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2022 Compliance Year-End Review

THURSDAY
NOVEMBER 10, 2022

3 P.M. ET ■ 2 P.M. CT
1 P.M. MT ■ 12 P.M. PT

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Meet Your Gallagher Speakers

Sally Wineman, J.D.

Area Senior Vice President, Compliance Counsel

Kim Mitchell, J.D.

Divisional Vice President, Compliance Counsel

Andrew Malahowski, J.D.

Area Senior Vice President, Compliance Counsel

Transparency Overview

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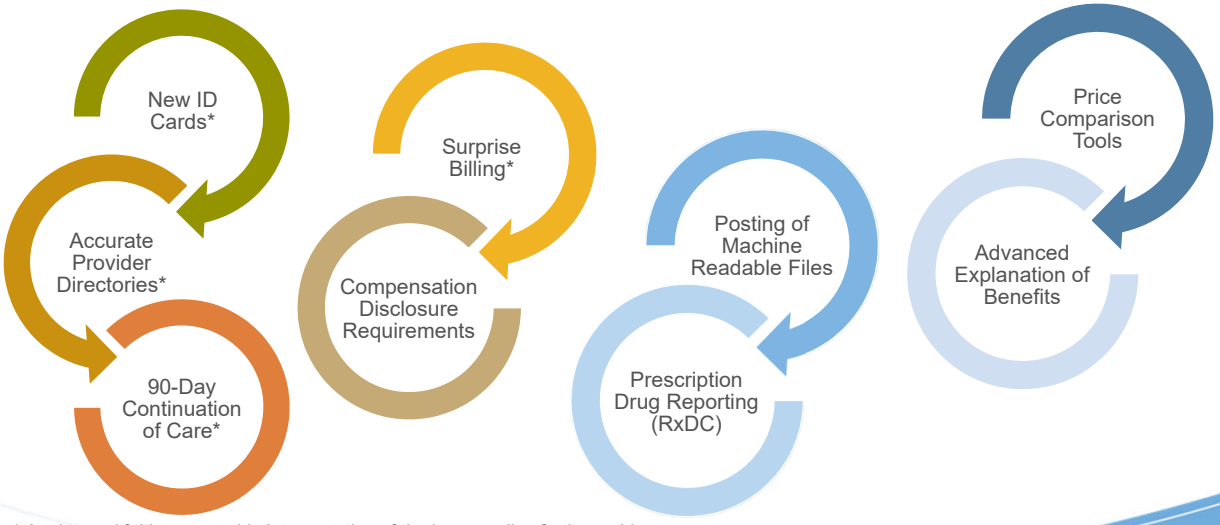

** Apply good faith, reasonable interpretation of the law, pending further guidance*

Upcoming Transparency Rules

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What's Next?

Price Comparison Tools	Price Comparison Tools	Advanced Explanation of Benefits
500 Items and Services	All Items and Services	Delayed
Plan Years beginning on or after January 1, 2023	Plan years beginning on or after January 1, 2024	Pending further guidance

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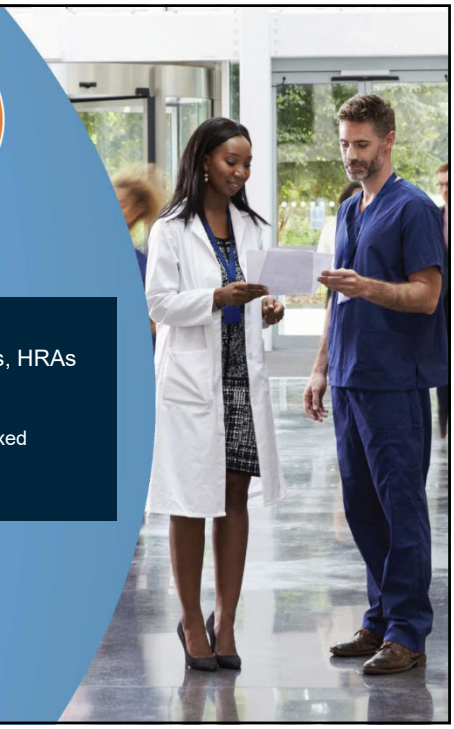
RxDC Reporting

Due by Dec. 27, 2022 and June 1st thereafter



Who Needs to Report?

