 and 9.61% for 2022**
****Note: 2022 4980H penalty amounts are not final and haven't been officially issued by the IRS. However, the amounts above are unlikely to change.**

ACA – Employer Mandate Penalties

The "B" Penalty- IRC 4980H(b)

Employer Shared Responsibility Payment for Failure to offer Coverage that Meets Affordability and Minimum Value (assessed if a 4980H(a) penalty is not triggered). On a monthly basis, applies for every full-time employee that did not receive an offer of coverage or received an offer, but the offer was either not affordable or did not provide Minimum Value or both, and the employee received a Premium Tax Credit for purchasing coverage through the marketplace for that month.

	2016	2017	2018	2019	2020	2021	2022
Monthly Penalty Per Employee	$270.00	$282.50	$290.00	$312.50	$362.66	$338.33	$343.33**
Annual Penalty Per Employee	$3,240	$3,390	$3,480	$3,750	$3,860	$4,060	$4,120**
Affordability Safe Harbor %	9.66%	9.69%	9.56%	9.86%	9.78%	9.83%	9.61%
FLP Monthly Amount (household size 1)	$94.75	$95.93	$96.08	$99.75	$101.79	$104.53	$103.14
FLP Annual Amount (household size 1)	$1,136.93	$1,151.12	$1,152.94	$1,197.00	$1,221.48	$1,254.31	$1,237.77

*** Note: The March 2021 enactment of the American Rescue Plan, which temporarily reduces the affordability cap to no more than 8.5% of household income for 2021 and 2022, may result in the IRS lowering the corresponding IRC Section 4980H(b) penalty threshold to 8.5%, instead of the prior 9.83% for 2021 and 9.61% for 2022**

****Note: 2022 4980H penalty amounts are not final and haven't been officially issued by the IRS. However, the amounts above are unlikely to change.**

ACA- Penalty 226-J Process

Step 1: Receipt of Letter 226-J

- Letter attaches Employee Premium Tax Credit (PTC) Listing (Form14765), which reflects names and months of the year employee(s) received subsidies from marketplace/exchange
- Letter includes an Employee Shared Responsibility Payment (ESRP) Summary Table, which identifies the amount of penalties to be assessed on an employer
- Employer must respond within 30 days of receipt of the letter

Step 2: Form 14764 Employer Shared Responsibility Provision (ESRP) Response

- Form used to respond to Letter 226J
- Employer can contest the imposition of penalties for one or more employees

Step 3: Letter 227

- Acknowledges the IRS s receipt of an employer s response to the penalty notice
- Five different versions available- J,K,L,M,N
- Outlines next steps for the employer to follow

Step 4: Pre-Assessment Conference with IRS

- The employer can request a conference with the IRS Office of Appeals if the employer disagrees with the contents of Letter 227
- Employer to review IRS Publication to file an appeal
- Appeal to be filed within 30 days of the receipt of Letter 227

Step 5: Notice CP 220-J, Demand of Payment

- Notice requires employers to pay stated ACA penalty amounts and is issued after the appeals process, or if an employer fails to respond to Letter 226J or Letter 227
- Notice will instruct the employer on the amount to pay and how to pay it

ACA – Takeaways

Takeaways

- Timely ACA filings are critical – starting NOW
- Reporting accuracy and completeness is critical – starting in 2022
- The more IRS letters (5699, 5698, 5005-A, 226-J, 227-J/N), the more complex the process.
- Keeping plans affordable will be a balancing act for employers
- Expect more IRS correspondence in 2022 and beyond
- The risk of penalties continues to increase
    - Especially in certain industry segments (staffing)
- Knowledgeable advisors can help clients avoid penalties
- A comprehensive benefits package and proper technology will help you avoid the potential for inaccurate or incomplete filing. Ask your advisor about benefits administration and tracking.

ACA- Reference Forms

IRS Letter 226-J

Form 14764, ESRP Response

IRS Letter 227-K

Letter 227-J acknowledges receipt of the signed agreement Form 14764, ESRP Response, and that the ESRP will be assessed. After issuance of this letter, the case will be closed. No response is required.

Letter 227-K acknowledges receipt of the information provided and shows the ESRP has been reduced to zero. After issuance of this letter, the case will be closed. No response is required.

