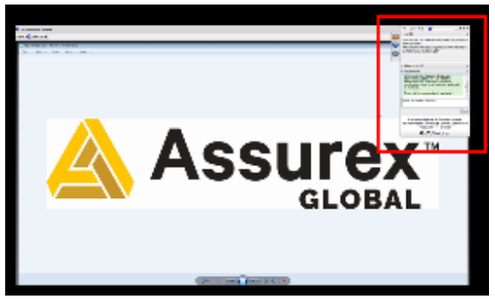
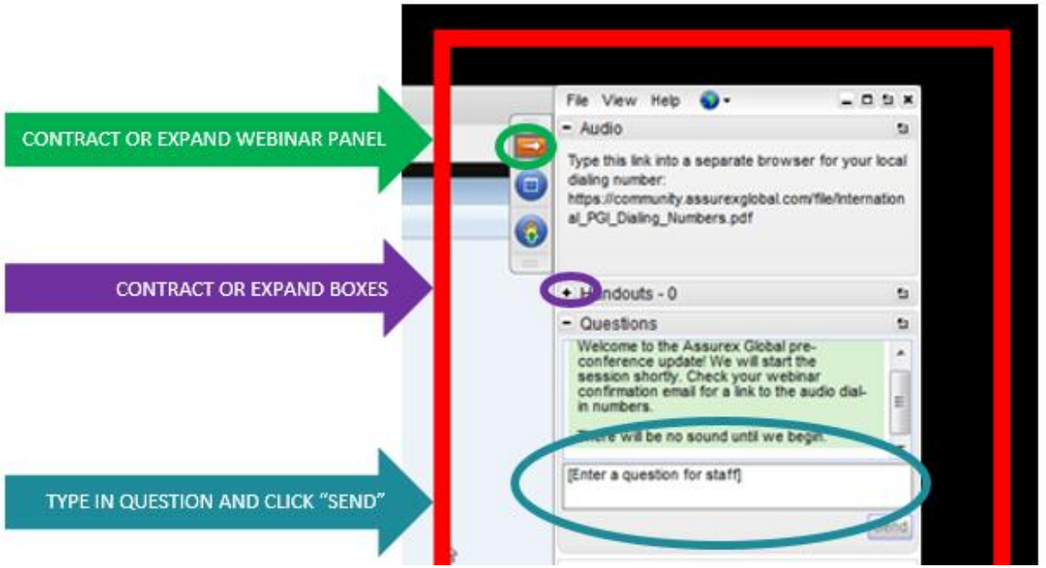
2022

Regulatory and Legislative Update

Presented by Benefit Comply

- 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
- The Graham Company
- Haylor, Freyer & Coon, Inc.
- Henderson Brothers, Inc.
- The Horton Group
- Houchens Insurance 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
- RCM&D
- The Rowley Agency
- Starkweather & Shepley
- Sterling Seacrest Pritchard
- Woodruff Sawyer
- York International

Agenda

- Legislative Update
  - The Inflation Reduction Act
- Regulatory Update
  - Family Glitch Fix
  - 2023 §4980H Affordability Percentage
  - Machine Readable Files Update
  - No Surprises Act FAQs
  - Contraceptive Coverage Update

Legislative Activity

Inflation Reduction Act

In the Final Version of the Legislation
Extension of expanded Premium Tax Credits
Medicare to negotiate Rx prices
Cap on insulin cost for Medicare enrollees
$2000 max Rx OOP for Medicare enrollees

Not in the Bill
Change in affordability percentage to 8.0%
Negotiated Rx prices for private & employer plans
Family glitch fix
Cap on insulin cost for private and employer plans
Simplification of employer reporting
Medicare benefits for vision, hearing, and dental

Inflation Reduction Act

2026 - Medicare to negotiate Rx prices

- Targeting 10 high-spending drugs (more in later years) that are older and not facing generic competition
- Minimum price reduction of 25% - up to 60% if drug has been on market for long
- If drug companies don't agree to the negotiated price - financial penalties of 65% - 95% of drug sales to Medicare

- Improvements in Medicare Rx Coverage
  - 2024 – Eliminates 5% co-insurance on Medicare catastrophic drug coverage
  - 2025 – Medicare $2000 Rx OOP cap

Could drug companies raise prices for private plans to make up for losses?

