



Employee Benefits Compliance & Trends
January 23, 2025

Agenda

- Regulatory Updates and Policy Changes
- Emerging Compliance Items
- Special Topics and Relief Measures
- Compliance Calendar and Disclaimer



Regulatory Updates and Policy Changes

Tri-Agency Nominees

- United States Departments of Health and Human Services (HHS), Treasury, and Labor work together to create and enforce regulations that impact the health plans.



HHS: Robert F. Kennedy, Jr.



Treasury: Scott Bessent



Labor: Lori Chavez-DeRemer



Affordable Care Act– “Repeal and replace?”

Employer-Sponsored Coverage

- Eliminate ESR provisions for ALEs to offer MEC that is affordable
 - Could also zero out penalty
- Change government's position in Braidwood v. Becerra
 - Challenge to preventive services provision

Individual Market Coverage

- De-fund Exchange marketing and outreach
 - Done in first Trump administration
- Shorten Exchange enrollment period
 - Executive Order signed January 20, 2025 rolled back Biden expansion
- End or reduce premium tax credits for Exchange coverage
 - Expanded under American Rescue Plan Act (2021)
- Flexibility in Health Plans
 - Association Health Plans
 - Short-term limited duration health plans (H.R. 379)
 - ICHRAs (codifying current guidance)



Deregulation

- **Mechanisms:**
 - Congressional Review Act: President Trump could possibly reverse any regulation finalized after August 1, 2024
 - Congress can attach appropriation riders to bills which would prohibit agencies from spending \$ to implement certain rules
 - Lawsuits to reverse regulations based on *Loper Bright Enterprises v. Raimondo*