Group Health Plans

- All sizes
- Fully Insured and Self-Insured
- Governmental Plans
- Church Plans
- Grandfathered Plans

Not Required:

- Account-based Plans – FSAs, HRAs
- Excepted benefits
  - Hospital Indemnity or other fixed indemnity
  - Disease-specific insurance

NOTE: The RxDC Report is the Prescription Drug Data Collection Report.

RxDC Reporting - Information to Be Filed

- Two types of files must be uploaded to HIOS*:
  - P2: Plan Information file that contain information about the plan(s); and
  - D1- D8: Data files which contain information about premiums, drug costs, and other costs

Plan Information (P2)	Data Files (D1-D8)
• Plan name, plan number, ERISA Form 5500 number and the HIOS number (if applicable) • States in which the plan is offered • Market segment • Plan year beginning and ending dates • Plan sponsor's name and EIN • Insurer, TPA, and PBM names and EINs	• D1 – Premium and life-years • D2 – Spending by category • D3 – Top 50 most frequent brand drugs • D4 – Top 50 most costly drugs • D5 – Top 50 drugs by spending increase • D6 – Rx totals • D7 – Rx rebates by therapeutic class • D8 – Rx rebates for the top 25 drugs

** Information will be submitted through the RxDC module in the Health Insurance Oversight System (HIOS) that is on the CMS Enterprise Portal*

RxDC – Submitting Plan Information

Vendor
- An insurer, TPA, or PBM may be willing to report on behalf of the plan. Don't assume! Put a written agreement in place!

Provide Information
- Vendor should have most, if not all, data
- May still need to provide plan information

Employer Submission
- If vendors not willing to report, employer will need to submit using HIOS system

RxDC – Submission Process

1. Create an EIDM account in the CMS Enterprise Portal
2. Request access to HIOS with the CMS Enterprise Portal
3. Register your organization
4. Request a role for the RxDC module in HIOS
5. Submit your RxDC files

Don't delay. It can take up to 2 weeks!

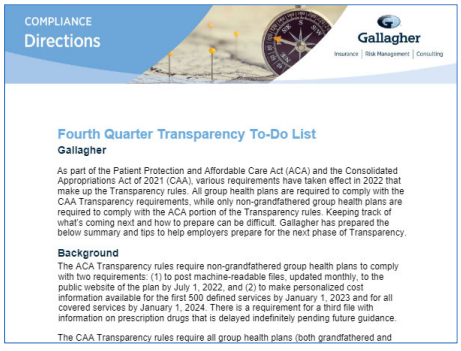
RxDC Reporting Challenges

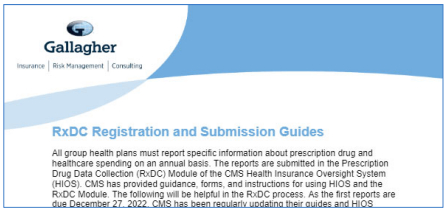
- Employers will want Insurer, TPA and/or PBM to handle the detailed reporting, **BUT** don't assume!
  - You may still need to provide plan information for them to complete reporting
  - They may prefer to provide you the data to directly submit
  - Or, they may file their data and let you file your plan information
  - Watch for any vendor deadlines to provide plan information.
    - Don't miss those deadlines or you could end up needing to file all the data files directly!

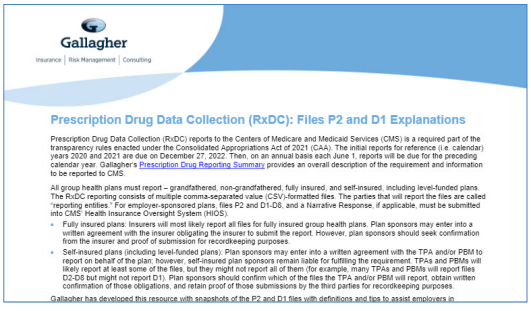
RxDC – Reporting Challenges

- Mid Year Renewal: Reporting is done on a calendar year basis, so you may need to deal with multiple vendors
  - First report includes CY 2020 and 2021
  - 2022 Reporting due June 1, 2023 for all plans
- Carrier Change: Changing Insurers, TPAs, or PBMs at renewal
  - Prior vendor still providing report data for you?
  - New written agreement with new vendor
- Service Charge: Any additional administrative charges for reporting?