Letter 227-L acknowledges receipt of the information provided and shows the ESRP has been revised. The letter includes an updated Form 14765 (PTC Listing) and revised calculation table. The ALE can agree or request a meeting with the manager and/or appeals.

Letter 227-M acknowledges receipt of information provided and shows that the ESRP did not change. The letter provides an updated Form 14765 (PTC Listing) and revised calculation table. The ALE can agree or request a meeting with the manager and/or appeals.

Letter 227-N acknowledges the decision reached in Appeals and shows the ESRP based on the Appeals review. After issuance of this letter, the case will be closed. No response is required.

Transparency & Surprise Billing

No Surprises Act Interim Final Rule (IFR) – Part I

Overview of Protections – limits to cost sharing

- Emergency services
- Nonparticipating providers of non-emergency services at IN facilities
- Air ambulance providers

Employer Balance Billing Disclosure Requirement

- Notice requirement – Model Notice (effective 1/1/22)
- Waiting for additional guidance but good faith interpretation should be used

No Surprises Act IFR – Part II

Independent Dispute Resolution (IDR) Process (eff. 1/1/22)

- If initial 30-day negotiation period fails, IDR process may be initiated within *4 business days*
- Certified IDR entity selected within *3 business days*
- Both parties submit their offers of payment & documentation within *10 business days*
- IDR entity issues a binding determination selecting one offer *within 30 business days*
- Losing party pays the IDR fee ($200-$500)

Carriers is responsible for fully-insured plans Plan sponsor is responsible for self-insured plans

***Note that although legislation takes affect 1/1/22, some provisions not implemented until 7/1/22**

Transparency in Coverage Final Rules

Stated Goals:

To support market driven health care system by giving consumers the information they need to make informed decisions about heath care purchases. It is believed that transparency will reduce health care costs over time.

Rules apply to:

- Non-grandfathered insured major medical plans
- Non-grandfathered self-insured major medical plans

Rules do not apply to:

- Excepted benefits (dental, vision, health FSAs)
- HRAs, HSAs, ICHRAs
- Short-term limited duration insurance

Summary – Transparency in Coverage Rules

REQUIREMENT	EFF DATE	ENFORCEMENT CHANGES	RESPONSIBLE
Public Disclosure of Machine Readable Files • In Network and Out Of Network Reimbursement Rates	1/1/22	**Delayed until 7/1/2022** Effective in the month the plan year begins, for plan years beginning after 7/1/22	Group Health Plan (GHP*)
Public Disclosure of Machine Readable Files • Prescription Drug Reimbursement Rates	1/1/22	**Delayed until further notice**	GHP*
Participant Disclosures • 500 Shoppable Services web tool	1/1/23	No change	GHP*
Participant Disclosures • All Services web tool	1/1/24	No change	GHP*

*** Responsibility is with the plan sponsor for fully-insured plans, however they may contract with the carrier to provide this information for plans. Self-insured plans are entirely responsible for these disclosures.**

Summary – Transparency Rules under Consolidated Appropriations Act (CAA)

REQUIREMENT	EFF DATE	ENFORCEMENT CHANGES	RESPONSIBLE
MHPAEA Comparative Analysis & Non-Quantitative Treatment Limitations (NQTL)s	2/10/21	No changes	GHPs and issuers
Disclosure of Broker Compensation	12/27/21	No changes	Broker/consultant
Surprise Billing Protections	1/1/22	No changes	Providers, issuers and GHPs
Elimination of Gag Clauses	12/27/20	Delayed *	GHPs and issuers
Attestation of Elimination of Gag Clauses	12/27/21	Delayed *	GHPs and issuers
Rx Benefits Reporting to HHS, DOL, IRS	12/27/21	Delayed *	GHPs and issuers
ID Card Additional Information	1/1/22	Delayed *	GHPs and issuers
Advanced EOBs & Good Faith Estimates	1/1/22	Delayed *	GHPs and issuers
Price Comparison Tool & Guidance	1/1/22	1/1/23	GHPs and issuers
Accurate Provider Directory	1/1/22	Delayed *	GHPs and issuers
Continuity of Care	1/1/22	Delayed *	GHPs and issuers

* Pending implementation rules, regs or guidance. Good faith interpretation & implementation recommended.
Applies to GHPs including grandfathered plans.