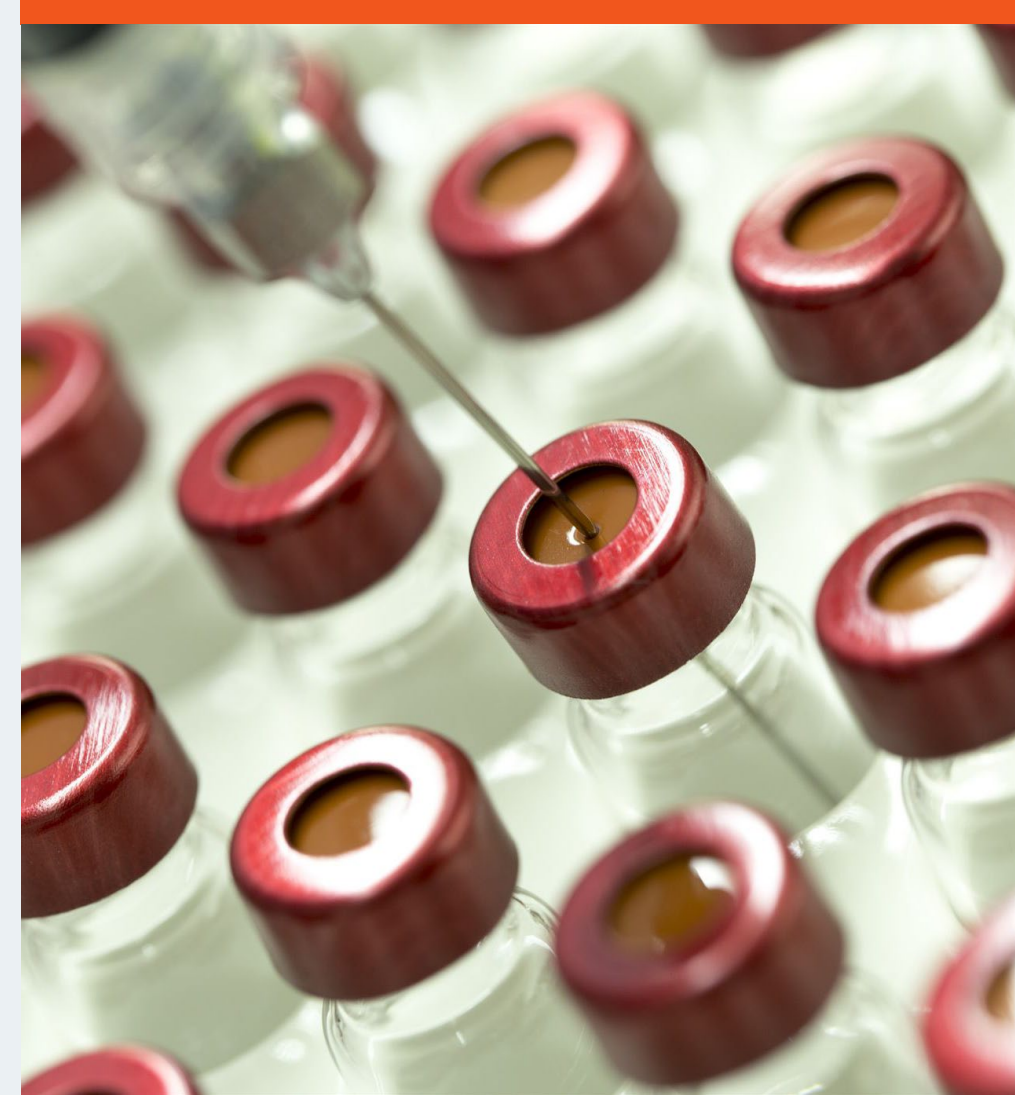
Deregulation

- **Reverse Biden era policies:**
 - Final rule expanding Section 1557 of the ACA
 - Final rule on MHPAEA nonquantitative treatment limitation (NQTL) comparative analyses
 - Final HIPAA Privacy Rule to Support Reproductive Health Care Privacy
 - Hospital indemnity notice
 - Previously struck down by federal district court in Texas
 - Will not be included in upcoming benefit guides; ok to keep on ones already distributed
 - Order to test Medicare and Medicaid models to lower health care costs



Other Potential Areas of Policy Change

- **Drug costs**
 - PBM legislation
 - Extend \$25 insulin cap to commercial plans
- **Increase transparency**
 - CAA 2021 was Trump-era legislation
- **Focus on chronic disease prevention and management**
 - Autoimmune disorders, autism, obesity and infertility



Potential Congressional Actions

Affordable Care Act

- \$5 billion reduction in ACA individual market subsidies
- Reform market plan design and eligibility rules such as actuarial value calculations and open enrollment periods (\$10 billion 10-year savings)
- Recapture excess premium tax credit payments from people with incomes below 400% of FPL (\$46 billion 10-year savings)
- Repeal family glitch fix (\$35 10-year savings)



Potential Congressional Actions

Rx

- Reform IRA's prescription drug prices to discourage price setting on innovative drugs treating rare patient populations (\$20 billion in 10-year costs)
- Make it a prohibited transaction under ERISA for employer-sponsored plans to pay for 340B drugs above the 340B discounted price
- Clarify and bolster ERISA preemption
- Bolster employer-sponsored insurance coverage of specialty drugs through value-based arrangements, reinsurance models or expanded risk pools



Potential Congressional Actions

Innovation

- Codify ICHRA rule
- H.R. 5688 Improvements to HSAs—would allow HSAs for those whose spouse has an FSA, and allow conversion of FSA dollars to HSA
- Replace HSAs with a \$9,100 Roth-style Universal Savings Account indexed to inflation (\$110 BILLION 10-YEAR SAVINGS)
- H.R. 2868 Association Health Plans Act (\$579 million 10-year costs)
- Legislation to expand the use of direct contracting and value-based models



Other Congressional Actions

- **Other Employer-Provided Benefits**

- End exclusion from income for employer-provided meals and lodging (except for military personnel \$87 billion 10-year savings)
- Eliminate credit for child and dependent care (\$55 billion 10 year savings)
- Eliminate tax exclusion for employer-paid transportation benefits (\$50 billion 10-year savings)