GBS Resources







Pandemic Relief – Potential Sunset

Plan administrators continue a "watchful waiting" approach

Public Health Emergency

Effective October 13, 2022, HHS extended the Public Health Emergency (first effective on January 27, 2020). The extension lasts another 90 days, though HHS has previously indicated it will provide a 60-day advance notice if the emergency will not be extended again.

National Emergency

Effective March 1, 2022, President Biden extended the National Emergency Declaration (first made in 2020). The National Emergency lasts for one year after the extension is effective (until February 28, 2023) unless the President further extends it or terminates it earlier.

These federal declarations impact the timing of certain mandates on group health plans, and other forms of relief for group health plan participants.

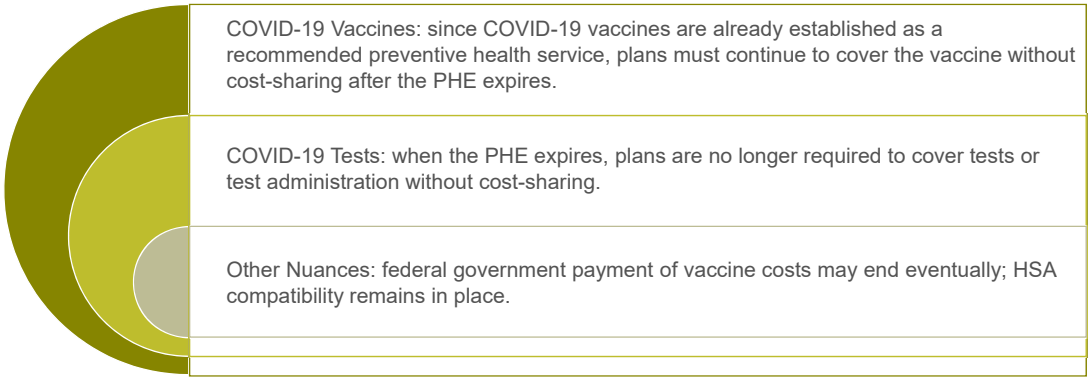
COVID-19 Vaccines and Testing

Reminder of the Rules Currently In Place

Coverage of COVID-19 Tests	Coverage of COVID-19 Vaccines	HSAs, HRAs, FSAs
Pursuant to FFCRA and the CARES Act, group health plans must cover COVID-19 tests without cost-sharing.	Pursuant to the CARES Act, non-grandfathered group health plans must cover COVID-19 vaccines without cost-sharing.	COVID-19 tests are qualifying medical expenses that can be reimbursed by HSAs, HRAs, and FSAs (if not already paid by another source).
January 2022 guidance expanded this mandate to include over-the-counter tests.	This includes booster doses for certain individuals, consistent with the EUA or BLA.	HDHPs can cover COVID tests without cost-sharing without spoiling HSA eligibility.

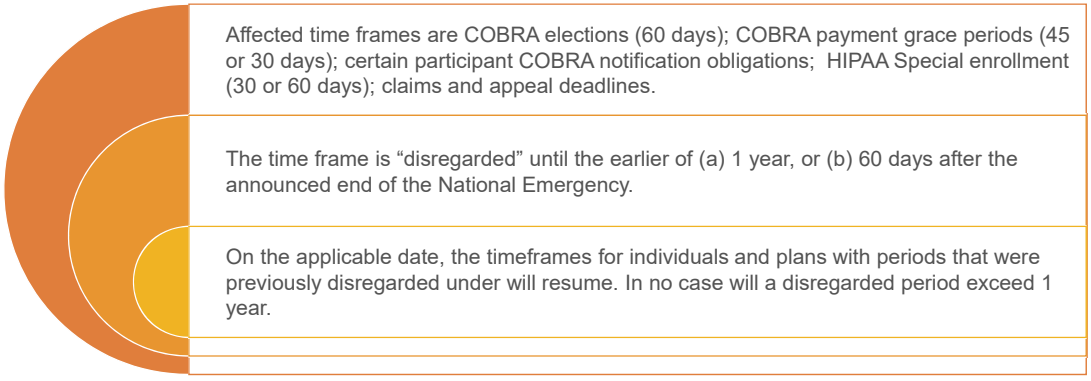
COVID-19 Vaccines and Testing

What happens when the Public Health Emergency expires?



