ACA Compliance for 2020

Presented by Benefit Team Insurance Services

Introduction

Agenda

- Coronavirus Impact on the ACA
- Current Legal Challenges to the ACA
- The ACA: 10 Years Later
- The ACA and the 2020 Election
- State Health Care Reform Trends
- Health Care Reform Developments
- Current Compliance Concerns
- Practical Tips for Employers

Coronavirus Impact on the ACA

Supreme Court oral arguments postponed

- Arguments postponed until after April 1
- Delay may impact ACA cases indirectly

FAQs on Essential Health Benefits (EHB)

- EHB generally includes coverage for the diagnosis and treatment of COVID-19
- Exact coverage details and cost-sharing amounts for individual services may vary
- EHB includes quarantine/isolation in a hospital (not at home)

Current Legal Challenges to the ACA

ACA Litigation: *Texas v. Azar*

U.S. Supreme Court has agreed to hear lawsuit challenging the constitutionality of the ACA

- Filed in response to the elimination of the individual mandate penalty
- Lower courts ruled that the individual mandate is unconstitutional without the penalty
- Supreme Court agreed to hear the case on its regular schedule
- Oral arguments are expected in the fall and a decision is expected to be issued in the spring or summer of 2021

ACA Litigation: *Texas v. Azar*

While this case is pending, all existing ACA provisions will continue to be applicable and enforced

If the Supreme Court invalidates the ACA in its entirety, this would have a huge impact on employers

- The specific practical impact is largely unclear
- It would likely take time to undo implementation of many ACA provisions

At this time, employers must continue to comply with all applicable provisions or risk penalties

Other Pending Litigation

Maine Community Health Options v. United States

- Insurers sued over unpaid risk corridor payments
- Will also impact pending litigation over whether insurers are entitled to unpaid cost-sharing reduction payments
- Pending with the Supreme Court
- A decision is expected before July 2020

Other Pending Litigation

Trump v. Pennsylvania and *Little Sisters of the Poor v. Pennsylvania*

- Supreme Court will consider the validity of two regulations that dramatically expand exemptions to the ACA's contraceptive coverage mandate based on religious or moral objections
- A decision is expected before July 2020

Other Pending Litigation

New York v. DOL and *Association for Community Affiliated Plans v. Department of the Treasury*

- Federal Appellate Court will consider the validity of two final regulations expanding access to association health plans (AHPs) and short-term plans
- Decisions in both of these cases are expected shortly

Other Pending Litigation

The American Hospital Association, et. al., v. Azar

- Four major hospital groups are challenging a final rule that would require hospitals to disclose their pricing information, including negotiated rates
- Pending in Federal District Court
- A decision is expected in late spring or early summer 2020

The ACA: 10 Years Later

ACA History

2010

- ACA enacted on March 23
- Democrats lost House majority in mid-term elections

2010-2016

- Many ACA provisions took effect
- House Republicans passed ACA repeal bills more than 50 times

2016 Elections

- Donald Trump elected President
- Republicans retained control of both chambers of Congress

ACA History

2017

- President Trump signed an ACA-related Executive Order on his first day in office
- Multiple ACA repeal efforts were launched and failed
- Individual mandate penalty reduced to zero

2018 Elections

- Republicans maintained control of the Senate
- Democrats took control of the House

Key ACA Provisions for Employers

- Dependent coverage up to age 26
- Excessive waiting periods prohibited
- Coverage of preventive care services
- Patient protections
- Lifetime and annual limits prohibited
- Limits on cost-sharing
- Rescissions prohibited
- Pre-existing condition exclusions prohibited
- Grandfathered plan exemptions

Key ACA Provisions for Employers

- Small group market rules
- Health coverage reporting on Form W-2
- Design rules for FSAs and HRAs
- Summary of Benefits and Coverage
- Employer shared responsibility rules
- 6055/6056 reporting
- PCORI fees
- Wellness program rules
- Transition relief for non-compliant plans (grandmothered plans)

The ACA's Future

The future of the ACA is still uncertain

- Court cases
- 2020 elections
- Administration of current rules

The impact of invalidation or repeal is not clear

- Could have retroactive effect
- May be limited by current state laws and future state actions

The ACA and the 2020 Election

2020 Election Contests

- The office of president of the United States
- All 435 seats in the U.S. House of Representatives (Democrats control)
- 35 of the 100 seats in the U.S. Senate (Republicans control)
- 13 state and territorial governorships
- Various state and local elections

Health Care as a Campaign Issue

- ✓ Health care (26%) and the economy (23%) are top issues for registered voters
- ✓ All major presidential candidates have some level of position on health care policy
- ✓ Health care is a major campaign issue for Congressional candidates