- **Other Provisions**

- Increase penalties for transparency noncompliance
- H.R. 2813 Self-Insurance Protection Act—Stop-loss coverage is not health insurance coverage under ERISA and preempts state law limits on stop-loss
- H.R. 824 telehealth fix
- Allow telehealth-only option under COBRA coverage



Other Congressional Actions

- **Decreasing Payments to Hospitals**

- Eliminate Medicare coverage of bad debt (65% reimbursement to hospitals-- \$42 billion 10-year savings)
- Remove DSH payments from Medicare Trust Fund and establish new uncompensated care fund that would distribute payments to hospital and non-hospital providers (\$229 billion 10-year savings)
- Eliminate nonprofit status for hospitals (\$260 billion 10-year savings)
- Eliminate charitable deduction for contributions to health organizations (\$83 billion 10-year savings)
- Ban telehealth and other facility fees (\$2.3 billion 10-year savings)

- **Medicaid Cuts**

- Impose limits on state-directed payments in Medicaid (\$25 billion 10-year savings)
- Lower Medicaid matching rate floor (\$387 billion 10-year savings)
- Remove American Rescue Plan temporary FMAP increase (\$18 billion 10-year savings)
- Impose per capita cap on state Medicaid matching funds \$900 billion 10-year savings)



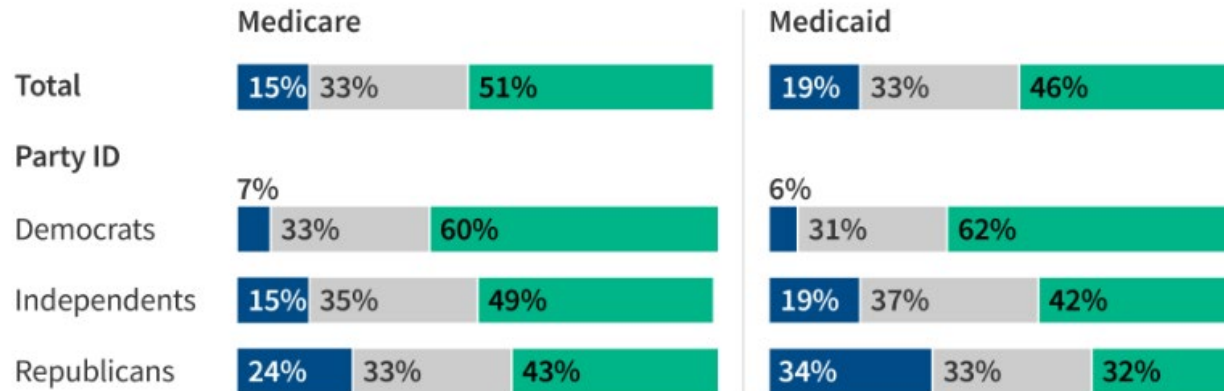
Medicare & Medicaid

- Cuts do not enjoy broad public support

About Half Say Federal Government Doesn't Spend Enough on Medicare and Medicaid, Few Say It Is Spending Too Much

Do you think the federal government spends too much money, not enough, or about the right amount of money on each of the following:

■ Too much ■ About the right amount ■ Not enough



Note: See topline for full question wording.