Republicans have opposed efforts to allow Rx price negotiation to apply to private & employer plans

Improvements to Medicare Rx coverage may mean more employer plans do not qualify as "creditable coverage"

Inflation Reduction Act

Extension of Expanded Subsidies with Purchasing Individual Health Insurance

- American Rescue Plan Significantly Increased Premium Tax Credits
  - Only effective for 2021 and 2022
  - Increased subsidies for low and middle income households
  - Extended subsidies to those with incomes over 400% FPL
    - Maximum cost of silver plan cannot exceed 8.5% of household income
- Inflation Reduction Act Extends Increased Subsidies through 2025
  - Also extends the low-income special enrollment period (SEP)
    - Allows individuals with household income that is under 150% FPL (about $40,000 for a family of 4) to enroll in Marketplace coverage on a monthly basis.

- **Premium Tax Credit (PTC) Eligibility**

An individual is eligible for a PTC to help pay the monthly premiums on a public Exchange if the following are all true:

- ☑ Not eligible for Medicaid, CHIP or Medicare
- ☑ Not enrolled in other minimum essential coverage (MEC)
- ☑ Not eligible for employer-sponsored coverage that provides minimum value **and is affordable**

  - Affordability is currently based on the employee's cost to participate in single coverage on the lowest cost MV plan offered by the employer

Inflation Reduction Act

- Significant Increase in Subsidies

Income (% of poverty)	**Affordable Care Act** (before legislative change)	**COVID-19 Relief (current law 2021-2022)**
Under 100%	Not eligible for subsi	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%

Extended Through 2025

Inflation Reduction Act

- Impact of Subsidy Increase

Annual Household Income	Family Size	% FPL	Average "Retail" Monthly Prem.	Subsidized Silver Plan Mo. 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**

- Silver Plan Cost (approx. $3,000 deductible plan - OOP reduced for lower income)

Inflation Reduction Act

Insulin and other Diabetic Supplies and HSA Eligibility

- HSA Eligibility Background
  - Participants are ineligible to make or receive an HSA contribution if they are covered by a plan that reimburses claims, **other than preventive**, prior to the participant meeting their minimum HSA deductible:
    - 2022: Single - $1400 Family - $2800
    - 2023: Single - $1500 Family - $3000

Inflation Reduction Act

Insulin and other Diabetic Supplies and HSA Eligibility

- In IRS Notice 2019-45 the IRS expanded upon what is considered to be preventive coverage for purposes of determining eligibility to contribute to a health savings account (HSA)
  - Included insulin and diabetic testing

- The Inflation Reduction Act
  - Allows HSA-compatible health insurance plans to cover “selected insulin products” before the minimum HSA/HDHP deductible is met
    - *“any dosage form (such as vial, pump, or inhaler dosage forms) of any different type (such as rapid-acting, short-acting, intermediate-acting, long-acting, ultra long-acting, and premixed) of insulin.”*
  - Note: Plans are not required to cover insulin prior to deductible but are allowed to.

Regulatory Update

Proposed Change to “Family Glitch”

Biden administration has proposed IRS changing the definition of affordability for purpose of qualification for premium tax credits

Current Affordability Rule

- Affordable for employee and all eligible family members if **single coverage is affordable**
- Employee contribution for employee-only (single) coverage cannot exceed 9.61% (in 2022) of household income

Proposed Affordability Rule

- Affordability for employee based on employee contribution for single coverage (cannot exceed 9.61% of household income)
- **Affordability for family members based on employee contribution for family coverage** (cannot exceed 9.61% of household income)

Proposed Change to “Family Glitch”

- Employer will not be penalized for unaffordable family coverage
- Current Status of Proposed Change - Effective date uncertain
  - Waiting on formal rules to be released
  - Rule change will likely face legal challenges
- Example
  - Monthly Premium Cost: Single coverage = $500 Family coverage = $1,500
  - Employee’s Household Income = $120,000 ($10,000/month): 9.61% of $10,000 = $961

