End of Year Benefits Compliance Considerations

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Agenda

- End of Year Compliance Considerations:
  - Gag Clause Attestations
  - W-2 Reporting
  - Medicare Part D Creditable Coverage Disclosures
  - PCOR/PCORI Fees
  - Transparency in Coverage (TiC) Update
  - New IRS E-Filing Rules
  - Other 2024 Compliance Considerations
- ACA Reporting & Employer Mandate Considerations:
  - 2024 Reporting Deadlines (for 2023 Year)
  - ACA Reporting & Employer Mandate Overview
  - Key Year-End Takeaways

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Gag Clause Attestations

- CAA, 2021 prohibits group health plans and insurers from entering into agreements with providers, networks, TPAs, or other service providers offering access to a network, which contain "gag clauses" that restrict the plan/insurer from:
  - Furnishing provider-specific cost or quality of care info to referring providers, plan sponsors, participants/beneficiaries
  - Electronically accessing de-identified claims info for a participant or beneficiary, and/or
  - Sharing the above info with business associates
- CAA also requires plans/insurers to submit annual filings attesting to the absence of gag clauses in their agreements
- Prohibition went into effect December 27, 2020, but annual attestation filing requirement was delayed until 2023

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Gag Clause Attestations

- First attestations of compliance due December 31, 2023
  - First filing attests to compliance from 12/27/2020 through 12/31/2023
  - After this year, filings will attest to compliance with respect to then-current year only and will be due by December 31 of such year
- Agencies issued new FAQ guidance (Part 57), along with instructions, a user manual, and an Excel template file (Note: Excel file not needed for single employer submissions)
- Annual attestations are to be submitted through newly created "GCPCA webform" portal on CMS's Health Insurance Oversight System (HIOS) website

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Gag Clause Attestations

- **Reporting Entity Type:**
  - ERISA Plan – Unless your organization is a church/church-affiliate or a state/local governmental entity, then you should select this option
  - Church Plan – Only if church/church-affiliate, taking the position that its plan(s) are exempt from ERISA under the church plan exemption
  - Non-Federal Governmental Plan – Only if state/local government entity (including some quasi-governmental), taking the position that its plan(s) are exempt from ERISA under the governmental plan exemption
  - Health Insurance Issuer

- **"Are you attesting for all provider agreements? Medical, PB, BHN, Other"**
  - Medical
  - PB (Pharmacy Benefits)
  - BHN (Behavioral / Mental Health Benefits)
  - Other (Benefits offered under any other type of ERISA group health plan that contracts with providers/networks)

Form W-2 Reporting

- W-2, Box 12 – Benefits reporting:
  - HSA: Report all employer and employee HSA contributions made through payroll as a single aggregated amount (Box 12, Code W)
  - Group term life insurance in excess of $50,000 (Box 12, Code C)
  - Health Plan Coverage: Report the cost of coverage under an employer-sponsored group health plan (Box 12, Code DD)
  - Third-party sick/disability pay that is not includible in income because employee paid premiums on after-tax basis (Box 12, Code J) (and third-party sick pay box in Box 13 should be checked)
  - 401(k) Plan – Pre-tax deferrals (Box 12, Code D) and designated Roth contributions (Box 12, Code AA)
- W-2, Box 10 – Dependent care reporting:
  - Report dependent care benefits, including benefits received under Dependent Care FSAs (*aka*, DCAPs) in Box 10
- W-2, Box 14 – Optional reporting items

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Medicare Part D Creditable Coverage Disclosures

- Group health plan sponsors must submit annual notice of creditable and/or non-creditable coverage to Centers for Medicare and Medicaid Services (CMS)
  - ERISA and non-ERISA plans must certify to CMS that prescription drug coverage offered under the plan is either creditable or non-creditable for Medicare Part D purposes
- Filing is made on the CMS.gov website
- Deadline:
  - Must notify CMS within 60 days after the beginning date of the plan year (renewal year, contract year, filing year, etc.)
  - March 1 for calendar year plans