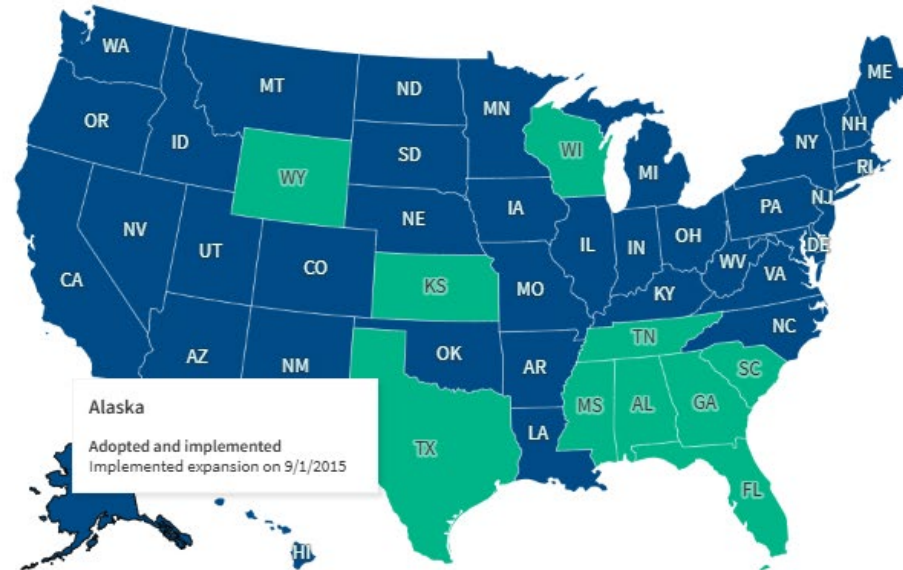


Medicaid

- Cuts could impact hospitals, especially those in 41 states (including DC) that expanded Medicaid under the ACA

Status of State Action on the Medicaid Expansion Decision

■ Adopted and implemented (41 states including DC) ■ Not adopted (10 states)



Source: [KFF tracking and analysis of state actions related to adoption of the ACA Medicaid expansion](#) • [Get the data](#) • [Download PNG](#)

KFF



Timing

Regulations:

- Executive orders can direct agency action
- Regulations not subject to Congressional Review Act will take more time

Legislation – two key dates:

- March 14, 2025 – Current continuing resolution (CR) ends
 - Opportunity to revisit healthcare provisions left out of prior CR (telehealth exception for HSAs, possibly PBM legislation)
- December 31, 2025 – Tax Cuts and Jobs Act (TCJA) key provisions expire
 - Extension of all provisions would cost \$4 trillion between 2025-2034 (according to Congressional Budget Office and Joint Committee on Taxation)
 - Potential need for spending offsets



