Compliance Watch

March 2025 Roundup: ACA Turns 15, Reporting Relief Expands, and Fiduciary Risk Rises

PROVANT

Hot Topics:

MARCH 2025

The Affordable Care Act (ACA) Just Turned 15 Years Old!

The ACA has had a tumultuous ride but has solidified itself as a permanent fixture in American health care as we know it. Since some Human Resource professionals may not even know what life was like before the ACA, here are some major outcomes of this legislation with respect to employee health plans:

- Children must remain eligible to stay enrolled through age 26
- Plans cannot impose pre-existing condition limits or exclusions
- Plans cannot impose annual or lifetime dollar limits on essential health benefits
- The vast majority of plans cannot ask employees to pay more than annually indexed out-of-pocket cost sharing limits for essential health benefits
- The vast majority of plans must cover a sizeable list of preventive care services and drugs without cost sharing (with exceptions available for employers with an objection to one or more contraceptives or sterilization)
- Other medical benefits an employer wants to sponsor (such as telehealth, fertility care benefits, a health reimbursement arrangement or HRA, or other carved out/bolted on benefits) must be integrated with the employer's medical plan down to the family member level (meaning only those actually enrolled in the medical plan can access these extra benefits)
- Fully insured plans are subject to minimum loss ratios
- Public health insurance marketplaces and plans were created and Medicaid was expanded to cut in half how many Americans must go uninsured each year (when the ACA passed, 16% of Americans were uninsured, but it's been around or below 10% since all of the ACA's major provisions took effect in 2014)
- Those marketplaces also provide people losing coverage more options to compare against their expensive COBRA continuation options, and opened up a new alternative for employers to help pay for individual health plans via QSEHRAs or ICHRAs if they would prefer to not sponsor their own major medical plans

WHAT'S NEW

ACA Turns 15
A decade and a half of coverage mandates, consumer protections, and employer obligations.

1095 Relief Extended to ALEs
All employers can now furnish 1095 forms only upon request with proper notice.

Fiduciary Lawsuits Heat Up
Major employers face claims of health plan mismanagement and conflicts of interest.

RxDC & CMS Deadlines Ahead
Prescription drug data due June 1; Medicare Part D disclosures already in play.

MAHA Commission Created
Executive Order forms new panel to tackle chronic disease and promote lifestyle care.

TAKEAWAY

ACA reporting relief brings welcome flexibility, but rising fiduciary risk and new federal directives signal it's no time to get complacent.

- Large employers must offer “affordable” coverage providing “minimum value” to all employees with 30+ hours of service per week (and their dependents to age 26) to avoid potential penalties, and must self-report compliance each year (forms 1094-C/1095-C)
- Small employers cannot be denied a plan (guaranteed availability and renewability)

Hot Topics:

ACA Reporting Is Due in March!

The 2024 forms and instructions for the 1094/1095 reporting have been out for months. However, new relief previously available to small employers now extends to applicable large employers (ALEs), allowing them to only provide 1095 forms to individuals upon request starting March 3 as long as they post proper notice to their public website by March 3. All forms must be electronically submitted to the IRS by March 31. Filing complete and accurate reports on time starts a six-year statute of limitations for potential ALE penalties, so it is imperative to verify reporting is accurate (including the XML file that is actually sent to the IRS) and timely.

Applies To:

- Applicable large employers (ALEs) responsible for 1094-C/1095-C forms whether they sponsor any type of medical plan or not
  - ALEs are typically those with 50+ full-time and equivalent employees, with employers in a controlled group or affiliated service group combining their employee counts
- Small employers who are not ALEs sponsoring a level-funded or self-funded medical plan or an individual coverage health reimbursement arrangement (ICHRA), making them responsible for 1094-B/1095-B forms

Go Deeper:

1095 Statements to Individuals

1095-B or 1095-C statements must be provided to individuals 30 days after January 31, or March 3 this year. However, if the employer responsible for completing 1095 forms provides proper notice on their public website by March 3 and keeps it there through October 15, then the employer can provide the 1095 form to only those who request it. Guidance states all size employers can take advantage of this in an easy two-step approach:

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First, the main public webpage must provide a prominent link to "Tax Information." A public webpage should be a website former employees can access and would be reasonably expected to visit to find employer contact information.