Medicare Part D Creditable Coverage Disclosures

- Notices disclosing to Part D-eligible individuals whether coverage is creditable must be provided prior to start of the Annual Coordinated Election Period (ACEP) for Part D each year (*i.e.*, before October 15 each year)
- Notices must also be provided to Part D-eligible individuals:
  - Prior to an individual's initial enrollment period (IEP) for Part D
  - Prior to the effective date of coverage for any Part D eligible individual that enrolls in employer's Rx coverage
  - Whenever employer no longer offers prescription drug coverage or changes it so that it is no longer creditable or becomes creditable
  - Upon request by the Part D eligible individual

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PCOR / PCORI Fees

- **Patient-Centered Outcomes Research Institute (PCORI) fees for self-insured group health plan sponsors**
  - **For plan years ending 10/1/2023 through 9/30/2024 = $3.22**
  - **2023 PCORI fee = $3.22 x Average Number of Covered Lives**
  - **Reported annually on Form 720 no later than 7/31 of subsequent calendar year**

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PCOR / PCORI Fees

- Plans subject to PCORI Fees
  - Self-insured plans, including HRAs
  - Does not apply to excepted benefits (*e.g.*, most FSAs)
  - Employers maintaining more than one self-insured arrangement can be treated as single plan for purposes of calculating fee if arrangements have same plan year
- Calculating Average Number of Covered Lives
  - Regulations provide plan sponsors of self-insured plans three alternative methods:
    1. Actual Count Method
    2. Snapshot Method
    3. Form 5500 Method

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Transparency in Coverage Update

- Transparency in Coverage ("TiC") require plans/insurers to publish in 3 separate machine-readable files ("MRFs"):
  - Payment rates negotiated between plan and in-network providers for all covered items and services ("in-network" file)
  - Amounts plan allowed, plus associated billed charges, for covered items or services furnished by out-of-network providers ("out-of-network" file)
  - Negotiated rates for prescription drugs ("prescription drug" file)
- Departments originally deferred enforcement of prescription drug MRF requirement indefinitely because of duplication with CAA RxDC reporting
- However, on 9/27/23, Departments published FAQs Part 61, rescinding previous deferred enforcement policy as to prescription drug MRF requirement

New IRS Mandatory E-Filing Rules

- **Pre-2024 Rules:**
  - IRS currently requires taxpayers to file information returns electronically only if filing 250 or more information returns in a calendar year, with that threshold being applied separately to each type of return
- **Beginning in 2024:**
  - Beginning with 2023 returns that are due in 2024, filers of 10 or more specified information returns are required to e-file
  - Additionally, filers are now required to aggregate all types of specified returns together when determining whether they meet the 10 return threshold
- **Specified information returns subject to the new rules include: Forms W-2, 1099, 1094-B/C and 1095-B/C, 3921, 3922, 5498, 8027, and 1042-S**

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Other 2024 Compliance Considerations

- Title VII – Prohibits employment discrimination based on race, color, religion, sex (including pregnancy), or national origin
  - Coverage of same-sex spouses generally required
  - Contraceptives – EEOC's position is that coverage is required; courts' positions have been mixed
  - Interaction with ACA Section 1557 – Coverage of gender affirming care
- Mental Health Parity – Increased DOL enforcement
- Increased fiduciary litigation risk due to CAA and TiC rules, including newly-available public data
- Student loan repayment benefits – Unless Congress acts, CARES Act student loan tax benefits will expire after 12/31/2025
- Possible new laws/regulations on the horizon for PBMs and level-funded plan service providers

2024 ACA Reporting Deadlines

To Employees (1095-C)	To IRS (1094-C and 1095-C)
▶ March 1, 2024	▶ Electronic Filers* ▶ April 1, 2024 *Required if filing 10 or more returns in *aggregate* for the year

ACA Reporting & Employer Mandate

- ACA reporting is its own requirement and has its own penalties but has significant implications for employer mandate penalties
- Applicable Large Employers: 50 or more full-time employees (including full-time equivalents) in the preceding calendar year
  - ALE Group Considerations
  - Full-Time Employees = 130 or more hours/month
  - Don’t forget Full-Time Equivalents
- Form 1094-C and Forms 1095-C
  - Penalties: Increased to $310 per form (x2)
  - Electronic Filing Required for all ALEs beginning in 2024

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ACA Employer Mandate – By The Numbers