Outbreak Period Extensions of Time

In effect during the National Emergency



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End of Outbreak Period

Example #1 – COBRA Election

- Covered employee experiences a COBRA qualifying event on October 1, 2021
  - Under normal COBRA rules, the qualified beneficiary would have 60 days to elect COBRA.
  - The normal deadline under COBRA would be **November 30, 2021**.
- The Outbreak Period relief provides a maximum of one year (beyond the normal deadline) to elect COBRA, until **November 30, 2022**.
- If the National Emergency expires on **February 28, 2023**, then this has no effect on this individual's extended COBRA election deadline (though later COBRA payment deadlines might be effected).

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End of Outbreak Period

Example #2 – COBRA Payment Grace Period

- Qualified Beneficiary has a monthly COBRA premium payment that is due on July 1, 2022
  - Under normal COBRA rules, the qualified beneficiary would have a 30-day grace period to make this payment.
  - Normally, the grace period would expire on **July 31, 2022**.
- The Outbreak Period relief provides a maximum of one year (beyond the normal deadline) to pay for COBRA, until **July 31, 2023**.
- However, if the National Emergency expires on **February 28, 2023**, then the 30-day grace period to pay for COBRA will resume 60 days after that expiration, on April 29, 2023, resulting in an expiration of the grace period to pay this COBRA premium payment on **May 29, 2023**.

End of Outbreak Period

Example #3 – HIPAA Special Enrollment

- Employee is married on October 1, 2022
  - This is a HIPAA special enrollment event that would normally provide the employee with 30 days to elect coverage for their spouse.
  - The normal deadline under HIPAA would be **October 31, 2022**.
- The Outbreak Period relief provides a maximum of one year (beyond the normal deadline) to elect HIPAA special enrollment, until **October 31, 2023**.
- However, if the National Emergency expires on **February 28, 2023**, then the 30-day timeframe to elect HIPAA special enrollment will resume 60 days after that expiration, on April 29, 2023, resulting in a special enrollment deadline of **May 29, 2023**.

Reproductive Benefits

Applicable Law

- U.S Supreme Court Ruling
- The Pregnancy Discrimination Act (PDA)
- The Equal Employment Opportunity Commission (EEOC)

Both the PDA and the EEOC guidance are unaffected by the Supreme Court ruling, meaning…..

Group health plans remain subject to both

Reproductive Benefits

Employer Considerations

Current Offerings

- Determine what the plan(s) currently offer.
- An employer may have more than one plan, including both a self-insured plan and a fully-insured plan offering different benefits or plans in multiple locations.

State Laws

- Consider impact of state laws on fully-insured plans.
- Some states have criminal statutes that make it a crime to aid someone who is seeking an abortion.

Travel Benefits

- Consider whether carrier or TPA can administer the benefit.
- IRS reimbursement limitations apply.

Preventive Services

Contraceptive Coverage

- All FDA-approved if medically necessary – including emergency contraception
- HSA, health FSA, or HRA can reimburse for cost of OTC contraception
- Conflicting state law is preempted

Preventive Services

Guidelines for Women

New:
- Counseling to prevent obesity

Updated:
- Lactation support
- Contraceptives
- Counseling for STIs
- HIV screening
- Well-women visits

Applies for plan years beginning on or after December 30, 2022

Preventive Services

Colorectal Cancer Screening

Follow-up colonoscopy must be covered in certain cases

Extended age to include age 45 to 49 for recommended screening

Applies for plan years beginning on or after May 31, 2022

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Telehealth & HSAs

Ended, Then Extended, Temporary HSA Relief for Telemedicine

- The CARES Act permitted an individual to have free or reduced cost telemedicine coverage within a qualifying HDHP
  - Before the annual statutory minimum deductible is satisfied,
  - Without negatively impacting their HSA eligibility.
- This special relief was only available for plan years beginning before January 1, 2022.
- The Consolidated Appropriations Act of 2022 (CAA 2022) extended the relief from April 1, 2022 through December 31, 2022.
- Not retroactive to January 1, 2022. Based on calendar year, not plan year.

