2021

2021 Regulatory Review and Wrap-Up

Presented by Benefit Comply

2021 Regulatory Review and Wrap-Up

- Welcome! We will begin at 3 p.m. Eastern
- There will be no sound until we begin the webinar. When we begin, you can listen to the audio portion through your computer speakers or by calling into the phone conference number provided in your confirmation email.
- You will be able to submit questions during the webinar by using the “Questions” or “Chat” box located on your webinar control panel.
- Slides can be printed from the webinar control panel – expand the “Handouts” section and click the file to download.

Assurex Global Partners

- Bolton & Company
- Cottingham & Butler
- Cragin & Pike, Inc.
- Daniel & Henry
- Foa & Son
- The Graham Company
- Haylor, Freyer & Coon, Inc.
- Henderson Brothers, Inc.
- The Horton Group
- The IMA Financial Group
- INSURICA
- Kapnick Insurance Group
- Lyons Companies
- The Mahoney Group
- MJ Insurance
- Oswald Companies
- Parker, Smith & Feek, Inc.
- R&R Insurance
- RHSB
- RCM&D
- The Rowley Agency
- Starkweather & Shepley
- Sterling Seacrest Pritchard
- Woodruff Sawyer

Agenda

- Pandemic Related Benefits Rules and Changes
- Regulatory Activity
- Health Cost Transparency, Surprise Billing, and other CAA Related Changes
- Benefits Related Issues in Proposed Build Back Better Legislation

Pandemic Related Benefits Rules

Public Health Emergency & National Emergency

- Remember there are two different kinds of pandemic related “Emergencies”

Public Health Emergency	National Emergency
Declared by Department of Health and Human Services (HHS) beginning in January 2020 and extended multiple times - Each extension lasts three months.	Declared by President Trump in March 2020 - Remains in force until declared over by President. “Outbreak Period” = End of National Emergency + 60 days.

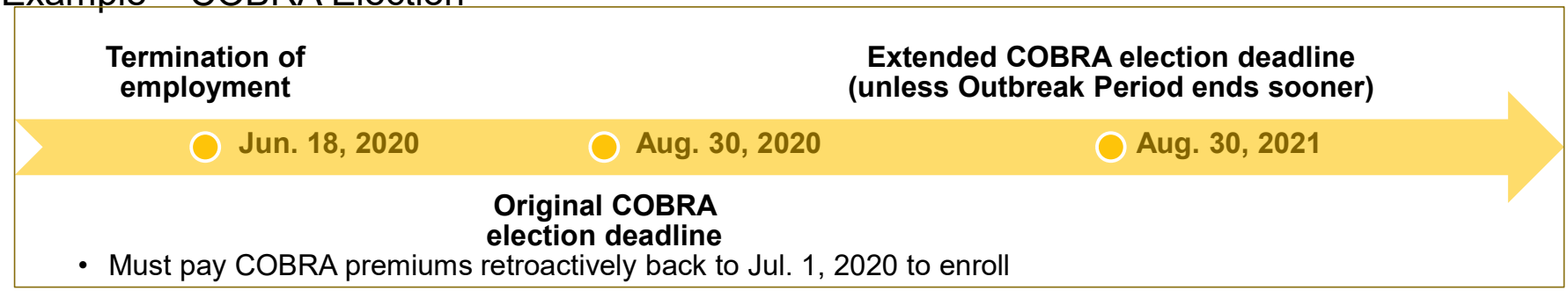
- Public Health Emergency - Impact on Benefit Plans
  - Group health plans required to cover COVID-19 diagnostic testing and vaccinations and related services, including out-of-network
  - Plans not required to cover COVID-19 testing for employment purposes
- National Emergency - Impact on Benefit Plans
  - COBRA notice, HIPAA special enrollment notice, and ERISA claims filing deadlines are all delayed for one year from the original deadline applicable to any participant or until the end of the outbreak period (TBD)