Emerging Compliance Items

Free Telehealth and HSAs

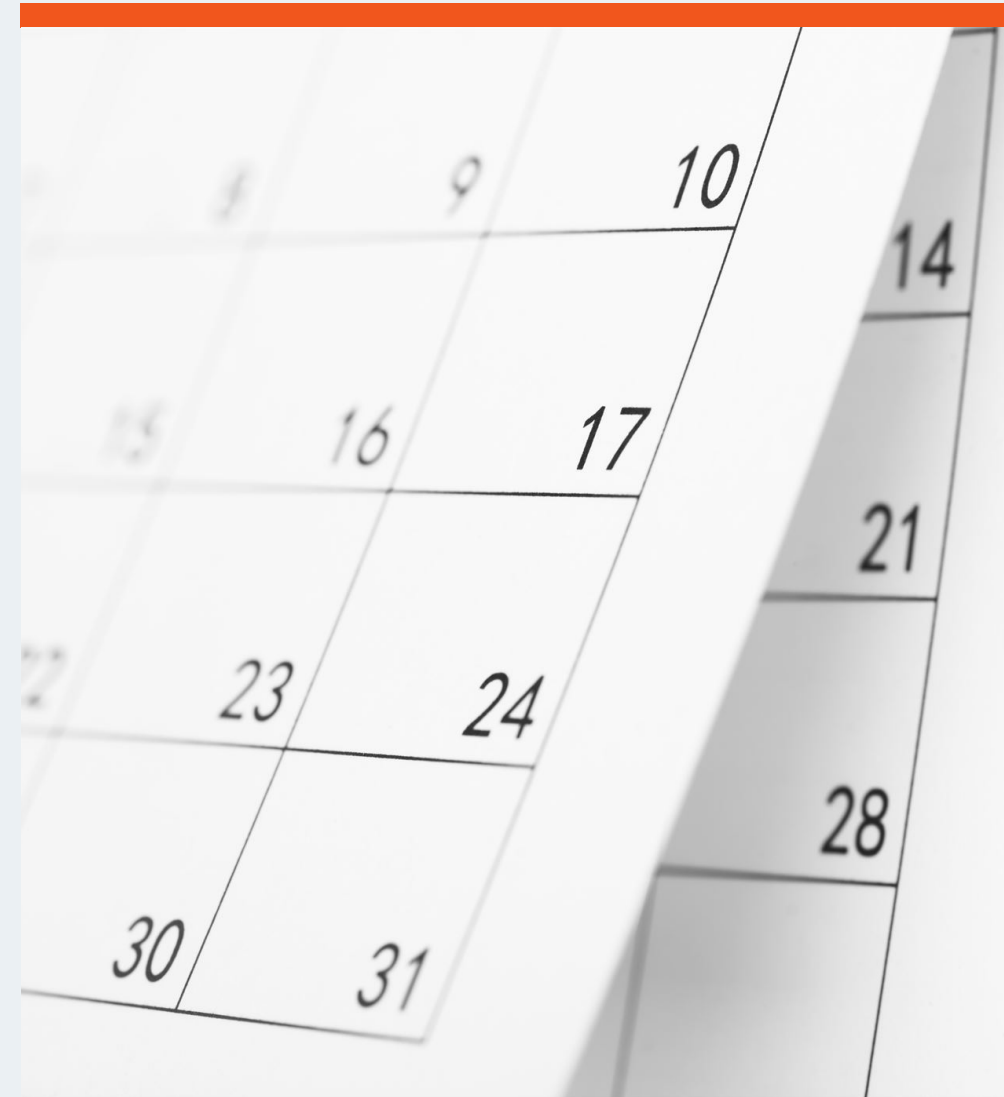
- COVID-era relief allowing free telehealth for those covered under a high-deductible health plan (HDHP) with a Health Savings Account (HSA)
 - Ended 12/31/24 after first bipartisan CR with telehealth relief fell through
- Employers hoping for a fix early in 2025 with a backdating provision
- Absent fix, employees in HDHP pay fair market value for telehealth



ACA Reporting Changes

Employer Reporting Improvement Act

- For ACA reporting on self-funded plans, employers can use DOB in place of TIN/SSN without making three attempts to obtain matching name and TIN/SSN information
 - Does not apply to Section 111 filings for Required Reporting Entities (RREs)
- ALEs who receive a Letter 226J must be given at least 90 days to respond
 - Previously 30 days
- 6-year statute of limitations on ESR penalties



ACA Reporting Changes

Paperwork Burden Reduction Act

- For both 1095-B and 1095-C Forms, distribution requirement can be satisfied by providing a “clear, conspicuous and accessible notice” that the forms are available upon request if such form is then provided by January 31st or within 30 days of request
 - Previously only allowed for 1095-B Forms
- IRS has yet to issue guidance on satisfying the notice requirement
 - Will not likely be issued before January 31st
 - Many employers proceeding with distribution plans already in place
 - Some employers following guidance previously issued for 1094-B and 1095-B
 - Notice of availability of the Form 1095s should be posted on the employer’s website (or perhaps a benefits portal) with an email address, physical mailing address, and telephone number that can be used to request a copy



IRS Notice 2024-75

Clarified benefits that an HDHP can provide on a pre-deductible basis as preventive care

- OTC oral contraceptives (Eff. plan years beginning on or after 12/30/22)
 - Under ACA, plans must cover FDA-approved, -granted, or -cleared contraceptives, incl. OTC
- Male condoms (Eff. plan years beginning on or after 12/30/22)
 - Preventive under ACA
 - Also eligible expenses under FSA, HSA or HRA under Notice 2024-71
- Breast cancer screening, including MRIs and ultrasounds (Eff. retroactive to 4/12/04)
 - Under ACA, plans must cover mammograms with no cost-sharing, but requirement does not extend to other types of screening. Under this rule, HDHP may choose to cover MRIs and ultrasounds on a pre-deductible basis
- Continuous Glucose Monitors (CGMs– Eff. retroactive to 7/17/19)
- Any devices used to administer or deliver insulin (Eff. plan years beginning on or after 12/30/22)



