

# Key 2022 Updates for Health and Welfare Plans

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## The Bottom Line

- Employers should carefully review and prepare for 2022 compliance modifications and new requirements, and should monitor future developments.
- In particular, the IRS may start more aggressively pursuing ACA penalties and taxes against employers if the good faith transitional relief for ACA reporting requirements is officially removed. Additionally, plans should prepare for DOL audits involving NQTL and other requirements under the MHPAEA.
- Plans should consult ERISA counsel in connection with these changes. Certain new requirements are complicated and may require significant effort to correctly implement.

The beginning of the year is always a good time for plan sponsors to take stock of their benefits offerings and make plan design decisions and updates for plan compliance. This year, however, presents new challenges. Employers should take note of new deadlines and requirements that apply to their employee benefit plans during 2022. The below provides an overview of compliance issues that will likely impact health and welfare plans in 2022 and that plan sponsors and administrators should review with counsel.

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## New No Surprises Act/Transparency in Coverage Rules

On December 27, 2020, the No Surprises Act was signed into law as part of the Consolidated Appropriations Act of 2021 (CAA). The No Surprises Act institutes certain requirements for health plans and issuers intended to protect against surprise medical bills, increase transparency and enable patient awareness, including:

- Effective January 1, 2022, providers must not “surprise” balance bill in certain instances when the patient has not provided written consent in certain situations, including when an individual seeks emergency care out-of-network, or when receiving care from an out-of-network provider at certain in-network facilities. Instead, in those cases, patients may only be charged the applicable in-network cost-sharing amount, and plans and providers will need to negotiate payment of the balance. Additionally, both plan sponsors and issuers need to notify employees about their rights, disclosing specific information about the federal balance billing restrictions and any applicable state laws. A model notice is available [here](#).
- Also effective January 1, 2022, medical plan ID cards must show deductibles and out-of-pocket caps, as well as phone numbers and website addresses that patients can use to seek assistance.

The enforcement of certain other requirements of the No Surprises Act/Transparency in Coverage rules will be deferred or delayed (per [FAQs](#) released by the Departments of Labor, Health & Human Services, and Treasury (collectively Departments), as well as Interim Final Rules [Part I](#) and [Part II](#)), including:

- Publishing certain plans and issuers’ machine-readable files related to prescription drug pricing (pending further rulemaking);

- Publishing other types of machine-readable files, including those that relate to certain in-network and out-of-network information (until July 1, 2022);
- Providing a price comparison tool (until January 1, 2023);
- Providing a good faith estimate of expected charges for health care for insured patients submitting a claim (pending further rulemaking); however, still effective January 1, 2022, certain health care providers and facilities must generate good faith estimates for the uninsured or for those not submitting a claim;
- Providing an advanced explanation of benefits notification in clear and understandable language to certain individuals (pending further rulemaking); and
- Reporting of pharmacy benefit and drug costs (pending further rulemaking, but with an eye on December 27, 2022 for reporting 2020 and 2021 data).

The Departments intend to issue future regulations. Until then, plans and issuers should use good faith, reasonable interpretations of the statute.

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## Mental Health Parity NQTL Analysis

The CAA requires that, as of February 2021, group health plans providing mental health and substance abuse benefits and medical/surgical benefits are able to provide (upon request) a comparative analysis to the Department of Labor (DOL), to demonstrate compliance with the nonquantitative treatment limitations (NQTL) requirements of the Mental Health Parity and Addiction Equity Act (MHPAEA). A MHPAEA self-compliance tool is available on the DOL's website as a resource for issuers and plan sponsors (with Section F of the tool addressing the NQTL requirements).

The DOL has actively been auditing plans for NQTL compliance, and a 2022 MHPAEA Report to Congress highlights recent emphasis on greater MHPAEA enforcement. As a result, plan sponsors should have ERISA counsel review a completed comparative analysis, ready to be submitted upon request.

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## 2022 Benefits Limits

The Internal Revenue Service (IRS) issued the 2022 limits for qualified transportation fringe benefits, adoption assistance programs, health care flexible spending accounts (FSAs), and long-term care premiums. This year's limits are available [here](#) and generally reflect an increase over 2021 limits.

- The dependent care FSA limit returned to its pre-2021 cap of \$2,500 for individuals or \$5,000 for married couples filing jointly (i.e., without effect of Congress' special, increased limit in place for 2021 only).
- Additionally, the IRS issued [guidance](#) increasing 2022 out-of-pocket maximums for self-only and family high-deductible health plan (HDHP) limits (to \$7,050 and \$14,100, respectively) and health savings accounts annual contribution limits (to \$3,650 for self-only and \$7,300 for family coverage).
- HDHP deductible limits and excepted benefit HRA limits have not changed for 2022.

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## Plan Coverage of COVID-19 At-Home Tests

The Departments [announced](#) mandatory plan coverage of FDA-approved over-the-counter COVID-19 at-home diagnostic tests, effective January 15, 2022. Key takeaways on this at-home testing coverage mandate can be found in our [prior alert](#).

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## Broker and Consultant Compensation Disclosures

For contracts or arrangements entered into, extended or renewed on or after December 27, 2021, the CAA now requires that brokers and consultants anticipated to earn \$1,000 or more in direct or indirect compensation (related to group health plans of any size subject to ERISA) must disclose such compensation to the plan sponsor reasonably in advance of entering into or renewing the triggering agreement or arrangement. The DOL's December 30, 2021 [Field Assistance Bulletin](#) further details this new disclosure requirement.

In tandem with this mandate, plan sponsors now have a fiduciary responsibility to report to the DOL any such service providers who fail to disclose their compensation appropriately.

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## Deadline Extension for Certain ACA Reports

The IRS recently issued [proposed regulations](#) targeting certain reporting deadlines for health coverage issuers, including sponsors of self-funded plans, and applicable large employers (generally those with 50 or more full-time and full-time equivalent employees) under the Patient Protection and Affordable Care Act (ACA). In prior years, the IRS had extended the deadline for furnishing Forms 1095-B and 1095-C to individuals and employees, upon application to the IRS and for good cause. These regulations now automatically and permanently extend the deadline by 30 days (to March 2, except for leap years). The separate deadline for providers and employers to file Forms 1094-B and 1094-C with the IRS generally remains February 28 (or March 31, if electronically filed).

The IRS removes the good faith transitional relief for reporting entities whose ACA forms are incomplete or inaccurate. This means that reporting entities need to ensure that they timely submit accurate forms, as the IRS may more aggressively pursue penalties and excise taxes related to incomplete or inaccurate forms.

While the regulations would become effective for coverage beginning January 1, 2022, providers and employers may rely on them for reports due for the 2021 calendar year (meaning Forms 1095-B and 1095-C must be furnished by March 2, 2022).

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