Outbreak Period

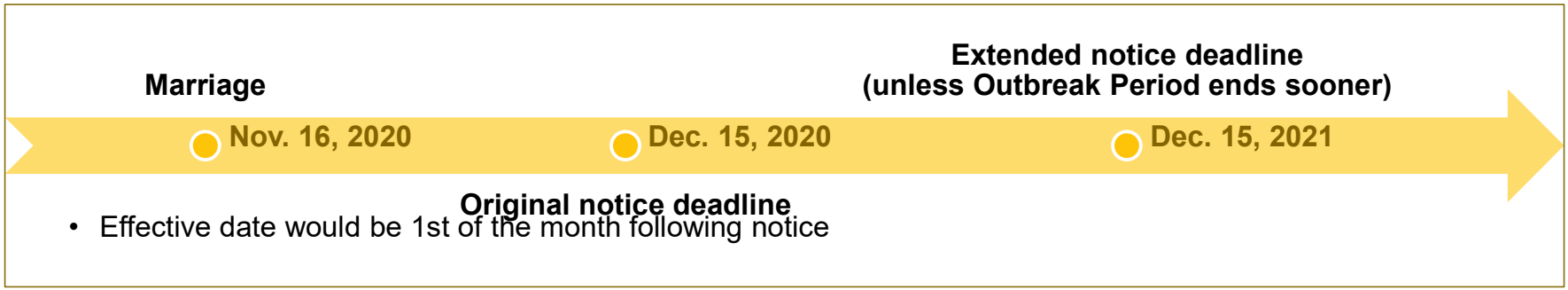
- COBRA notice, HIPAA special enrollment notice, and ERISA claims filing deadlines are delayed for one year (the “disregarded period) or until the end of the outbreak period (TBD)
- Disregarded Period
  - Outbreak Period (National Emergency + 60 days) or 1 year from the individual’s original deadline (whichever expires first)
  - Applies to the following deadlines:
    - Notice for requesting HIPAA special enrollment rights
    - ERISA claims filing deadlines (including health FSA and HRA run-out periods)
    - COBRA elections and payments

Outbreak Period

- Example – COBRA Election



- Example – HIPAA Special Enrollment Right



IRS Plan Limits

- Revenue Procedure 2021-45 (released 11/10/21)
  - Health FSA Contribution Limit
    - Increased to $2,850 for plan years beginning in 2022
    - Carryover increased to $570
  - Qualified transportation and parking benefits
    - Limit on monthly contributions increased to $280 in 2022
- 2022 HSA Limits (announced earlier this year)
  - Maximum Contribution
    - Self-only = $3,650, Family = $7,300
  - HDHP Minimum Deductible
    - Self-only = $1,400, Family = $2,800 (unchanged from 2021)
  - HDHP Maximum OOP
    - Self-only = $7,050, Family = $14,100

§125 and §129 Flexibility Expiring

- Optional Cafeteria Plan flexibility offered for plan years ending in 2020 or 2021
  - Expanded carryovers or grace periods
    - HFSA and DCAP plans could offer a carryover of all unused amounts OR up to a 12-month grace period
  - Health FSA post termination reimbursements
  - Election change flexibility
- Annual Increase in DCAP contribution limit Going Back to $5,000 in 2022
    - Temporary maximum DCAP pre-tax payroll deduction of $10,500 ends in 2021
    - Carryover amounts from 2021 will not count toward the 2022 maximum
- Plan Amendments
  - May retroactively implement any provisions so long as the employer informs all eligible employees of changes
  - Formal plan amendments must be made by last day of the first calendar year after plan year in which change is effective

Recent Regulatory Activity

Regulatory Update

- Telemedicine and HSA Eligibility
  - IRS Notice 2020-29 allowed HDHP plans to cover telehealth services prior to participant meeting minimum deductible without making them ineligible to make HSA contributions
    - Relief was provided only for plans beginning on or before 12/31/21
  - To maintain HSA eligibility - Effective plan years beginning 1/1/22, telehealth benefits can only pay for preventive services until the participant has met the minimum HSA deductible
- Biden announcement that health plans will pay for all COVID-19 testing
  - Currently health plans are only required to cover testing for diagnostic purposes – not for employment purposes or self-tests
  - Regulations expected in January 2022 will require health plans to pay for all approved COVID-19 testing

