

 NORTH RISK PARTNERS

EMPLOYEE BENEFITS COMPLIANCE: LATEST REGULATIONS


March 2024

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Presenters



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BENEFIT COMPLY



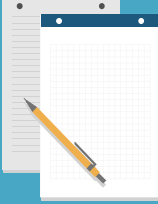
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Agenda

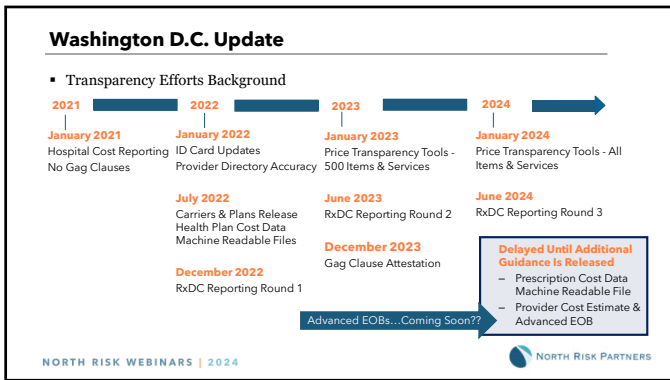
- Washington Legislative and Regulatory Update
- Upcoming Deadlines
 - 1094/1095 Reporting
 - PCORI
 - RxDC Reporting Round 3
- J&J Lawsuit and Employer Fiduciary Duty



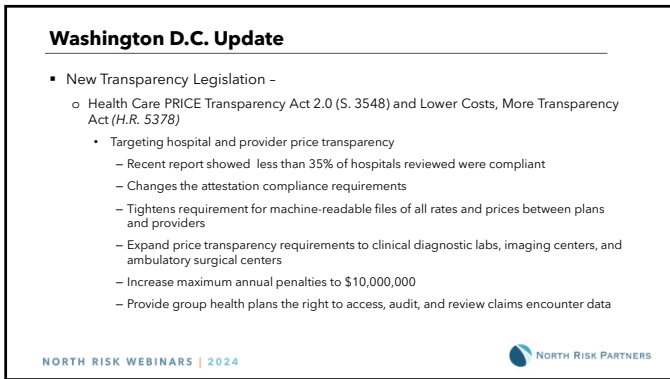
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Washington D.C. Update

- Telehealth Impact on HSA Eligibility Background
 - Under normal rules telehealth coverage provided before member incurs the minimum HDHP deductible would make individual ineligible to make HSA contributions
 - The 2023 Consolidated Appropriations Act (CAA) provided relief allowing that telehealth coverage would be temporarily disregarded for purposes of HSA eligibility for the 2023 and 2024 plan years
- Proposed Permanent Extension
 - Telehealth Expansion Act of 2023, HR 1843
 - Would permanently extend the relief to participants with telehealth benefits to remain HSA eligible
 - Passed the House Ways & Means Committee with bi-partisan support



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Washington Update

- Proposed HSA Legislation
 - The Bipartisan HSA Improvement Act (HR 5688)
 - Would allow for participants to maintain HSA eligibility even if covered by certain benefits
 - Limited direct primary care
 - Spouse only FSA (will require that FSAs be able to differentiate spouse expenses)
 - Includes an FSA/HRA to HSA rollover provision
 - The HSA Act (HR 5687)
 - Allows HSA eligibility if participant has VA coverage, Medicare Part A, Native American Health coverage, bronze and catastrophic plan coverage
 - Permits HDHP to include \$500 mental health services below HDHP deductible
 - Increases maximum HSA contributions



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Proposed IRS Regulations on Hospital & Indemnity Plans

- IRS, DOL, and HHS have released new proposed guidance
 - Plans must pay on a "fixed period" basis

Not allowed to pay on a per service basis	Addresses plans being sold as excepted benefit indemnity plans but contain a significant list of "per service" payments making it look more like comprehensive fee-for-service health insurance.
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 - Tighten the no coordination rule

Cannot be offered in conjunction with another plan that makes indemnity plan payments contingent on the participant having other coverage.	Targeting "preventive only MEC + indemnity coverage" plans that are being marketed as an alternative to comprehensive group health coverage.
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 - Effective Date
 - New plans offered after publication of final rules
 - Existing group plans sold before publication of final rules - Plan years beginning January 1, 2027!



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Proposed IRS Regulations on Hospital & Indemnity Plans

- IRS proposing to amend regulations to reflect IRS' existing interpretation of the tax treatment of hospital and fixed indemnity plans
- Benefits paid by plan must be treated as taxable compensation if:
 - Employee pays for the coverage using pre-tax deductions from pay through the employer's Section 125 plan or employer pays and does not treat payments as taxable income
 - Payments made by the fixed indemnity plan are made without regard for actual 213(d) medical expenses incurred by the employee
- Effective Date
 - Later of publication of final regulations or 01/01/24

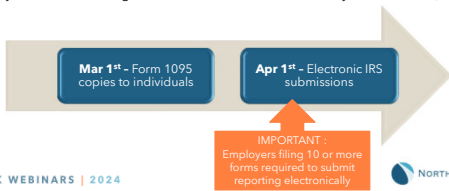
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UPCOMING DEADLINES

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Employer 1094 / 1095 Reporting

- New Electronic Reporting Requirements for 2023
 - Employers filing 10 or more forms required to submit reporting electronically
 - Includes 1095s, 1094s, W-2s, and 1099s
- 2024 Due Dates (for 2023 Reporting)
 - 30-day extension for filing with the IRS if Form 8809 is filed by the due date (due Apr 1)




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Employer 1094 / 1095 Reporting