Presidential Candidate Positions

President Trump

- Currently focusing on health care achievements in first term
- Administration challenging ACA in court

Joe Biden

- Supports protecting and building on the ACA (not a Medicare for All system)

Bernie Sanders

- Supports a Medicare for All, single-payer national program

Health Care Policy Terms

Universal coverage: any method of providing health coverage to all of a nation's residents

Single-payer system: a single entity (usually the government) pays for health care services, delivery system can be private

Socialized medicine: government pays for health care services, owns health facilities and employs health professionals

Medicare for All

- Originally developed in the late 1980s
- Intended to extend the Medicare program for senior citizens to the entire population (or specific groups)
- Some versions of the proposal would create a new program
- Private insurance currently involved in Medicare
- Opposed by the health care industry

Potential Impact of the Election

- The future of the ACA and health care policy in general will depend on the outcome of the election
- Democratic Party wins could see a return to Obama-era health care policies
- Either party will have to address results of Supreme Court decision on the ACA

State Health Care Reform

State Individual Mandates

Massachusetts

- First state to enact an individual mandate (enacted in 2006)
- Requires residents 18 or older to have health coverage for the year or pay a penalty through state tax returns
- Exempt if no access to affordable health coverage

New Jersey

- Enacted on May 30, 2018; took effect in 2019
- Largely mirrors the ACA's individual mandate requirement
- Will not be enforced if ACA's premium tax credits become unavailable

State Individual Mandates

District of Columbia

- Enacted on June 27, 2018, as part of a budget bill; took effect in 2019
- Generally mirrors the ACA's individual mandate requirement
- Penalty amount is determined by D.C. Council by Sept. 30 of each year

Vermont

- Enacted on May 28, 2018; took effect in 2020
- Generally mirrors the ACA's individual mandate requirement
- Amended on June 17, 2019, to eliminate enforcement provisions – **individuals in Vermont will not be penalized for failing to obtain acceptable health coverage**

California

- Enacted on June 28, 2019; took effect in 2020
- Generally mirrors the ACA's individual mandate requirement
- Imposes a state reporting requirement similar to the federal Section 6055 reporting

State Reinsurance Programs

Many states are now exploring state-based reinsurance programs to help control premium increases

Reinsurance Programs:

- Uses federal and state funding to help pay for high-cost claims
- Helps stabilize premiums in the individual market

Section 1332 Waivers:

- Provide federal funding to states that implement innovative strategies to control health care costs and increase access to coverage
- Many states are using Section 1332 funding for their reinsurance programs

Surprise Medical Bill Legislation

May 9, 2019

- In a speech, President Trump announced a general plan for combatting surprise medical billing
- Would apply to both group and individual coverage

Four main regulatory goals

- In emergency situations, patients shouldn't have to "bear the burden" of out-of-network costs
- Balance billing should be prohibited for emergency care
- For scheduled nonemergency care, patients should receive an "honest" bill up front—including an itemized list of out-of-pocket expenses the patient must cover
- Patients should not receive a surprise bill from out-of-network providers they did not choose themselves

Proposed Legislation

- H.R. 2328: Approved by the House Energy and Commerce Committee in July 2019
- S. 1895: Approved by the Senate health Education Labor and Pension Committee in July 2019
- Some states have also passed laws to combat surprise medical billing

Health Care Reform Developments

Transition Relief for Non-ACA Plans

Transition Relief

Allows small group and individual coverage to be renewed without adopting all of the ACA's market reforms	"If you like your plan, you can keep it"	Has been extended every year since 2014

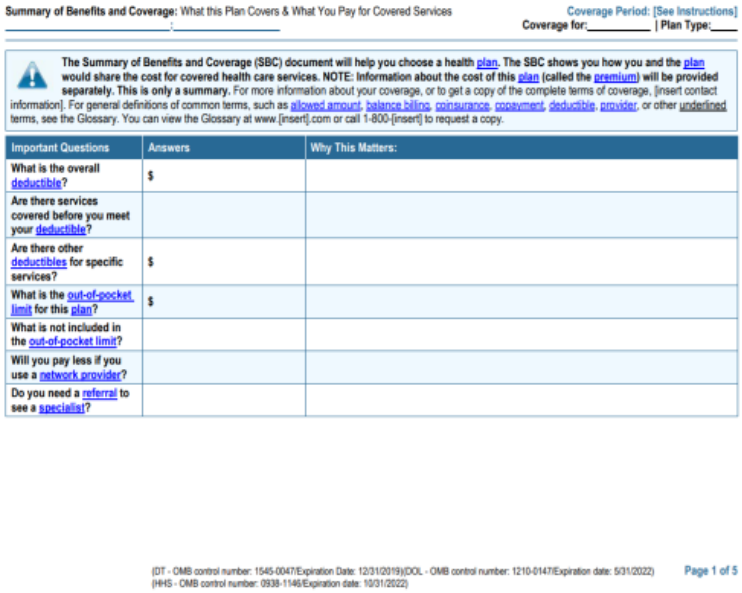
Most Recent Extension (Jan. 31, 2020)