Special Topics and Relief Measures

Hurricane Relief

- **Impacted by Hurricane/Tropical Storm Helen or Hurricane Milton**
- **Extends certain deadlines under ERISA, HIPAA, COBRA**
 - Similar to relief extended under COVID-19
- **Affected individuals**
 - one “who resided, lived, or worked in one of the disaster areas” when one of the named storms occurred or “whose coverage was under an employee benefit plan that was directly affected”
 - “directly affected” means:
 - Principal place of employer’s business located in one of the disaster areas at time of storm,
 - Principal place of employer’s business employing more than 50% of active plan participants located in one of the disaster areas at the time of storm, or
 - Office of the plan administrator or primary recordkeeper located in one of the disaster areas at time of storm



Hurricane Relief

Relief period depends on location of disaster area

| State | Storm | Relief Period Begins |
|------------------------------------------|-----------------------|----------------------|
| Florida | Hurricane Helene | September 23, 2024 |
| Florida | Hurricane Milton | October 4, 2024 |
| Georgia | Hurricane Helene | September 24, 2024 |
| North Carolina, South Carolina, Virginia | Tropical Storm Helene | September 25, 2024 |
| Tennessee | Tropical Storm Helene | September 26, 2024 |

Relief period for all disaster areas ends on May 1, 2025



Hurricane Relief

Relief Period applies to the following requirements:

HIPAA

- 30 or 60-day deadline for requesting for HIPAA special enrollment rights
- Notice requirements for plan sponsors

COBRA

- 60-day deadline to elect COBRA
- 30 or 45-day due date for COBRA premium payments
- 60-day deadline to notify plan of a qualifying event or disability extension
- Notice requirements for plan sponsors

ERISA

- Claim filing deadlines (including run-out periods for health FSAs and HRAs)
- Deadlines applicable to claims appeals and external reviews
- Notice requirements for plan sponsors
- Form 5500 (and Form M-1) filing requirements



Social Security Fairness Act

- Impacts workers entitled to public pensions
- Fixes Windfall Elimination Provision and Government Pension Offset
- Eliminates reduction of SS benefits while entitled to public pensions from work not covered by SS
- SSA is evaluating how to implement the act
- Guidance at <https://ssa.gov/benefits/retirement/social-security-fairness-act.html>
 - Make sure SSA has current mailing address and direct deposit information
 - File for SSA benefits if you had not done so previously



Compliance Calendar

2024-25 Compliance Calendar

| Date | Requirement |
|-------------------|----------------------------------------------------------------------------------------------------|
| January 31, 2025 | Annual reporting of aggregate cost of employer-sponsored group health coverage on W2 |
| February 28, 2025 | Section 6055 and 6056 Reporting (April 1, if filing electronically; also state deadlines may vary) |
| February 28, 2025 | Medicare Part D Disclosures to CMS |
| March 1, 2025 | Form 1095-C or 1095-B Annual Statements to individuals |
| March 1, 2025 | Form M-1 filing with DOL |
| March 31, 2025 | Forms 1094/95-C and/or 1094/95-B to the IRS – (April 1 if filing electronically) |
| June 1, 2025 | RxDC– Drug Cost Reporting to CMS |



2024-25 Compliance Calendar

| Date | Requirement |
|--------------------|------------------------------------------------------------------------------------|
| July 31, 2025 | PCORI Fee – Deadline for filing IRS Form 720 and paying fees for the previous year |
| July 31, 2025 | Form 5500 – Can be automatically extended 2.5 months by filing form 5558 |
| September 30, 2025 | MLR rebate, if any |
| September 30, 2025 | Summary Annual Report (SAR) for calendar year plans |
| October 14, 2025 | Creditable Coverage Notice |
| December 15, 2025 | SAR distribution, if 5500 was extended |
| December 31, 2025 | Gag Clause Attestation |



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Questions





Thank you!