Then, the secondary public webpage that the link takes people to must also be accessible to former employees and must include the following content:

- "IMPORTANT HEALTH COVERAGE TAX DOCUMENTS" in all caps
- How a "responsible individual" may request a copy of "Form 1095-B, Health Coverage," or
- How a "full-time employee" may request a copy of "Form 1095-C, Employer-Provided Health Insurance Offer and Coverage"
- With email address, mailing address, and telephone number

Requests must be honored within 30 days. Individuals can give consent to electronic delivery, and that individual's consent may be relied upon until revoked in writing.

Electronic Filing to IRS

As a reminder, starting last year, all 1094/1095 forms must be **filed electronically for all employers** who file 10 or more of various types of information returns combined (i.e., after they add up all the W-2, 1099, 1095, and a few others listed here). This essentially means every employer with an ACA reporting obligation must e-file their forms to the IRS by March 31. An extension can be requested by submitting Form 8809 no later than March 31.

In addition, the penalty for failing to file electronically or for failing to submit accurate or complete forms is increasing to $330 per return or statement (up from $310). This is reduced to $130 if corrected by August 1, or $60 if corrected within 30 days of the original due date. These fees apply separately related to statements due to individuals by March 3 vs. returns due to the IRS by March 31.

Keep in mind that several states (CA, MA, NJ, RI, and D.C.) have additional state filing obligations.

Employers should consider the preparations of such filings, including any state filings, and work with their payroll provider or ACA reporting vendor to complete any applicable filings electronically by the above due dates.

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Next Round of RxDC Submissions Due by Sunday, June 1, 2025

Section 204 of Consolidated Appropriations Act (CAA) requires group health plans and issuers to report detailed prescription drug data, but also requires information related to healthcare spending. The next round of reports for data during the "reference year" 2024 must be submitted directly to CMS by Sunday, June 1, 2025.

Who this applies to:

- All size employers sponsoring a group medical plan and prescription drug benefit
- Exempt: excepted benefits such as standalone dental, vision, FSAs, HSA, HRAs including ICHRAs

Go Deeper:

To comply with this requirement, employers must rely heavily on their claims administrators because these service providers possess the required data.

Any gaps in submissions should be addressed by either the employer submitting themselves in the government's HIOS system or engaging with a third-party vendor to assist with coordinating submissions.

Typically, the claims administrator or carrier will facilitate the full reporting but will ask the employer for key information needed two to three months before the June 1 annual deadline.

- They primarily need to know how much the employer paid vs. how much participants paid (including COBRA participants) for the previous calendar year's medical/Rx coverage (even if the plan does not operate on a calendar year).
- If self-funded, the premium "equivalent" for this will be actual fixed costs plus actual claims (choose either incurred claims or paid claims for the calendar year, and stick with that choice every year), less stop loss rebates and pharmacy rebates retained by the plan.

Employer plan sponsors, especially self-funded health plan sponsors, should continue to take necessary steps in order to prepare for the June 1 deadline. Helpful information can be found on CMS's RxDC webpage.

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Federal Updates:

Recent Fiduciary Breach Lawsuits

Large employers like JP Morgan Chase, Johnson & Johnson, Wells Fargo and others have recently faced lawsuits for breaching their fiduciary responsibilities to properly manage their benefit plans. Plaintiff complaints allege plan sponsors are not paying attention to massively overpriced benefits and are ignoring conflicts of interest, thus breaching their fiduciary obligations to the detriment of employees and former employees.

Applies To:

All employers sponsoring employee benefits.

Go Deeper:

Plaintiffs are identifying numerous examples where the plan sponsor allegedly allowed egregious overspending on prescription drugs that can potentially be purchased for a tiny fraction of what the plan is actually paying. In some cases, the plaintiffs are able to call into question whether some of that egregious overspending is profiting a service provider engaged with the plan, which could be a conflict of interest.

Plan sponsors are fiduciaries of their benefit plans and must act with the skill, prudence, diligence and care to always operate in the sole interest of participants and beneficiaries. Yet, plan sponsors may not always know or understand the detailed inner-workings of price negotiations for covered services and drugs, and some employees are calling employers out for failing to obtain the knowledge necessary to appropriately oversee the plan and its service providers. They argue this is costing the plan, employer, participants, and beneficiaries exceedingly more money than is reasonable to pay. They are also arguing that overspending on health benefits is translating to suppressed wage growth and to exorbitant costs for COBRA and retiree participant premiums.

So far, the J&J and Wells Fargo lawsuits have been dismissed due to the court finding the plaintiffs lack standing, which is the legal argument that they cannot prove they have suffered a concrete injury as a result of the plan fiduciary's actions (or alleged lack of prudent actions). However, these dismissals are without prejudice, meaning the cases could be reopened. If the plaintiffs choose to reopen the case, they will have to show they suffered a concrete injury in order to avoid a dismissal based on lack of standing. This has in fact just happened with the J&J case, with a complaint filed to reopen the case almost a year after it was initially filed.