Regulatory Update

- Affordability % Change
  - In Revenue Procedure 2021-36, the IRS decreased the affordability percentage from 9.83% to 9.61% for 2022
    - Effective for plan years beginning on or after January 1, 2022

Affordability Percentage	2015	2016	2017	2018	2019	2020	2021	2022
	9.56%	9.66%	9.69%	9.56%	9.86%	9.78%	9.83%	9.61%

    - The decrease in the affordability percentage may require employers to lower employee contributions for the 2022 plan year to meet the affordability requirements under §4980H(b)
  - W-2 Safe Harbor Example

	2021	2022
W-2 Salary	$25,000.00	$25,000.00
	9.83%	9.61%
	$2,457.50	$2,402.50
Affordable Monthly Employee Contribution	**$204.79**	**$200.21**

Regulatory Update

- Employer Reporting Changes
  - Permanent extended deadline for distributing Form 1095 to employees & participants
    - Previously employers required to provide a copy of the Form 1095 to employees and participants by January 31st
      - IRS has offered a 30-day extension to that deadline for years
    - The proposed rules make this 30-day extension permanent
      - 2021 reporting, statements must be provided to participants by March 2, 2022.
  - NOTE: Due dates for filing Form 1094 and 1095 with the IRS have NOT been extended
    - For 2021 reporting - deadline to file Form 1094 and Form 1095s with the IRS
      - February 28, 2022 for paper filers
      - March 31, 2022 for those who file electronically

Regulatory Update

- Employer Reporting Changes
  - End of Penalty Relief for Reporting Errors
    - In previous years the IRS had provided penalty relief for reporting errors
      - This relief was only available if the employer filed timely and could show it made good faith efforts to comply with information reporting requirements
      - IRS has already been imposing penalties for late filing
    - The IRS makes it clear in the proposed rules that this “good faith relief” is no longer available beginning with reporting for the 2021 calendar year
      - Penalties of up to $280 per form for inaccurate Form 1095 provided to participants
      - Separate $280 per form penalty could be applied for the same mistake in the forms filed with the IRS, potentially triggering a penalty of up to $560 per employee
    - Employers should carefully review 2021 1095s before submitting to IRS and providing to participants

Health Cost Transparency, Surprise Billing and More

- Hospital Cost Transparency Final Rule
  - Based on legislation originally contained in The Affordable Care Act but only partially implemented
  - Published November 2019 – Effective January 2021
- Transparency in Coverage Final Rule (TiC Final Rules)
  - Published November 2020
  - Based on legislation originally contained in The Affordable Care Act but never fully implemented
    - Carriers and Health Plans must publicly release data files with detailed reimbursement rate information
    - Price comparison tool and personalized cost estimates
- Consolidated Appropriations Act (CAA) Transparency Rules & The No Surprises Act
  - Part of the stimulus bill passed by Congress in December 2020
    - Surprise Billing Restrictions
    - Price comparison tool and “Advanced EOB”
    - ID Card changes
    - Provider “good faith estimate” requirement
    - Rx Cost Reporting
- Regulatory FAQ delaying many of the implementation dates released August 20, 2021

Health Cost Transparency, Surprise Billing and More Timing

- 2021
  - Hospital Cost Reporting – January 2021
- 2022
  - Carriers and TPA Release Health Plan Data Files - July 2022
  - ID card and Provider Directory Accuracy – January 2022
  - Surprise Billing - Balance Billing Protection – Plan years starting January 1, 2022
  - Continuity of Care Requirements – Plan years starting January 1, 2022
  - RX Cost Reporting – Proposed rules released – New effective date December 27, 2022
- 2023
  - Payers must release price transparency tools - 500 items & services January 2023 - all items and services January 2024
- Enforcement Delayed Until Further Notice
  - Provider Good Faith Estimate January 2021 –
  - CAA Good Faith Estimate “Advanced EOB” -Effective January 2022

