



*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

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# 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*



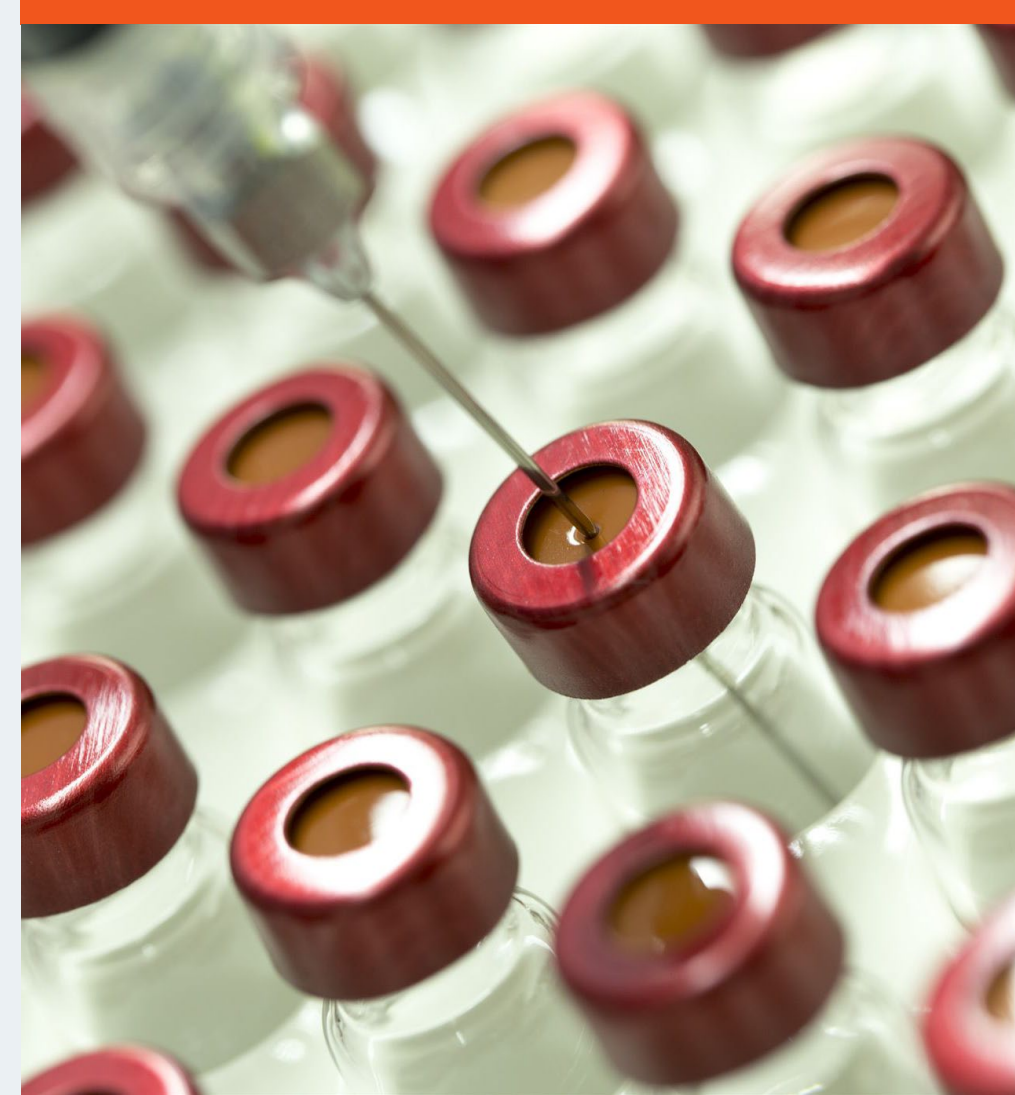
# Deregulation

- **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)



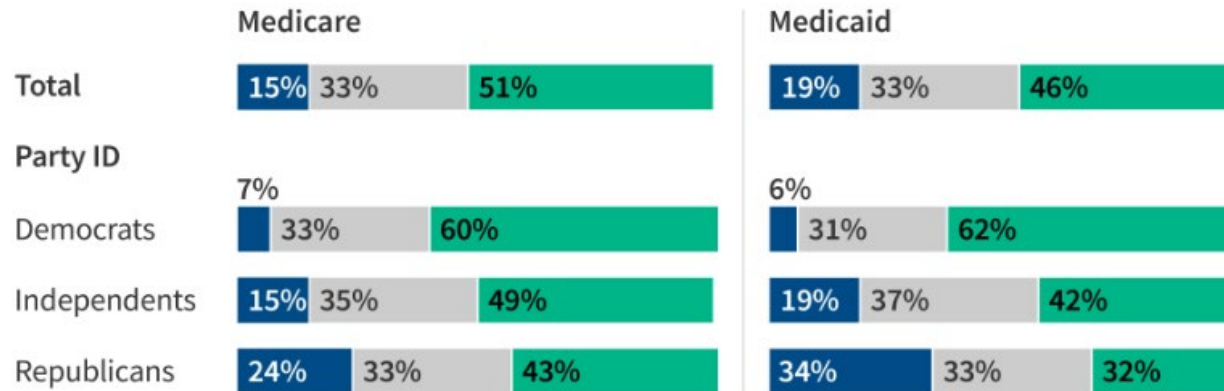
# Medicare & Medicaid

- 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.