Monthly EE Contribution

Single = $250, Family = $1,250

Current Rule - Affordable for employee and all family members

Proposed Rule - Affordable for employee, but not for family members

Monthly EE Contribution

Single = $250, Family = $750

Current Rule - Affordable for employee and all family members

Proposed Rule - Affordable for employee and all family members

2023 §4980H Affordability Percentage

- IRS decreased §4980H affordability percentage from 9.61% (2022) to 9.12% (2023)
  - Effective for plan years beginning on or after January 1, 2022

Affordability Percentage	2015	2016	2017	2018	2019	2020	2021	2022	**2023**
	9.56%	9.66%	9.69%	9.56%	9.86%	9.78%	9.83%	9.61%	**9.12%**

  - The decrease in the affordability % may require employers to lower employee contributions for 2023 plan year to meet the affordability requirements under §4980H(b)
    - W-2 Salary Safe Harbor example:

	2022	**2023**
W-2 Salary	$25,000.00	$25,000.00
	9.61%	9.12%
	$2,402.50	$2,280.00
Affordable Monthly Employee Contribution	**$200.21**	**$190.00**

2023 §4980H Affordability Percentage

Federal Poverty Level (FPL) Safe Harbor

- Based on FPL for lower 48 states for a single individual
- Employers should use FPL amounts in effect within six months before the first day of the plan year
  - HHS typically updates the FPL amounts in late January

- 2023 Calendar year plans: $103.28/month ($13,590 x 9.12% / 12)

2023 §4980H Affordability Percentage

Rate of Pay Safe Harbor

- Hourly Employee
  - Hourly rate x 130 x 9.12%
  - Use hourly rate as of the first day of the coverage period, unless pay is reduced during the year; if pay is reduced, use the lower amount
- •Salaried Employee
  - Monthly salary x 9.12%
  - Use monthly salary as of first day of the coverage period; if pay is reduced, safe harbor is not available

Employee Wages	Rate of Pay
	Amount that is affordable
HOURLY	
$8	$94.85
$10	$118.56
$12	$142.27
$14	$165.98
$16	$189.70
$18	$213.41
$20	$237.12
SALARIED (per month)	
$1,500	$136.80
$2,000	$182.40
$2,500	$228.00
$3,000	$273.60

2023 §4980H Affordability Percentage

W-2 Safe Harbor

- Include all annual wages/salary, including bonuses, but reduced by pre-tax contributions toward benefits
- Use Box 1 wages for the year coverage is offered (e.g., 2023 Box 1 wages for affordability of coverage offered during 2023)
- Use an estimate of lowest W-2 wages at the beginning of the year to set affordable contributions

Employee Wages	Form W-2 (Box 1)
	Amount that is affordable
BOX 1 WAGES (hourly or salaried)	
$20,000	$152.00
$30,000	$228.00
$40,000	$304.00
$50,000	$380.00
$60,000	$456.00

Machine Readable Files FAQ

- Machine Readable Files (MRF) Background
  - Effective July 1, 2022 - Plans & insurers must publicly post machine-readable plan cost files
    - The In-Network Rate File
    - The Allowed Amount File
    - ~~The Prescription Drug File~~ - Enforcement delayed indefinitely
- Departments (DOL, IRS, HHS) Guidance Released August 19th

  https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-55.pdf
  - Employers do not need to post link to data files on the employer's company website
    - Posting only required if employer maintains a public website for the employer's group health plan
      - Most employers do not maintain a public website for their plan.
      - An intranet site available only to employees or participants is not a public website.

Bottom Line:
Employers are not required to post links to machine readable files as long as they have an agreement with carrier or TPA to post the files relevant to their plan.