Health Cost Transparency

Hospital Cost Reporting

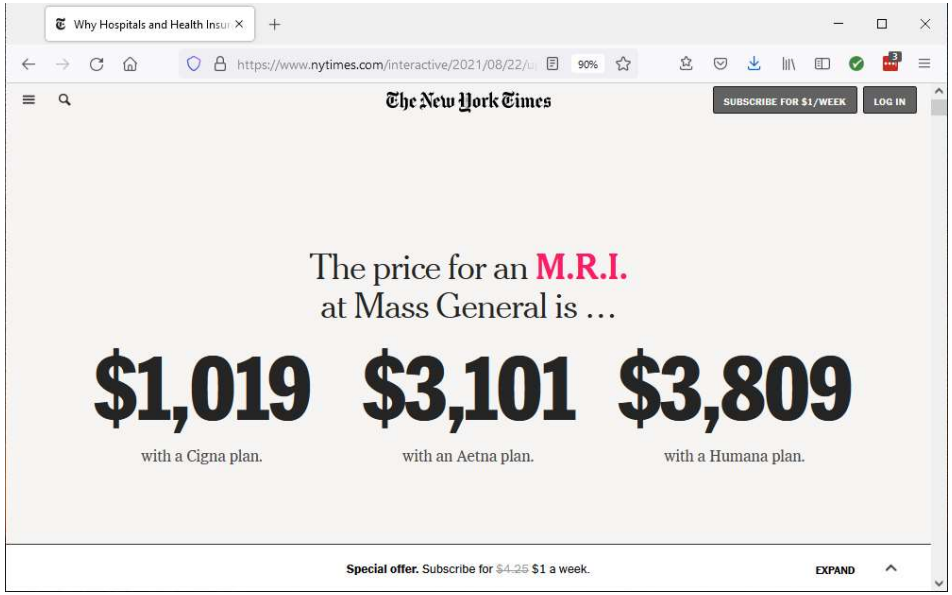
- Requirement Basics – Effective 1/1/2021
  - Hospitals must publish a machine-readable file containing these types of charges for all “items and services” provided by the hospital
    - Gross charges - The non-discounted rate, as reflected in a hospital’s chargemaster
    - Discounted cash prices - The rate the hospital would charge individuals who pay cash
    - Payer-specific negotiated charges - The rate that a hospital has negotiated with a third-party payer
    - De-identified minimum negotiated rates - The lowest rates that a hospital has negotiated with all third-party payers without identifying the payer
    - De-identified maximum negotiated rates - The highest rates that a hospital has negotiated with all third-party payers without identifying the payer
  - Hospitals must publish a more consumer friendly list for the hospital’s 300 most “shoppable services,”
    - CMS listed 70 shoppable services that must be included; up to the hospital to select the remaining 230

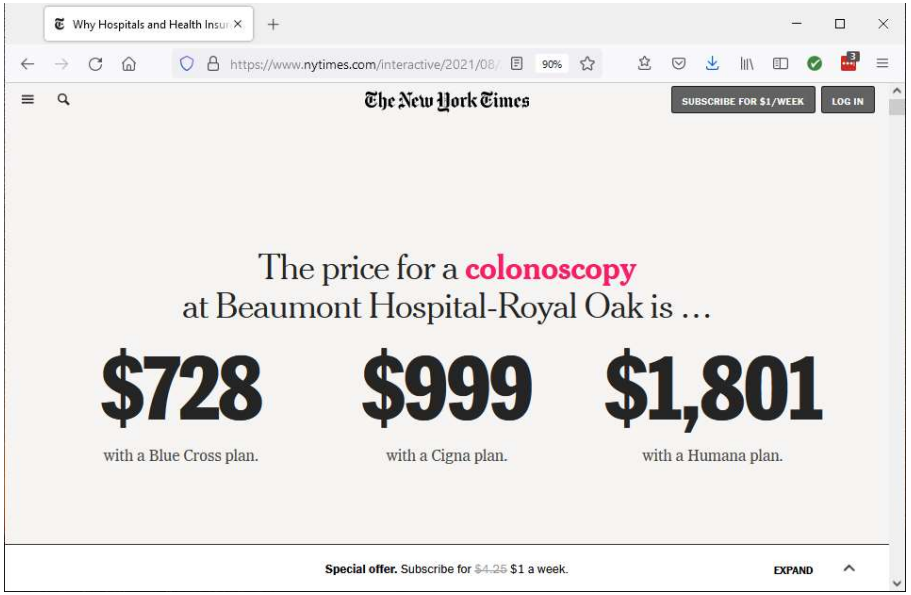
Health Plan Cost Transparency and Disclosure