Extended for one year, through policy years beginning on or before Oct. 1, 2021	State regulators must allow it in their state	**Renewed plans must end by Dec. 31, 2021**

New SBC Template

Nov. 8, 2019: DOL and HHS issued an updated template and related materials for the summary of benefits and coverage (SBC)

- These materials are required to be used for plan years beginning on or after Jan. 1, 2021
- The updated template must be used for the 2021 plan year's open enrollment period



Summary of Benefits and Coverage: What this Plan Covers & What You Pay for Covered Services

Coverage Period: [See Instructions]

Coverage for:_____ | **Plan Type:**____

The Summary of Benefits and Coverage (SBC) document will help you choose a health plan. The SBC shows you how you and the plan would share the cost for covered health care services. NOTE: Information about the cost of this plan (called the premium) will be provided separately. This is only a summary. For more information about your coverage, or to get a copy of the complete terms of coverage, [insert contact information]. For general definitions of common terms, such as allowed amount, balance billing, coinsurance, copayment, deductible, provider, or other underlined terms, see the Glossary. You can view the Glossary at www.[insert].com or call 1-800-[insert] to request a copy.

Important Questions	Answers	Why This Matters:
What is the overall deductible?	$	
Are there services covered before you meet your deductible?		
Are there other deductibles for specific services?	$	
What is the out-of-pocket limit for this plan?	$	
What is not included in the out-of-pocket limit?		
Will you pay less if you use a network provider?		
Do you need a referral to see a specialist?		

(DT - OMB control number: 1545-0047/Expiration Date: 12/31/2019)(DOL - OMB control number: 1210-0147/Expiration date: 5/31/2022)
(HHS - OMB control number: 0938-1146/Expiration date: 10/31/2022)

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SBC Template Changes

Only minor changes were made, including:

- Removal of references to the individual mandate penalty
- Inclusion of an explanation of what constitutes minimum essential coverage
- Within the coverage examples, addition of guidance related to applying the rounding rules to cost-sharing amounts and out-of-pocket limits

Health Care Transparency Regulations

Two transparency regulations were issued that intend to increase availability of health care price and quality information and protect patients from surprise medical bills

- June 24, 2019: Executive order aimed at improving price and quality transparency in health care
- Nov. 15, 2019: Departments issued two regulations that require health care pricing information to be made publicly available
  - **Proposed rule** would impose new transparency requirements on group health plans and health insurers in the individual and group markets
  - **Final rule** requires hospitals to provide patients with information about their "standard charges"
- Dec. 4, 2019: four major hospital groups filed a lawsuit challenging the final rule

65464 Federal Register / Vol. 84, No. 229 / Wednesday, November 27, 2019 / Proposed Rules

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[REG-134279-19]

RIN 1545-BP47

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2590

RIN 1210-AB83

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 147 and 158

[CMS-9915-P]

RIN 0938-AU04

Transparency in Coverage

AGENCY: Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Proposed rule.

SUMMARY: These proposed rules set forth proposed requirements for group health plans and health insurance issuers in the individual and group markets to disclose cost-sharing information upon request, to a participant, beneficiary, or enrollee (or his or her authorized representative), including an estimate of each individual's cost-sharing liability for covered items or services furnished by a particular provider. Under these proposed rules, plans and issuers would be required to make such information available on an internet website and, if requested, through non-internet means, thereby allowing a participant, beneficiary, or enrollee (or his or her authorized representative) to obtain an estimate and understanding of the individual's out-of-pocket expenses and effectively shop for items and services. These proposed rules also include proposals to require plans and issuers to disclose in-network provider negotiated rates, and historical out-of-network allowed amounts through two machine-readable files posted on an internet website, thereby allowing the public to have access to health insurance coverage information that can be used to understand health care pricing and potentially dampen the rise in health care spending. The Department of Health and Human Services (HHS) also proposes amendments to its medical loss ratio program rules to allow issuers offering group or individual health insurance coverage to receive credit in their medical loss ratio calculations for savings they share with enrollees that result from the enrollee's shopping for, and receiving care from, lower-cost, higher-value providers.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on January 14, 2020.