Transparency Regulations

Takeaways

- Transparency requirements will impact essentially all GHPs
- Sponsors of self-funded plans should confirm that the TPA will be following the new IDR process effective 1/1/22
- Balance Billing Model Notice should be implemented for plan years beginning 1/1/22

Mental Health Parity & Addiction Equity Act

MHPAEA

Mental Health Parity & Addiction Equity Act

Background

- Mental Health Parity Act of 1996
  - A limited law
- Mental Health Parity and Addiction Equity Act of 2008
  - Designed to strengthen mental health parity requirements
- The Consolidated Appropriations Act of 2021
  - Brought renewed focus & enforcement of MHPAEA (effective 2/10/21)

MHPAEA

Mental Health Parity & Addiction Equity Act

Plans impacted

- Plans that provide mental health or substance use disorder benefits (MH/SUD) and medical/surgical benefits
  - If no MH/SUD is offered, there is no MHPAEA responsibility
- Fully insured plans (all plans are impacted)
  - *Plan sponsor and carrier share responsibility*
- Self-insured plans, where employer has > 50 EEs
  - *Plan sponsor is responsible*

MHPAEA
Mental Health Parity & Addiction Equity Act

Requirements – Plan Design

- **Quantitative treatment limitations** (QTLs) for Mental Health/Substance Use Disorders (MH/SUD) must be no more restrictive than medical/surgical benefits
- Prohibits separate treatment limitations that apply only to MH/SUD
  - Within coverage categories (Inpatient IN, Inpatient Out-of-Network (OON), Outpatient In-Network IN, Outpatient OON, Emergency, Rx)
- **Non-quantitative treatment limitations** (NQTLs) may not be imposed on MH/SUD unless standards are comparable

Requirements – NQTL Comparative Analysis

- Perform a comparative analysis of each NQTL's design and application
- Document a detailed, written and reasoned explanation of specific plan terms and practices, and provide a basis for conclusions
  - This will be a HUGE document (100+ pages)
  - Must be disclosed to beneficiaries, federal agencies and state regulators upon demand

MHPAEA

Mental Health Parity & Addiction Equity Act

Enforcement & Penalties

- Penalties can be $100/day per impacted beneficiary
- If your client is being audited by the DOL or a NQTL has been requested, respond quickly
- Plans are being audited now, and participants may submit complaints against plans, triggering enforcement actions
- Plans will have limited time to respond to an enforcement action

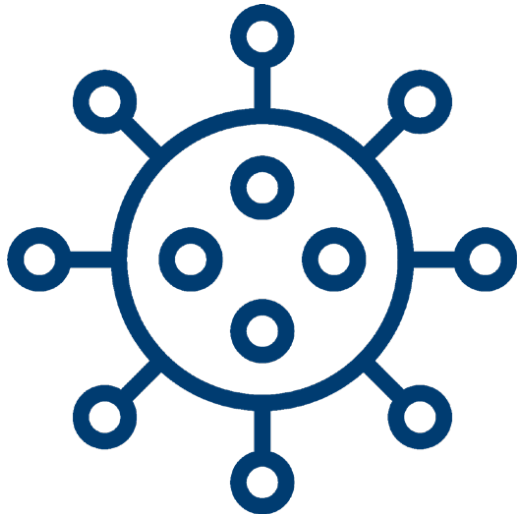
MHPAEA

Mental Health Parity & Addiction Equity Act

Compliance Considerations

- Many issuers have been monitoring parity for years
- Carriers and TPAs have been working to build out NQTL comparative analysis capabilities during 2021
- Plans should rely on carriers if fully-insured
- TPAs for self-insured plans will need to work with plan vendors and may need to hire outside compliance specialists for the NQTL comparative analysis

COVID-19 Over the Counter at Home Testing



COVID-19 Over the Counter at Home Testing

- On January 10, 2022, the Departments of Labor, Treasury, and Health and Human Services released guidance to support the Biden Administration's directive that health insurers and group health plans cover the costs of FDA-authorized or approved over-the-counter (OTC) at-home COVID-19 tests purchased on or after January 15, 2022.
- These OTC tests have been authorized, cleared, or approved for use without a doctor's prescription. They may be purchased without the need for a provider or clinical assistant.
- Authorized or Approved OTC at-home tests are listed on the FDA website. Test kits purchased from a non-authorized seller are not eligible for reimbursement.
- Submitting proof of purchase of an OTC test for reimbursement can be as simple as taking a photo of your receipt.