- Pricing Data Disclosure
  - Effective beginning in ~~January 2022~~ July 2022 - Plans and insurers must publicly post three machine-readable files
    - The In-Network Rate File
      - All applicable rates with in-network providers for all covered items and services (including negotiated rates, underlying fee schedules, or derived amounts)
    - The Allowed Amount File
      - one on billed charges and allowed amounts for covered items and services provided by out-of-network providers
    - The Prescription Drug File - Enforcement delayed indefinitely
      - Negotiated rates and historical net prices for prescription drugs furnished by in-network providers
  - This information must be updated monthly and made publicly available on carrier's or plan's website free of charge

Hospital Cost Reporting

- Differences Between Different Payers





Source: New York Times - "*Hospitals and Insurers Didn't Want You to See These Prices. Here's Why.*" Aug. 22, 2021

Hospital Cost Reporting

- Difference Between Insurance and Cash Price

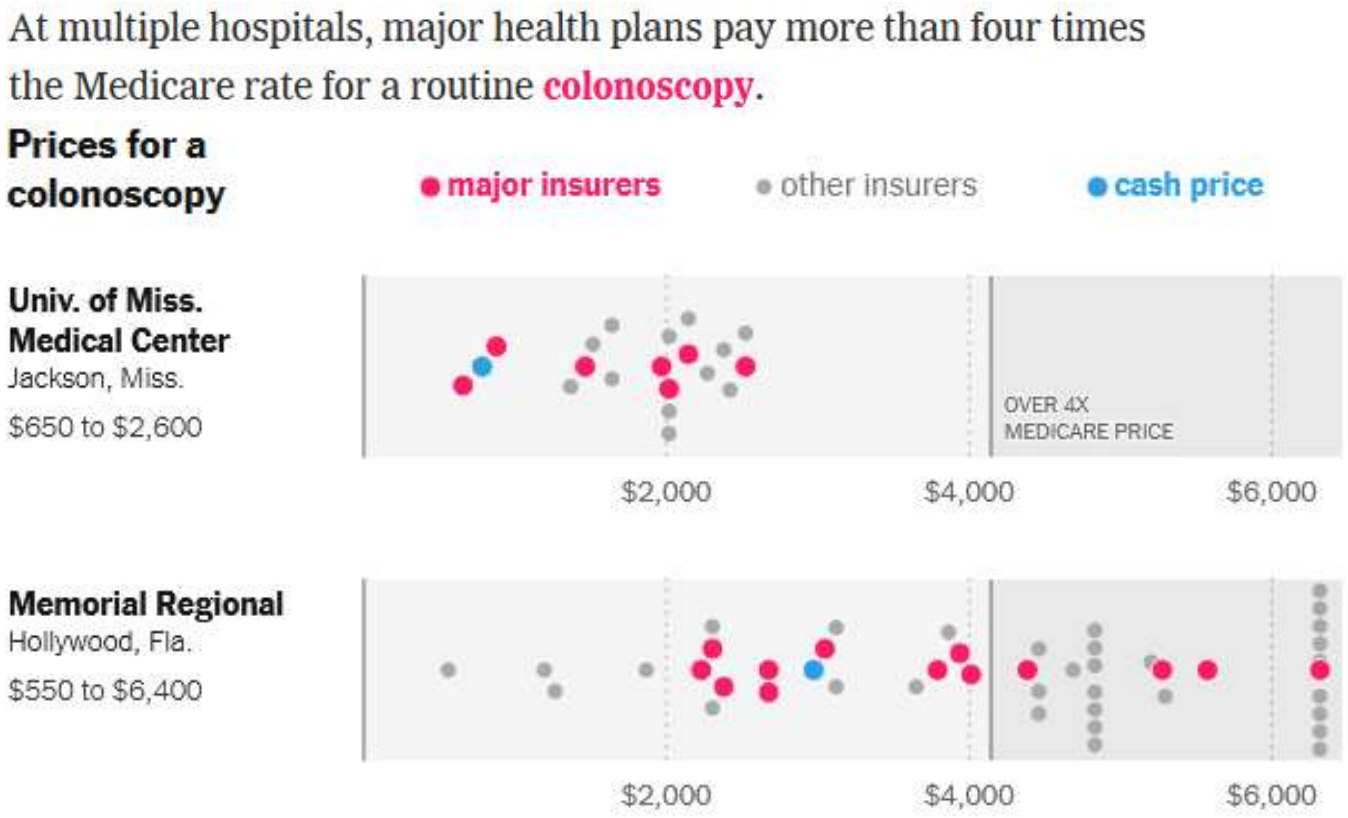
Source: New York Times - "*Hospitals and Insurers Didn't Want You to See These Prices. Here's Why.*" Aug. 22, 2021