"Family Glitch" Fix

- Spouse and dependent eligibility to receive subsidies for ACA marketplace coverage will be based on the affordability of offer of family coverage through employer group health plan
- Does not affect employer's obligation under the ACA employer mandate
- IRS guidance created new permitted mid-year election change for cafeteria plans. Employers may amend their Section 125 plan to allow participants to drop family coverage for spouses and/or dependent children to enroll in ACA marketplace coverage
- Both sets of rules are effective January 1, 2023
- Employers adopting the newly available mid year election change events must amend their plans by the end of the plan year in which it is first allowed

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Year-End Reminders

Year-End Reminders

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Employer Shared Responsibility Mandate

Mandate	2022	2023
Affordability Rate	9.61%	9.12%
Employer Shared Responsibility Assessment - "Headcount" (4980H(a))	$2,750	$2,880
Employer Shared Responsibility Assessment - "Individualized" (4980H(b))	$4,120	$4,320
FPL Safe Harbor - Maximum Self-Only Contribution	$103.15 (CY Plans)	$103.28 est. (CY Plans)

Year-End Reminders

ACA Cost Sharing and Deductibles

Deductibles & Out-of-Pocket Maximums	2022 Single/Family	2023 Single/Family
ACA Out-of-Pocket Maximum*	$8,700/$17,400	**$9,100/$18,200**
HDHP Minimum Deductible	$1,400/$2,800	**$1,500/$3,000**
HDHP Out-of-Pocket Maximum	$7,050/$14,100	**$7,500/$15,000**

** Applicable to Non-Grandfathered Plans*

Year-End Reminders

IRS Adjustments to Account-Based Plans

Contributions	2022 Single/Family	2023 Single/Family
HSA Annual Contribution Limit	$3,650/$7,300	**$3,850/$7,750**
HSA Catch-Up Contribution (age 55 or over)	$1,000	**$1,000**
Health FSA Contribution Limit	$2,850	**$3,050**
Health FSA Carryover Limit	$570	**$610**
Dependent Care Contribution Limit	$5,000 ($2,500 if married filing separately)	**$5,000 ($2,500 if married filing separately)**

Upcoming Year Outlook

Items to Watch in 2023

- Wellness - Rules yet to come
- Transparency - Advanced EOB rules
- HSA Telehealth extension for 2023
- Mental Health Parity – Additional guidance
- Mid-term election impacts
- State legislative activity impacts
- DOL – Proposed Independent Contractor rules
- Will we see the end of the Public Health and National Emergency for COVID-19?

What Else Is New?

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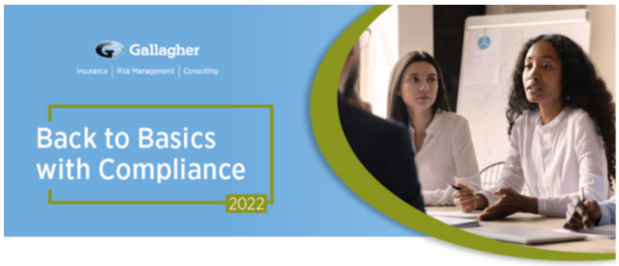
Changes in your organization may create legal obligations that are "new to you"

- Mergers and Acquisitions
- Employer Shared Responsibility Obligations
- Moving From Fully-Insured to Self-Insured
- Implementing New Benefit Designs

Resources



Employers are searching for talent in human resources and employee benefits, and often the right person for the job has the skills to perform, but needs basic or refresher training to put them on track for success.

Thank you!

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