

New Employer Group Health Plan Compliance Obligations for 2022

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With each new year, new legal obligations for employers sponsoring group health plans seem to arrive. This article provides a brief overview and reminder of some of the new key requirements for 2022, many of which we have touched on previously [here](#).

Surprise Billing Protections

Effective for plan years beginning on or after January 1, 2022, the Consolidated Appropriations Act of 2021 (“CAA”) requires group health plans or insurers, among other things, to apply in-network prior authorization and cost-sharing rules to emergency services provided by out-of-network providers, facilities, and air ambulance providers. From the provider perspective, the CAA prohibits health care providers from charging out-of-network rates for services if the patient receives medical care at an in-network facility without the patient’s consent. Health plan sponsors and insurance carriers will be required to notify employees of their rights under the CAA related to surprise medical bills and applicable state laws. A **model notice** has been issued by CMS for this purpose. These changes may also require amendments to contracts with TPAs or insurers that are currently in place.

Health Coverage ID Card Disclosures

Attorneys

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Practice Areas

Employee Benefits and
Executive Compensation

Health and Welfare Benefit
Plans

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The CAA also requires health plans and insurers to disclose on health plan coverage ID cards issued in 2022, any deductibles and out-of-pocket limits that apply to the plan or insurance coverage, along with a telephone number and website through which participants can access plan related information. Currently, employers are subject to a “good faith” compliance standard with respect to this requirement until final regulations are issued.

Online Data Files

The CAA also requires, effective July 1, 2022, that insurers and group health plan sponsors make available online (and update monthly) three machine-readable data files with health care services pricing information. These files must include: (i) all in-network provider negotiated rates, (ii) historical out-of-network allowed amounts, and (iii) prescription drug pricing information. It is likely that health insurers will provide this data themselves, but self-insured employers will need to work with their third party administrator or claims administrator to put these systems into place.

Prohibition on “Gag Clauses”

Effective January 1, 2022, the CAA prohibits “gag clauses” from being included in agreements between providers and group health plans or insurers that restrict the plan or insurer from, among other things, (i) furnishing specific cost or quality of care information to referring providers, plan sponsors, participants, or beneficiaries, or (ii) electronically accessing de-identified claims data for a participant or beneficiary on request. However, the bill permits providers and service providers to place reasonable limits on any such disclosures. Employers that sponsor self-insured health plans will need to review their service contracts to ensure that no such provisions exist and amend such contracts as needed.

Changes Related to Forms 1094/1095

Late last year, the Treasury Department issued a **proposed rule** that, along with changes to the Form 1094/1095 instructions, changed the information reporting standards for applicable large employers (ALEs) and health insurers. The changes impact reporting with respect to the 2021 calendar year. First, the proposed rule extends the deadline by which insurers and employers need to provide employees Forms 1095-B and/or 1095-C by 30 days, or until March 2, 2022. Second, the proposed rule eliminates the “good faith” compliance standard that had been in place with respect to such reporting since 2015. Previously, the IRS had not issued penalties for incorrect Forms 1094/1095, and were quite forgiving in that regard. However, starting in 2022, that relief is eliminated, and thus employers may be subject to penalties associated with inaccurate Forms 1094/1095, as well as any shared responsibility penalties that may be

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triggered by an inaccurate report.

Illinois Health Insurance Disclosure Requirements

As explained in more detail [here](#), Illinois employers are now required to disclose to all new hires who are eligible for group health plan coverage and all group health plan participants annually, and upon request, an easy-to-understand comparison between the benefits provided under the plan and the “essential health benefits” required by the Illinois Department of Insurance (DOI) for individual and small group health insurance coverage. FAQs and a sample comparison chart can be found [here](#).

If you have any questions concerning these new requirements, please reach out to your servicing attorney or any of our employee benefits professionals.