Hospital Cost Reporting

- Difference Between Insurance and Medicare Price

Source: New York Times - "*Hospitals and Insurers Didn't Want You to See These Prices. Here's Why.*" Aug. 22, 2021

Hospital Cost Reporting



Source: New York Times - "*Hospitals and Insurers Didn't Want You to See These Prices. Here's Why.*" Aug. 22, 2021

Hospital Cost Reporting

- There are even significant differences in what the hospital charges the same payer depending on what type of insurance contract it is

Source: New York Times - "*Hospitals and Insurers Didn't Want You to See These Prices. Here's Why.*" Aug. 22, 2021

Surprise Billing Protections

Surprise Billing

- Effective for Plan Years beginning January 1, 2022
- Types of Medical Service and Claims Affected
  - Out-of-Network Emergency Services
    - Addresses the “Rent an Emergency Doc” problem
  - Air Ambulance
  - Out-of-Network Providers in an In-Network Facility (Anesthesiologists, Radiologists, Etc.)
- Payers' payment to OON provider will initially be based on:
  - State all-payer database or balance billing laws
  - “Qualified Payment Amount” (QPA) = Median of the payer’s contracted rates for that particular service

Surprise Billing

- Payment Dispute Resolution
  - If OON providers refuses payers “offer” it goes to an Independent Dispute Resolution (IDR) process
    - Payer submits $ offer – Provider submits $ offer – Arbiter chooses one!
- Balance Billing Protection
  - The member cost share will be calculated as if service was provided in-network and provider is prohibited from balance billing the individual

Other Changes Coming in 2022

Continuity of Care Requirements

- When a provider leaves a network a “continuing care patient” can request continued transitional care covered by the plan on an in-network basis for up to 90 days
  - Effective for plan years beginning on or after January 1, 2022
  - Notice Requirement
    - The plan must notify each “continuing care patient” at the time of a termination affecting a provider or facility of the right to elect continued transitional care from the provider or facility
    - Notice must explain how the individual can elect to continue to have benefits provided under the same terms and conditions as would have applied in-network
  - A continuing care patient is defined as with respect to a provider or facility if the individual
    - is undergoing a course of treatment for a “serious and complex condition”
    - is undergoing a course of institutional or inpatient care
    - s scheduled to undergo nonelective surgery from the provider
    - is pregnant and undergoing a course of treatment for the pregnancy
    - is or was determined to be “terminally ill”

Rx Cost Reporting

- Detailed Rx and Cost Data Must be Reported to Agencies Annually
- Who?
  - Employer Plan Sponsors and Carriers
- When?
  - Effective beginning December 27, 2022
- What Must be Reported?
    - Rx spending by plan and participant
    - Number of enrollees
    - Total spending by the plan by types of cost (e.g., hospital, primary care, specialty care, provider and clinical service costs, prescription drugs, wellness)
    - 50 most common brand prescription drugs paid by the plan & total claims paid for each drug
    - 50 most costly drugs & the annual amount spent for each of the 50 drugs
    - 50 drugs with the greatest year-over-year cost increase
    - Average monthly premiums paid by the employer and the participants
    - And more...