ADDRESSES: Written comments may be submitted to the addresses specified below. Any comment that is submitted will be shared with the Department of the Treasury (Treasury Department), Internal Revenue Service (IRS) and the Department of Labor (DOL). Please do not submit duplicates.

All comments will be made available to the public. Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments are posted on the internet exactly as received, and can be retrieved by most internet search engines. No deletions, modifications, or redactions will be made to the comments received, as they are public records. Comments may be submitted anonymously.

In commenting, please refer to file code CMS-9915-P. Because of staff and resource limitations, the Departments of Labor, HHS, and the Treasury (the Departments) cannot accept comments by facsimile (FAX) transmission.

Comments must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the "Submit a comment" instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9915–P, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9915–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. The comments are posted on the following website as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that website to view public comments.

FOR FURTHER INFORMATION CONTACT:

Deborah Bryant, Centers for Medicare and Medicaid Services, (301) 492–4280.

Christopher Dellana, Internal Revenue Service, (202) 317–5500.

Matthew Litret or David Sydlik, Employee Benefits Security Administration, (202) 693–8335.

Customer Service Information: Individuals interested in obtaining information from the DOL concerning employment-based health coverage laws may call the Employee Benefits Security Administration (EBSA) Toll-Free Hotline at 1–800–444–EBSA (3272) or visit DOL's website (*http://www.dol.gov/ebsa*). In addition, information from HHS on private health insurance for consumers can be found on the Centers for Medicare & Medicaid Services (CMS) website (*www.cms.gov/cciio*) and information on health reform can be found at *http://www.healthcare.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Executive Order

On June 24, 2019, President Trump issued Executive Order 13877, "Executive Order on Improving Price and Quality Transparency in American Healthcare to Put Patients First."[1] Section 3(b) of Executive Order 13877 directs the Secretaries of the Departments of Labor, Health and Human Services (HHS), and the Treasury (the Departments) to issue an advance notice of proposed rulemaking (ANPRM), consistent with applicable law, soliciting comment on a proposal to require health care providers, health insurance issuers, and self-insured group health plans to provide or facilitate access to information about expected out-of-pocket costs for items or services to patients before they receive care. The Departments have considered the issue, including by consulting with stakeholders, and have determined that a notice of proposed rulemaking (NPRM), rather than an ANPRM, would allow for more specific and useful feedback from commenters, who would

[1] 84 FR 30849 (June 27, 2019). The Executive Order was issued on June 24, 2019 and was published in the Federal Register on June 27, 2019.

Transparency Final Rule Lawsuit

Under the final rule:

- Hospitals must provide patients with clear, easily accessible information about "standard charges " by Jan. 1, 2021
- Hospitals that fail to comply face a $300 per day civil penalty

Lawsuit argues:

- CMS exceeded their authority and the rule violates the First Amendment
- Requiring hospitals to publish the different charges, including their privately negotiated prices with insurers,"will confuse patients and unduly burden hospitals "

All motions were due March 10; a decision is expected in late spring or early summer 2020

PCORI Fee

Fee on health insurance issuers and self-insured plan sponsors to fund comparative effectiveness research

- Was scheduled to expire for plan years ending on or after Oct. 1, 2019

Reported and paid annually

- Using IRS Form 720, Quarterly Federal Excise Tax Return
- Due July 31 each year (July 31, 2020, for the 2019 plan year)
- For plan years ending on or after Oct. 1, 2018, and before Oct. 1, 2019, the PCORI fee amount is $2.45 multiplied by the average number of lives covered under the plan

2019 continuing spending resolution extended the PCORI fees for an additional 10 years

- **These fees will continue to apply for the 2020-2029 fiscal years**

ICHRAs

Final rule expands health reimbursement arrangements (HRAs), effective in 2020

- **Individual Coverage HRAs (ICHRAs):** Allows HRAs to be used to reimburse the cost of individual market premiums on a tax-preferred basis, subject to certain conditions
- **Excepted Benefit HRAs** Allows employers that offer traditional group coverage to provide an HRA of up to $1,800 per year (as adjusted) to reimburse certain qualified medical expenses.