Machine Readable Files FAQ

- Employers should have “written agreement” with carrier or TPA to publicly post the relevant data files
  - Fully-insured plans – If files are not posted the carrier is liable
  - Self-insured plans – If TPA does not post files employer/plan sponsor is liable
- What is a “written agreement”? – no guidance provided…

Great
- Specific MRF language in group contract or administrative service agreement

Good
- Send an email to vendor asking for confirmation of posting and receive a specific response

Probably OK
- Receive something in writing (email, letter, etc.) from carrier or TPA stating they will make relevant files publicly available

Maybe OK
- Already have more general language in group contract or administrative service agreement regarding carrier or TPA compliance with applicable laws and regulations

No Surprises Act (NSA) FAQs

- NSA Background
  - Effective for Plan Years beginning January 1, 2022
  - Employer Responsibility
    - Employers typically do not process the claims
    - Fully-insured plans carrier principally responsible for compliance
    - Self-insured plans - The plan sponsor/employer is responsible for compliance
      - TPA contracting and due diligence
  - Types of Medical Service and Claims Affected
    - Out-of-Network Emergency Services
    - Air Ambulance
    - Out-of-Network Providers in an In-Network Facility (Anesthesiologists, Radiologists, Etc.)

No Surprises Act (NSA) FAQs

- NSA Background Cont.
  - Payers' payment to OON provider will initially be based on:
    - State all-payer database or other state balance billing laws
    - “Qualified Payment Amount” (QPA) = Median of the payer’s contracted rates for that particular service
  - Payment Dispute Resolution
    - If OON providers refuses payers “offer” it goes to an Independent Dispute Resolution (IDR) process
  - 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

No Surprises Act (NSA) FAQs

- Departments (DOL, IRS, HHS) Guidance Released August 19th
  - https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-55.pdf
- Guidance on a number of payment related issues (typically will be administered by carrier or TPA)
  - Air ambulance with pickup outside U.S., Emergency services in a behavioral health crisis facility, methodologies for calculating QPA, notice of denial to provider, etc.
- NSA Disclosure Rules
  - Employer may rely on carrier or TPA to post required NSA disclosure rules if employer does not maintain a public website for the employer's plans
    - Most employers do not maintain a public website for their plan.
    - An intranet site available only to employees or participants is not a public website.

No Surprises Act (NSA) FAQs

- Reference Base Plans and The No Surprises Act (NSA)
  - Clarifies that the balance billing protections of apply to plans that do not have a network such as reference-based plans
  - Calculating member OOP for claims covered by NSA
    - If an All-Payer Model Agreement or specified state law applies, the plan must calculate cost sharing for out-of-network services (other than out-of-network air ambulance services) based on the amount determined by the All-Payer Model Agreement or specified state law.
    - If an All-Payer Model Agreement or specified state law does not apply cost sharing is determined based on the lesser of the billed charge or the QPA

Coverage for Contraceptives FAQs

- Contraceptive Coverage Background
  - Under the Affordable Care Act (ACA), all non-grandfathered individual and group health plans are required to provide preventive services coverage with no cost-sharing. The list of preventive services required to be covered at 100% includes:

:

Evidenced-based items or services that have in effect a rating of "A" or "B" in the current recommendations of the United States Preventive Services Task Force (USPSTF)	Immunizations for routine use in children, adolescents, and adults that have in effect a recommendation from the Advisory Committee on Immunization Practices (ACIP) of the Centers for Disease Control and Prevention (CDC)
Evidence-informed preventive care and screenings provided for in the comprehensive guidelines supported by the Health Resources and Services Administration (HRSA) for infants, children, and adolescents	**Evidence-informed preventive care and screenings provided for in the comprehensive guidelines supported by the HRSA**

Coverage for Contraceptives FAQs

- Departments (DOL, IRS, HHS) Guidance
  - https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-54.pdf
- Due to complaints that some group health plans and insurers are not complying with the contraceptive coverage mandate, the DOL, IRS, and HHS have indicated that they are actively investigating compliance with this requirement.
  - The agencies issued a letter warning health plan sponsors and insurers to make sure their plans comply with the contraceptive coverage mandate and
  - Also indicated intent to enforce the contraceptive coverage mandate in states that fail to do so
- Existing religious exemptions and accommodation process for employers who do not want to offer contraceptive coverage is still in place

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