	For 2023 Plan Years
Code Section 4980H(a) Penalty	$2,880 ($240.00/month)
Code Section 4980H(b) Penalty	$4,320 ($360.00/month)
Affordability %	9.12% Coverage not *affordable*—and employee may be eligible for PTC for exchange coverage—if employee's required contribution for self-only coverage exceeds 9.12% of the employee's household income. Employer avoids 4980H(b) penalty if it satisfies *Affordability Safe Harbors* using 9.12%

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Common ACA Reporting & EM Challenges

- Full-Time Status Determination Methods
  - Month-to-Month
  - Look Back Safe Harbor
    - New Employees:
      - New Full-Time Employees → Three-Month Grace Period
      - New Variable Hour, Part-Time, or Seasonal Employees → Initial Measurement Period Safe Harbor
    - Ongoing Employees:
      - Look Back Safe Harbor using Standard Measurement Period

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Common ACA Reporting & EM Challenges

- Affordability
  - Affordability Threshold = 9.12% for plan years beginning in 2023
    - 8.39% for plan years beginning in 2024
- Affordability Safe Harbors
  - W-2 Safe Harbor
  - Rate of Pay Safe Harbor
  - Federal Poverty Level Safe Harbor

ACA Affordability Safe Harbors

ACA Affordability Safe Harbor	Form W-2 Safe Harbor
The Basics	Employee's required contribution does not exceed 9.12% of that employee's Form W-2 wages from the ALE Group for the calendar year
"Strings" Attached	• Determined after the end of the calendar year and on an employee-by-employee basis, taking into account the Form W-2 wages and the required employee contribution for that year. • Employee's required contribution must remain a consistent amount or percentage of all Form W-2 wages during the calendar year (or during the plan year for plans with non-calendar year plan years) • An ALE is not permitted to make discretionary adjustments to the required employee contribution for a pay period • ACA Reporting rules allow full year contribution / 12 • Must Use Form W-2 Safe Harbor for all months of the calendar year

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ACA Affordability Safe Harbors

ACA Affordability Safe Harbor	Rate of Pay Safe Harbor
The Basics	• Hourly employees: satisfied for a calendar month if the employee's required contribution for the calendar month does not exceed 9.12% of an amount equal to 130 hours multiplied by the lower of the employee's hourly rate of pay as of the first day of the coverage period (generally the first day of the plan year) or the employee's lowest hourly rate of pay during the calendar month. • Non-hourly employees: does not exceed 9.12% of an amount equal to 130 hours multiplied by the employee's monthly salary, as of the first day of the coverage period (instead of 130 multiplied by the hourly rate of pay).
"Strings" Attached	• Hourly employees: Must use lowest rate of pay (i.e., cannot count raises) • Non-hourly employees: Unavailable if the monthly salary is reduced, including due to a reduction in work hours • Generally does not work for tipped or commissioned employees • May use for some or all months

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ACA Affordability Safe Harbors

ACA Affordability Safe Harbor	Federal Poverty Line Safe Harbor
The Basics	An applicable large employer member satisfies the federal poverty line safe harbor with respect to an employee for a calendar month if the employee's required contribution for the calendar month for the applicable large employer member's lowest cost self-only coverage that provides minimum value does not exceed 9.12% of a monthly amount determined as the federal poverty line for a single individual for the applicable calendar year, divided by 12.
"Strings" Attached	• Basically no strings attached • May use for some or all months • Allows use of the Qualified Offer Method for ACA reporting • Generally results in the lowest employee premium

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ACA Reporting & EM Takeaways

- Reporting for 2023 due in Early 2024
  - Electronic Filing Requirement & Increased Penalties
  - Are you an ALE?
  - Who is a Full-Time Employee for Form 1095-C purposes?
- Considerations when offering coverage and setting costs for next year:
  - Who is a Full-Time Employee?
  - Affordability Threshold = 8.39% for plan years beginning in 2024
    - 9.12% for plan years beginning in 2023
    - Based on employee's required contribution for the employer's lowest cost self-only coverage that provides minimum value
  - If utilizing a Safe Harbor: BEWARE of strings attached
- *May* be able to fix issues through ESRP process
- Work with your TRUE Network consultants!

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