Other Issues

- No Gag Clause in Provider Contracts
  - Effective December 27, 2020
- ID Card Requirements
  - ID cards must include deductible and out-of-pocket maximum amounts
  - Effective for plan years beginning January 1, 2022
  - Carriers and plans can make goof faith attempt to comply until additional guidance is released
- Provider Directory Accuracy
  - If an individual receives services from an out-of-network provider and relied on inaccurate provider directory information, the plan must play the claim as if it was provided in network
  - Effective for plan years beginning January 1, 2022

Summary and Employer Responsibility

Plan Heath Cost Disclosure, Surprise Billing, Rx Reporting, ID Card Updates, Continuity of Care Administration, etc.

- Most of the responsibility falls on carriers and administrators
  - Employers typically do not process the claims or have access to provider agreements
- Fully-insured plans - the carrier is principally responsible for compliance
- Self-insured plans - The plan sponsor/employer is technically responsible to assure that their plan is in compliance
  - Self-insured employers should focus on TPA contracting and due diligence

Benefits Related Issues in Proposed Build Back Better Legislation

Build Back Better Proposed Legislation

- Health Insurance Related Provisions
  - Changes employer-sponsored coverage affordability test to 8.5% of household income with no indexing (9.61% in 2022)
    - Indexing begins again in 2027 plan year
    - Would apply to both premium tax credit eligibility and employer mandate
    - Would make employer plans “unaffordable” more often

	2021	2022	Proposed
W-2 Salary	$25,000.00	$25,000.00	$25,000.00
	9.83%	9.61%	8.50%
	$2,457.50	$2,402.50	$2,124.00
Affordable Monthly Employee Contribution	**$204.79**	**$200.21**	**$177.08**

Build Back Better Proposed Legislation

- Expanded Premium Tax Credits
  - American Rescue Plan Act increased subsidies for 2021 and 2022 for household incomes between 100 - 400% of the federal poverty level (FPL)
  - Provides tax credits for taxpayers with household incomes above 400% of the FPL
  - Proposed legislation extends these subsidies through 2025

Significant Increase in Subsidies

Table 1: Percent of Income Paid for Marketplace Benchmark Silver Premium, by Income		
Income (% of poverty)	**Affordable Care Act** (before legislative change)	**COVID-19 Relief (current law 2021-2022)**
Under 100%	Not eligible for subsidies*	Not eligible for subsidies**
100% – 138%	2.07%	0.0%
138% – 150%	3.10% – 4.14%	0.0%
150% – 200%	4.14% – 6.52%	0.0% – 2.0%
200% – 250%	6.52% – 8.33%	2.0% – 4.0%
250% – 300%	8.33% – 9.83%	4.0% – 6.0%
300% – 400%	9.83%	6.0% – 8.5%
Over 400%	Not eligible for subsidies	8.5%

Source: Kaiser Family Foundation

Significant Increase in Subsidies

- Silver Plan Cost (Approx. a $3,000 deductible plan)
- Remember employee's who are offered "affordable" single coverage by their employer make employee AND family ineligible for subsides

Annual Household Income	Family Size	% FPL	Average "Retail" Monthly Prem.	Subsidized Silver Plan Monthly Prem.
$20,000	1	157%	$353	$5
$20,000	4	76%	Medicaid	Medicaid
$40,000	1	313%	$353	$211
$40,000	4	153%	$1,245	$4
$60,000	1	470%	$353	$353
$60,000	4	229%	$1,245	$158
$80,000	4	305%	$1,245	$409
$125,000	4	477%	$1,245	$885

2021

2021 Regulatory Review and Wrap-Up

Presented by Benefit Comply