ICHRAs

Conditions:

- Employers cannot offer any employee a choice between an ICHRA and a traditional group health plan
- Covered individuals must be enrolled in individual insurance coverage (or Medicare coverage)
- Employers must generally offer the ICHRA on the same terms to all employees within a class of employees
- Employers must provide an annual notice to covered employees

Cadillac Plan Tax

Cadillac Tax:

- **40% excise tax** on high-cost group health coverage
- Due to delays, was scheduled to take effect in 2022

- Taxes the cost of employer-sponsored health coverage over an annual dollar limit
- Intended to encourage companies to choose lower-cost health plans for their employees

The Cadillac tax is fully repealed beginning with the 2020 taxable year

ACA Fees

Health insurance providers fee

- Excise tax on health insurers (due Sept. 30 each year)
- A **one-year moratorium** applied for 2017 and 2019
- The fee continued to apply for 2018, **as well as for 2020**
- **The health insurance providers fee will be fully repealed beginning with the 2021 calendar year**

Medical devices excise tax

- 2.3 percent excise tax certain medical device sales
- 2016-2019: collection was **suspended through 2019**
- **The medical devices tax is fully repealed beginning in 2020**

Current Compliance Concerns

Annual Dollar Limits

Health FSA Limit for 2020

- The ACA imposes a dollar limit on employees' salary reduction contributions to a health FSA
- **Rev. Proc. 19-44**: increased the health FSA limit for 2020 to **$2,750**

Cost-sharing Limits for 2020

- The ACA places annual limits on total enrollee cost sharing for essential health benefits
- Cost-sharing limits for 2020: **$8,150** (self-only coverage) and **$16,300** (family coverage)

Affordability Percentage

Premium Tax Credit Eligibility

- Employees who are eligible for affordable employer-sponsored coverage are not eligible for the premium tax credit
- For 2020, the affordability contribution percentage is **9.78%**

Pay or Play Rules

- Affordability of health coverage is a key point in determining whether an ALE will be subject to a penalty
- For 2020, the affordability contribution percentage is **9.78%**

Individual Mandate Exemption

- Individuals who lack access to affordable minimum essential coverage are exempt from the individual mandate
- For 2020, the affordability contribution percentage is **8.24%**

Pay or Play Rules

The pay or play rules continue to be a major compliance concern for employers

- Feb. 21, 2020: IRS clarified that no statute of limitations applies for ACA pay or play penalty assessments
  - The IRS can assess pay or play penalties for an ALE's noncompliance many years after the violation occurred
- Pay or play penalties are subject to IRS lien and levy enforcement actions
  - Interest will accrue from the date of the notice and demand and continue until the ALE pays the total penalty balance due

Is Reporting Still Required?

Neither Section 6055 nor Section 6056 has been repealed or eliminated at this time

Reporting requirements do still apply

- No ACA repeal proposal so far has included a repeal of these reporting provisions
- Until a law is passed or other guidance is issued that explicitly eliminates these reporting rules, they will continue to be required, regardless of whether any other ACA provision is repealed

ACA Reporting Deadlines

Furnishing Statements to Individuals

- Generally due by Jan. 31 each year
- Deadline for 2019 reporting extended to **March 2, 2020**
- The IRS will not grant additional extensions of time to furnish Forms 1095-B and 1095-C to individuals

Filing with the IRS

- Generally due by Feb. 28 (paper) or March 31 (electronic) each year
- Deadline for 2019 reporting **was not extended**
  - Feb. 28, 2020, if filing on paper
  - March 31, 2020, if filing electronically
- 30 day extension available if requested prior to the deadline

ACA Reporting Penalties

Penalty Provisions in the Tax Code

- General reporting penalties for failure to file correct information returns and furnish correct payee statements
- **Start at $250 per violation** (as adjusted)
- Penalty amounts increased to **$270 per violation** for returns filed in 2020

Short-term Penalty Relief

- Provided for returns **related to 2015– 2019** if reporting entity can show a good faith effort to comply and failures are for providing incorrect or incomplete information
- Some additional relief available for failures due to reasonable cause (IRS discretion)

6055 Transition Relief for 2019

Reporting entities will not be penalized for failing to furnish Form 1095-B if requirements are met

Requirements:

- Prominently post a notice on their website stating that responsible individuals may receive a copy of their Form 1095-B upon request (along with contact information)
- Furnish a 2019 Form 1095-B within 30 days of any request

Penalty relief does not extend to the requirements to furnish Forms 1095-C to FT employees or to file information with the IRS

Practical Tips for Employers

Best Practices for ACA Compliance

- ✓ Monitor the news for ACA updates
- ✓ Conduct a compliance review prior to every plan year
  - ✓ Review plan document terms
  - ✓ Review plan administration
- ✓ Evaluate ALE status each calendar year
- ✓ Review ACA reporting and disclosure obligations
- ✓ Audit required processes on a regular basis

Questions?

Thank you!