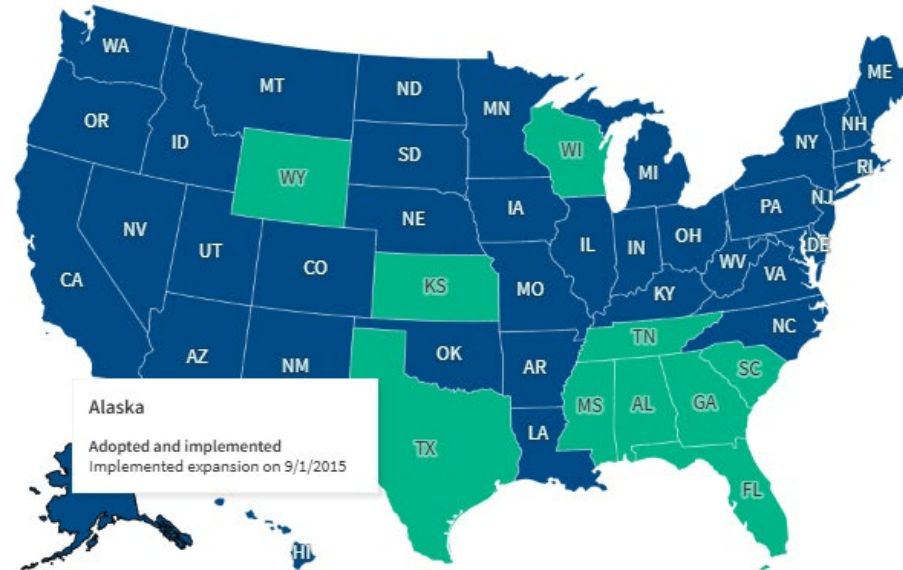


# Medicaid

- 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](#)

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# 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

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# Free Telehealth and HSAs

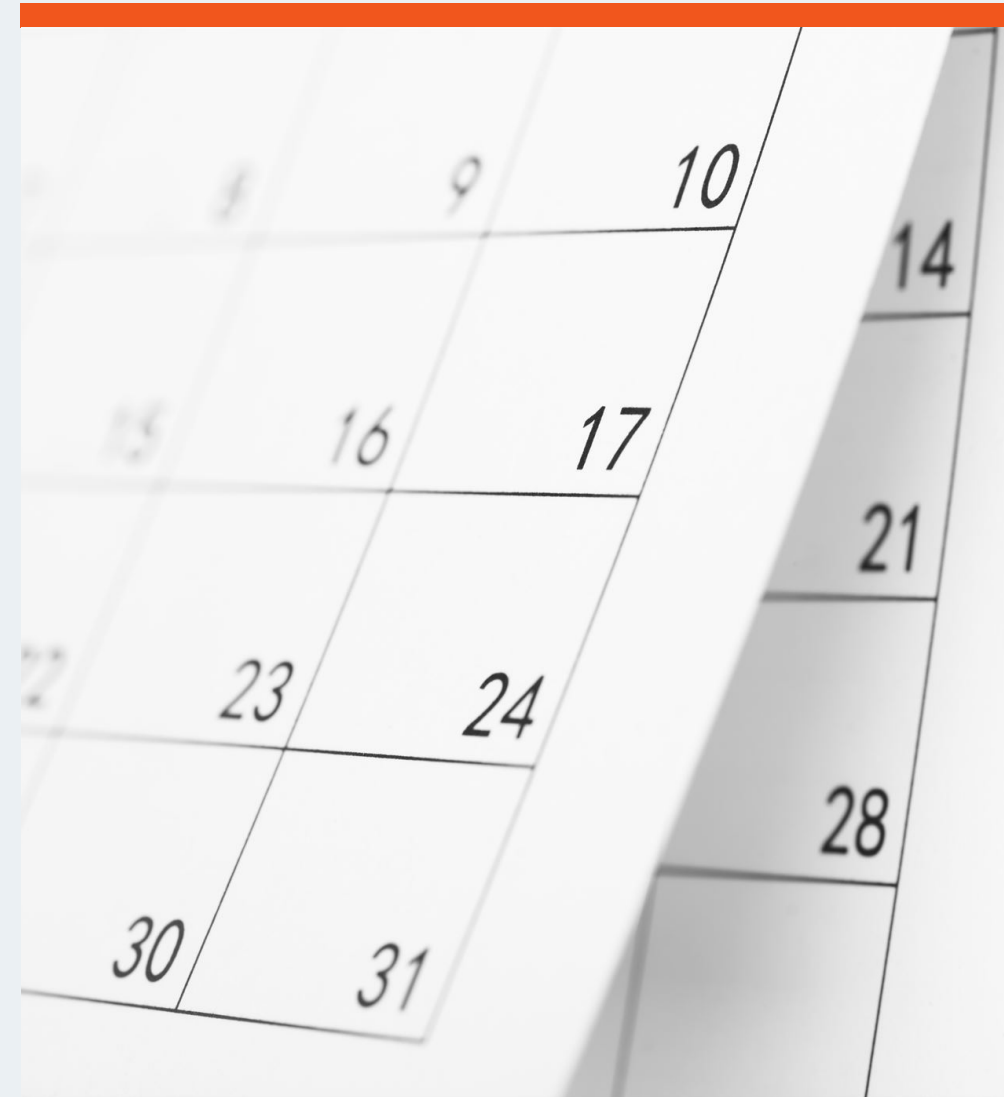
- COVID-era relief allowing free telehealth for those covered under a high-deductible health plan (HDHP) with a Health Savings Account (HSA)
  - Ended 12/31/24 after first bipartisan CR with telehealth relief fell through
- Employers hoping for a fix early in 2025 with a backdating provision
- Absent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

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# 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

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# 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!*