

# Compliance News to Know

Noteworthy regulatory changes affecting welfare plans.

News from March 11<sup>th</sup> - April 5<sup>th</sup>, 2023: Vol. 2.6

**Upcoming Webinar:** May 3<sup>rd</sup>, 1:30 pm EST

**Register Here:** [Transparency Compliance Reporting](#)

## Departments Issue FAQs Guidance for Stakeholders: End of Public Health & National Emergencies

**Anticipated Pandemic End:** May 11, 2023

**Summary:** On March 29<sup>th</sup>, the Departments of Labor (DOL), Treasury (IRS), and Health and Human Services (HHS) issued a Frequent Asked Questions ([FAQs](#)) PDF about COVID-19 – related regulations, including the FFCRA, CARES Act, and HIPAA Implementation Part 58. The questions from the FAQ document are listed below. To review the Departments’ responses and assess applicability to Group Health Plans (Plans), issuers, and individuals, [visit the DOL’s website](#).

1. Do the COVID-19 testing coverage requirements under section 6001 of the FFCRA apply to items and services furnished after the end of the PHE?
2. Must plans and issuers notify participants and enrollees if they change the terms of their coverage for the diagnosis or treatment of COVID-19 after the end of the PHE?
3. Do the reimbursement and cash price posting requirements under section 3202 of the CARES Act apply to COVID-19 diagnostic tests furnished after the end of the PHE?
4. Do the statutory requirements related to rapid coverage of preventive services for coronavirus under section 3203 of the CARES Act apply to qualifying coronavirus preventive services furnished after the end of the PHE?
5. Following the anticipated end of the COVID-19 National Emergency, on what date does the Outbreak Period end? *Several examples applicable to COBRA and Special Enrollment deadlines follow this question.*
6. Following the expiration of the continuous enrollment condition, if an individual loses Medicaid or CHIP coverage due to a loss of eligibility for such coverage, is the individual entitled to a special enrollment period to enroll in an employer-sponsored group health plan for which they are otherwise eligible and had previously declined to enroll, or a special enrollment period in the individual market?
7. What else can employers, particularly those that employ workers who are likely benefiting from Medicaid or CHIP coverage, do to assist their employees in maintaining health coverage?
8. May an individual covered by an HDHP that provides medical care services and items purchased related to testing for and treatment of COVID-19 prior to the satisfaction of the applicable minimum deductible contribute to an HSA?

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Vol. 2.6 Page 2

## HHS Releases Revised Instructions for RxDC Reporting

**Reporting due for 2022 Reference Year: June 1, 2023**

**Summary:** Plans and issuers must report 2022 Prescription Drug and Healthcare Spending Data (RxDC) Report by June 1, 2023, to CMS via their Health Insurance Oversight System (HIOS) portal, accessible via [CMS' Enterprise Portal](#).

Plans & issuers should be familiar with this reporting as the first of these reports for 2020 and 2021 data was due January 31, 2023.

- The RxDC report is required under the CAA.
- The *reference year* is the calendar year immediately preceding the calendar year in which the data submission is due.
- Reporting for the 2022 reference year report is due June 1, 2023.
- Instructions regarding the RxDC reporting may be found on [CMS' website](#).

**Employer Application?** As fiduciaries, Plans hold ultimate responsibility to ensure RxDC reports are timely submitted.

- Fully insured Plans may contract with issuers to submit the report on their behalf and should memorialize this in writing.
- Self-insured Plans should contract with Plan TPAs and providers to verify who will submit the report and confirm (1) in writing for liability purposes; and (2) the report has been submitted by the TPA/provider.
- For the 2023 reporting deadline, Plans & issuers must first register via [CMS' Enterprise Portal](#).
- To access HIOS user manuals, [reference guides](#), and submit data, navigate to [CMS' RxDC webpage](#).

## Self-Insured Plan Usage Increases from 2019-2020

**Access** the **DOL's 2023 Annual Report of 2020 Data**

**Summary:** The DOL released its [annual report](#) to Congress containing aggregated data on Plans from Form 5500 by private-sector employers.

