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Compliance Advisor

## What every HR leader should know about compliance



December 2021

Jan. 5, 2022

December was a quiet month in the compliance world in terms of large announcements, but lots of little information trickled in over the month. OSHA's vaccine-or-test mandate for large employers and vaccine mandate for health care organizations is headed for the Supreme Court, set to be heard on January 7, 2022. While we wait for that decision to be handed down, here is a recap of what happened in December.

### **HHS Notice of Benefit and Payment Parameters for 2023 Proposed Rule**

The Department of Health and Human Services and the Centers for Medicare and Medicaid Services (CMS) posted its [proposed benefit and payment parameters for 2023](#). The proposed rule addresses a good number of issues, including proposed requirements related to prohibiting discrimination based on sexual orientation and gender identity, guaranteed availability, federal marketplace enrollment assistance for consumers, essential health benefits non-discrimination policy refinement, and actuarial value issues. Review the [HHS Fact Sheet](#) for a summary of the proposed rule.

### **IRS Released Methodology for Calculating Qualifying Payment Amounts Under No Surprises Act**

The Internal Revenue Service (IRS) released [Revenue Procedure 2022-11](#), which specifies the methodology for calculating a qualifying payment amount pursuant to the No Surprises Act (NSA). Under the NSA, certified independent resolution entities are to take into account the qualifying payment amount for items or services that are subject to a dispute between a provider and a plan or insurance issuer. For items or services provided during 2022, the combined percentage increase to adjust the median contracted rate is 1.0648523983. Any resulting qualifying payment amount may be rounded to the nearest dollar.

### **Department of Labor Released Regulatory Agenda**

The Department of Labor released its [regulatory agenda for Fall 2021](#), essentially a to-do list of regulatory items pending and the stage of rulemaking for each item. Included in the lengthy list are several benefits-related rules, including improved fee disclosure for welfare plans, improvement of Form 5500 forms and reporting, and Mental Health Parity and Addiction Equity Act amendments.



### **IRS Issued Patient-Centered Outcomes Research Institute Fee for 2022**

The Internal Revenue Service (IRS) issued [IRS Notice 2022-04](#), which provides the 2022 update for the Patient-Centered Outcomes Research Institute (PCORI) fee. The PCORI fee was implemented as part of the Affordable Care Act and is designed to fund the Patient-Centered Outcomes Research Trust Fund, which funds research to evaluate the quality, outcomes, and effectiveness of health care treatments and interventions.

The updated PCORI fee is \$2.79 per covered life for plan years ending on or after October 1, 2021, and before October 1, 2022. The PCORI fee is paid by fully insured plans through the monthly premium payments to the carrier and self-funded plans pay the fee as part of the annual IRS Form 720 filing.

### **CMS Released Part A and Part B Amounts for 2022**

The Centers for Medicare and Medicaid Services (CMS) posted its 2022 cost-sharing amounts for [Medicare Part A](#), including premium, deductible, and coinsurance amounts, and [Medicare Part B](#) premium and deductible amounts.

### **CMS Posted Guidance for Federal Independent Dispute Resolution Process for Certified Entities**

The Centers for Medicare and Medicaid Services (CMS) posted [guidance](#) regarding the independent dispute resolution process for certified independent dispute resolution entities pursuant to the No Surprises Act. The guidance, issued jointly by the Departments of Health and Human Services, Labor, and Treasury, along with the Office of Personnel Management, provides direction to certified entities on various aspects of the federal independent dispute resolution process. It includes information on how parties may initiate the dispute resolution process and how to request an extension of certain time periods, as well as process information the certified entities must follow for confidentiality and recordkeeping.

On a related note, CMS continues to update its [list of certified independent dispute resolution entities page](#), which includes information on the certified entity and fee structures.

### **IRS Released Final Instructions for Forms 1094 and 1095**

The Internal Revenue Service (IRS) released the final versions of the 2021 instructions for [Forms 1094-B and 1095-B](#), as well as instructions for [Forms 1094-C and 1095-C](#). Draft instructions for the forms have been released several times in 2021, but the final versions include all the changes reflected in previous draft versions. Among the changes is the addition of two new codes for certain ICHRA coverage offerings, and a description of an automatic 30-day extension for providing Forms 1095-B and 1095-C to individuals. The new instructions also emphasize the IRS's updated stance of less leniency in tolerating reporting errors, as evidenced in the removal of references to penalty relief for incomplete or inaccurate information even if made in good faith. The per-return penalty for failure to file remains the same, however the maximum annual penalties reflect the indexed increases for 2021.

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