I am an ALE* and offer a self-funded group health plan	I am an ALE* and do not offer a self-funded group health plan	I am not an ALE* and offer a self-funded group health plan	I am not an ALE* and do not offer a self-funded group health plan
1094C + 1095C Parts I, II, & III	1094C + 1095C Parts I & II	1094B + 1095B	No reporting required


*ALE has 50 or more Full-time Equivalent (FTE) employees. PT employees counted on a pro-rated basis

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PCORI Fee Deadline

- Self-insured employer must file and pay no later than July 31, 2024
 - \$3.00 per participant for plan years that end on or after October 1, 2022, and before October 1, 2023
 - \$3.22 per participant for plan years that end on or after October 1, 2023, and before October 1, 2024
 - This includes all 1/1/23 - 12/31/23 calendar year plans
- Do not file and pay early - Wait until updated 2nd Quarter 2024 Form 720 is released
- PCORI Fee Reminders
 - Self-insured plans subject to the PCORI Fee include HRAs and Level Funded Plans
 - Even a fully-insured employer who offers an HRA must file and pay PCORI fee

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Rx Reporting - Round Three!

- Round 1
 - Originally due December 27, 2022
 - Deadline extended to January 31, 2023
 - Reported 2020 & 2021 calendar years
- Round 2
 - Due before June 1, 2023
 - Reported for 2022 calendar year
- Round 3
 - Due before June 1, 2024
 - Reporting for 2023 calendar year

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Rx Reporting - Round Three!

- Many employers, especially those with fully-insured plans, did not have to do anything during Round 1 - carrier /TPA / PBM handled all of the reporting for most employers...
- That was not the case in Round 2
 - Most employers had some role to play in completing Round 2 reporting - carriers and TPAs asked employers for data they did not have..
- Employers may need to be involved again in Round 3...

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Rx Reporting - Round Three!

- The RxDC reporting requirements contain data elements that the carrier or TPA may not know...
 - The one creating the biggest problem is Employer/Employee Plan Contributions
 - Regulators extended temporary relief for the Dec. 27 reporting deadline so that employer/employee plan contribution reporting was optional
 - That data is supposed to be in the reporting now..Vendors who are reporting on the behalf of the employer's plan are asking for this information from employers
- What Should the Employer Do
 - Scenario 1 - Carrier or TPA required employer to report Average Monthly Premium data to them through online form, email or paper form.
 - Scenario 2 - Carrier/TPA will no longer file D1 and employer will have to submit a P2 and D1 file on their own.

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Rx Reporting - Round Three!

- Will first need to register with HIOS if they have not done so already.
 - This takes time to get the account approved. It will also ask for personal information for security purposes.

<https://www.cms.gov/CCIIO/Programs-and-Initiatives/Other-Insurance-Protections/Prescription-Drug-Data-Collection>

We do not think missing employer/employee contribution data will be an enforcement priority...

Primary Filing Resources

- [RxDC reporting instructions \(PDF\)](#)
- [RxDC templates and data dictionary \(ZIP\)](#)
- [RxDC drug name and therapeutic class crosswalk \(XLSX\)](#)
- [RxDC data validators \(XLSX\)](#)

Other Resources

- [Frequently Asked Questions \(PDF\)](#)
- [Training Resource Directory \(PDF\)](#)
- [RxDC YouTube Playlist](#)
- [Federal Regulation](#)

HIOS Manuals

- [HIOS Portal RxDC Quick Reference Guide \(PDF\)](#)
- [RxDC HIOS Module User Manual \(PDF\)](#)
- [Click here to Submit your data in the CMS Enterprise Portal](#)

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Some J&J Case Facts that Matter


- J&J accused of significantly overpaying for prescription drugs - some of which were sold by J&J
- J&J very actively involved in the selection of specific drugs covered by the plan
- J&J holds plan assets, including employer contributions, in trust
 - Very few employers do this...

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Fiduciary Responsibility 101

"Act in the Best Interest of Plan Participants"

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Health and Welfare Plan Fiduciary Responsibility Basics

- ERISA §404 - Plan fiduciary must perform their duties:
 - solely in the interests of participants and beneficiaries;
 - for the exclusive purpose of providing plan benefits, or for defraying reasonable expenses of plan administration;
 - with the care, skill, prudence and diligence that a prudent person acting in a like capacity and familiar with such matters would use...; and
 - in accordance with the documents and the instruments governing the plan...

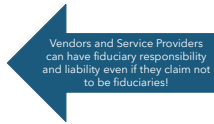
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Who is a Plan Fiduciary

- Named Fiduciaries
 - Every plan should have at least one fiduciary named in plan documents
- Functional Fiduciaries
 - Exercises any discretionary authority or discretionary control with respect to management or administration of the plan
 - Renders investment advice
 - Less important for most health and welfare plans unless a trust is involved - more applicable to retirement plans



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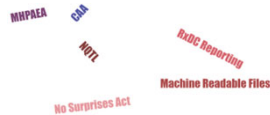
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Vendor and Service Provider Selection and Oversight

"...fiduciary status depends on whether the employer exercises discretion over the plan."

-DOL Understanding Your Fiduciary Responsibilities Under a Group Health Plan

- Many compliance obligations cannot be handled by the employer alone...



DOL "Understanding Your Fiduciary Responsibilities Under a Group Health Plan"
<https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/publications/understanding-your-fiduciary-responsibilities-under-a-group-health-plan.pdf>


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Employer Strategies

- Follow Your Plan Documentation
- Pay Attention to How You Handle Employee Contributions
- Keep Records of Vendor Choices and Decisions
- *"Act in the Best Interest of Plan Participants"*

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QUESTIONS?



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