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Practical Implications to Employers:

As you can tell from the fact that the J&J case started a year ago and was just amended this month to re-file it, these lawsuits take a very long time to move through the courts. For now, employers will want to consider ways to **document fiduciary decisions, considerations/deliberations, contract review**s, and other documentation their counsel would like them to maintain to have a strong defense in case anyone should complain that the health plan fiduciaries are not meeting their fiduciary obligations to the plan's participants and beneficiaries. Even something as simple as staying fully insured for a long time could be risky when the employer's population is stable and alternative funding options could yield cost-savings or other benefits to participants.

And remember, while these lawsuits have focused on health plans, employers are fiduciaries with respect to all their benefit plans. So, they should be diligently ensuring benefits are adequate, keeping up with the needs of modern workers and families, do not contain avoidable language that unnecessarily harms individuals and are priced appropriately.

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Executive Order Creates Make America Healthy Again Commission

Move over MAGA, the new administration has created another acronym, MAHA – Make America Healthy Again.

Applies To:

All employers with group health plans.

Go Deeper:

On February 13, 2025 the President signed an Executive Order establishing the Make America Healthy Again Commission. Under the direction of Health and Human Services (HHS), the Commission is tasked with investigating and addressing the root cause of America's health crisis with specific focus on childhood chronic disease.

The Commission is derived of individuals from 14 different agencies, establishing an interagency structure to leverage federal government expertise. There are four main policy directives to the Commission from the Executive Order:

- Empower Americans through transparency and open-source data and avoid conflicts of interest in all federally funded health research.
- Prioritize gold-standard research on why Americans are getting sick in all health-related research funded by the federal government.
- Work with farmers to ensure that U.S. food is healthy, abundant and affordable.
- Ensure expanded treatment options and health coverage flexibility for beneficial lifestyle changes and disease prevention.

In adhering to the focus on childhood chronic disease, the Executive Order imposes specific timeframes in the coming days for the Commission to timely assess and strategize how to improve the health of America's children:

- Within 100 Days – Produce an assessment of what is known and what questions remain regarding childhood chronic disease and compare against international statistics.
- Within 180 Days – Produce a strategy based on the finding of the assessment.

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Practical Implications to Employers:

Additional policies outlined in the Executive Order aim to ensure the availability of expanded treatment options and the flexibility for health insurance coverage to provide benefits that support beneficial lifestyle change and disease prevention. This could result in expanding coverage for wellness benefits (i.e., coverage of dietary supplements, fitness tools and programs, etc.). Perhaps some benefits currently taxable under lifestyle spending accounts can become non-taxable benefits in the future.

In contrast, the policy also touches on America's over reliance on medication and treatments, signifying the likelihood of continued reform around pharmaceuticals, specifically targeting FDA approval and use of medications for children and imposing non-traditional treatments for chronic disease vs. prescribing medication.

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Question of the Month:

We discovered an employer is subject to ACA reporting, but they have not been reporting. How do we help employers remedy this situation?

For either 1095-B or 1095-C, intentionally neglecting to file the required ACA forms can result in penalties imposed by the IRS. Separate penalties occur for timely and correct filing to the IRS and timely and correct issuance to applicable employees. Penalty amounts change annually: IRS Penalties and Calculations.

The IRS link also includes guidance on how the penalty is calculated as well as how to remove/reduce penalties if the employer receives notice by the IRS. Reduction or removal of penalties by the IRS is determined by reasonable cause and evaluated on a case by case basis.

As you will see from the IRS penalty chart in the link, penalties can be reduced if the employer takes action to provide complete and accurate forms to individuals and the IRS. Thus, realization and an honest effort to voluntarily correct the forms can significantly reduce the risk of getting notice from the IRS and them imposing penalties. Further, if a notice is received by the IRS, the employer taking voluntary action to resolve could also significantly reduce the penalty amounts.

If the employer's current ACA reporting partner cannot facilitate prior year filings, there are numerous independent third-party reporting vendors who can assist for a fee. As a reminder, electronic filing is required in most cases, so employers will want a vendor's assistance.

Delivery for 2023 (and prior) Forms:

Unless the employer has received consent from each applicable employee for electronic delivery, for the 2023 (and prior) forms, the employer will have to provide each generated form to the respective individual. Mailing to the last known address is required.

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