



Congress and Regulators Issue Welcome Deadline Relief for Group Health Plans

Sponsors of group health plans received welcome relief from Congress and regulatory agencies which should make health plan administration and reporting less burdensome. The relief comes in the form of a permanent extension of certain Affordable Care Act (ACA) reporting deadlines, a temporary reprieve from new prescription drug reporting requirements, and a two-year continuation of the ability to offer telehealth and remote care services under HSA-compatible high deductible health plans.

ACA Reporting – 2022 and Thereafter

In December, the IRS published [final regulations](#) on the reporting requirements under the ACA. Each year, health plans, insurers, and Applicable Large Employers (ALEs) (i.e., employers with at least 50 full-time equivalent employees) are required to provide individual statements to participants and employees and complete a filing with the IRS regarding the health care coverage they offer. Providers of minimum essential coverage – namely, health plan sponsors and insurers – must furnish individual statements to participants using Form 1095-B. Plan sponsors must also file copies of the individual statements with the IRS under cover of transmittal Form 1094-B.

ALEs must provide individual statements to employees using Form 1095-C and must submit copies of the statements to the IRS under cover of transmittal Form 1094-C.

Forms 1095-B and 1095-C – Individual Statements due March 2, 2023

Historically, the individual statements on Forms 1095-B and 1095-C have been due by January 31 of the year following the calendar year for which coverage is reported. However, for the past several years, the IRS has issued 30-day extensions of this

deadline. In its 2021 proposed regulations, the IRS seemed poised to make this 30-day extension permanent, and with the December 2022 final regulations, the service has done just that.

For 2022 reporting, Forms 1095-B and 1095-C must be furnished by March 2, 2023. In future years, the deadline will continue to be March 2, consistent with the final regulations. (In years when March 2 falls on a weekend or holiday, the deadline will be the next business day).

Forms 1094-B and 1094-C – IRS submissions due March 31, 2023

The final regulations do not alter the deadline for the submission of Forms 1094-B and 1094-C to the IRS. Filers must continue to submit copies of the individual statements along with Form 1094-B or 1094-C by March 31 (if filing electronically^[1]). Filers requiring more time for the IRS submission must submit Form 8809 before the due date to receive an automatic 30-day extension.

Alternative Method of Distribution for Form 1095-B

The final regulations also provide an alternative method of furnishing Forms 1095-B to individuals. Typically, plan sponsors furnish Forms 1095-B by mail or pursuant to electronic distribution rules. Pursuant to the final regulations, plan sponsors may now post a “clear and conspicuous notice” on their website informing individuals how to request a copy of Form 1095-B and providing contact information. The final regulations contain specific instructions regarding alternative distribution methods for Form 1095-B, as well as a safe-harbor example for the required notice. Plan sponsors must provide the Form 1095-B within 30 days of an individual’s request.

This alternative distribution method generally does *not* apply to Forms 1095-C, except in limited circumstances for non-employees and non-full-time employees.

Goodbye to Good-Faith Relief

In prior years, the IRS offered “transitional good-faith relief” under which penalties were not imposed on plan sponsors and employers who demonstrated a good-faith effort to comply with the ACA reporting requirements would. That good-faith relief expired after 2020, and the final regulations confirm that such transitional relief has been eliminated. Plan sponsors and employers who fail to properly complete the

forms and satisfy the reporting requirements will now be required to show reasonable cause to be eligible for penalty relief.

Group Health Plan Reporting on Prescription Drug and Health Care Spending Extended Through January 31, 2023

Section 725 of ERISA (as added by the Consolidated Appropriations Act, 2021) requires group health plans to submit detailed online reporting through the CMS Health Insurance Oversight System, including specific information related to the plan's prescription drug spending. (Parallel reporting requirements under the Internal Revenue Code and Public Health Services Act apply to non-ERISA group health plans.) The initial report was to be due no later than December 27, 2022, and cover the relevant plan information for 2020 and 2021.

The Departments of Labor, Health and Human Services, and Treasury jointly issued guidance (in the form of an [FAQ](#)) extending this deadline on December 23, 2022. The FAQ provide welcome relief for employers and plan sponsors for the initial submission, including:

- A grace period through January 31, 2023, in which to complete the initial submission; and
- A commitment not to take enforcement action against plans that have made a good faith effort to comply.

In addition, the FAQ provides flexibility concerning the data that must be included in this first round of reporting.

While many employers and plan sponsors will rely on their third-party administrators or insurance carriers to submit the required information, the plan ultimately is responsible for any failure to satisfy the reporting obligations. Employers and plan sponsors should confirm with their reporting entities that the applicable report is submitted by the end of the grace period provided in the FAQ.

First-Dollar Coverage of Telehealth and Remote Care Services Under-Compatible HDHPs Extended Through December 31, 2024

The CARES Act established a safe harbor that allowed HSA-compatible high deductible health plans (HDHPs) to provide first-dollar coverage of telehealth and

remote care services without compromising the ability of participants to make HSA contributions. This safe harbor was extended by the Consolidated Appropriations Act 2022, but was set to expire on December 31, 2022. Absent this safe harbor, HSA-compatible HDHPs may not cover any healthcare expenses until participants have met the applicable deductible.

The recently enacted Consolidated Appropriations Act, 2023, has extended the ability of HDHPs to provide first-dollar coverage of telehealth and remote care services for plan years beginning after December 31, 2022, and before January 1, 2025. Calendar-year HDHPs therefore can continue to provide first-dollar coverage of telehealth and remote care services throughout the 2023 and 2024 plan years. Non-calendar year HDHPs must be careful to account for the gap created by the legislation, which does not allow for first-dollar coverage of telehealth and remote care services for any months remaining in the 2022 plan year that fall in 2023. Employers and plan sponsors should review their plans carefully, as many plan documents will likely require amendments to provide for this extension of telehealth coverage.

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[\[1\]](#) Electronic filing remains mandatory for filers with 250 or more returns. Paper returns, if permissible, must be filed with the IRS by February 28, 2023.