**Highlights from the [Report](#):**

- The Form 5500 is filed by Plans of 100 participants or more.
- Form 5500 is also filed by any size Plan if they hold assets in trust or are a Multiple Employer Welfare Arrangement (MEWA) or an Entity Claiming Exception.
- 7,100 Plans filed a Form 5500 in 2020.
- 37,900 Plans were Self-Insured (SI) and 4,400 mixed self-insurance with insurance. This represents coverage for 35 million participants.
- 51% of 2020 filings were by SI Plans.
- SI Plans covered approx. 35 million participants and held \$112 billion in assets.
- The number of SI Plans increased by more than 20% from 2019 to 2020.

**Employer Application?**

- Given lag time, it's likely the current number of SI Plans is more than 2020 statistics. Self-insuring permits greater freedom in plan design.
- However, administration of Plans, including payment of claims can prove costly if not well-designed. Processes, documentation, and compliance with health insurance privacy must be closely monitored.
- Advisers to SI Plans must stay informed of regulatory changes affecting reporting requirements where Plans holds ultimate liability for submission.

## Stats: 2021 HIPAA Compliance & Breach Reports

**News Release:** [Office of Civil Rights](#)

**Summary:** HHS annually releases its report to Congress about compliance with HIPAA's Privacy, Security, and Breach Notification Rules, as well as data received re: breaches of unsecured Protected Health Information (PHI).

The Office of Civil Rights (OCR) within the HHS is responsible for enforcement of HIPAA, including assessing penalties for breaches as well as providing guidance to Plans and their providers on strategies to best mitigate risks.

### Highlights from the [Compliance Report](#):

- OCR received a 25% increase in the number of complaints regarding improper use or disclosure of PHI in 2021. The top five issues:
  1. Impermissible uses and disclosures of PHI;
  2. Right of access to PHI;
  3. Weak or nonexistent PHI safeguards;
  4. Administrative safeguard compliance with the Security Rule; and
  5. Provision of a breach notice to affected individuals.

### Highlights from the [Breach Notification Report](#):

- OCR received 609 large breach notifications affecting 37 million persons.
- The most vulnerable security risks included hacking and IT incidents on network services.
- Small breach reports showed unauthorized access or disclosure in paper records occurred most often.

**Employer Application?** These reports include data from Plans and their Business Associates (BAs), who are also required under the Security Rule to comply with the protection of PHI. Plans must create a strong HIPAA compliance process, document it, and establish procedures to address potential violations and unsecured PHI breaches. OCR investigates all breaches of 500+ but may audit any size Plan.

## IRS Explains When Wellness Expenses are Reimbursable.

**News Release:** [Department of Treasury \(IRS\)](#)

**Summary:** The IRS released a [FAQs document](#) outlining when certain nutrition, wellness, and general health expenses are considered *medical expenses*, and therefore reimbursable under a health savings account (HSA), health flexible spending arrangement (FSA), Archer medical savings account (Archer MSA) or health reimbursement arrangement (HRA).

IRS Code Section 213 generally permits deductions for expenses paid for medical care if requirements are met, as well as being paid or reimbursable under various consumer-driven products. Employers should consider communicating these parameters with employees.

### What is a Medical Expense?

- A *medical expense* is "the cost of diagnosis, cure, mitigation, treatment, or prevention of disease, and for the purpose of affecting any part or function of the body."
- *Medical expenses* "must be primarily to alleviate or prevent a physical or mental disability or illness."

### What are Examples of Medical Expenses?

- Payments for legal medical services rendered by physicians, surgeons, dentists, & other medical practitioners.
- Costs of equipment, supplies, & diagnostic devices needed for these purposes.
- Costs of medicines & drugs prescribed by a physician.

### What is NOT a Medical Expense?

- Expenses associates with services or products that are "merely beneficial to general health."
- These include the costs of exercise equipment, dance lessons, and weight loss food & beverages (if they would typically satisfy "normal" nutritional needs).