

EMPLOYEE BENEFITS

# 2022 Compliance Issues to Consider



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## 2022 ACA Maximum Out-of-Pocket Expenses

(non-grandfathered plans)

### Applicable to plan years beginning on or after 1/1/2022:

- \$8,700 for self-only coverage (increase from \$8,550 in 2021)
- \$17,400 for family coverage (increase from \$17,100 in 2021)

## 2022 HSA & HDHP Design Maximums

HDHP	2021	2022	Change in 2022
<b>Minimum Annual Deductible</b> <i>(per plan year)</i>	\$1,400 for self-only coverage	\$1,400 for self-only coverage	No change
	\$2,800 for family coverage	\$2,800 for family coverage	No change
<b>Out-of-Pocket Maximums</b> <i>(per plan year)</i>	\$7,000 for self-only coverage	\$7,050 for self-only coverage	\$50 increase
	\$14,000 for family coverage	\$14,100 for family coverage	\$100 increase
<b>Maximum Annual HSA Contribution</b> <i>(per calendar year)</i>	\$3,600 for self-only coverage	\$3,650 for self-only coverage	\$50 increase
	\$7,200 for family coverage	\$7,300 for family coverage	\$100 increase

- Catch-up contribution (Age 55 and older by the end of the tax year): \$1,000
- **Note:** DOL, HHS, and IRS guidance requires group health plans to embed an individual out-of-pocket maximum in the plan's family coverage when the family out-of-pocket maximum exceeds the ACA's out-of-pocket maximum for self-only coverage.

## Health FSA Limits

- The annual limit on employee salary reduction contributions for plan years beginning in 2021 is \$2,750. The limit for plan years beginning in 2022 is \$2,850.
- The limit on the amount that may be carried over from the plan year beginning in 2021 to the plan year beginning in 2022 is \$550. The limit on the amount that may be carried over from the plan year beginning in 2022 to the plan year beginning in 2023 is \$570.
- Relief allowing pre-tax election changes for group health care plan coverage, health FSA elections, and dependent care FSA elections for plan years ending in 2021 ends.
- Health FSA spend-down provision for plan years ending in 2021 (part of COVID-19 relief).

## Dependent Care FSA limits

- Dependent Care FSA annual (calendar year) limit on the amount of benefits excluded from income will revert to \$5,000 (\$2,500 for married filing separately).
- Relief allowing pre-tax election changes for group health care plan coverage, health FSA elections, and dependent care FSA elections for plan years ending in 2021 ends.

## Transportation Limits

The 2021 monthly limitation for the qualified transportation fringe benefit is \$270, as is the 2021 monthly limitation for qualified parking. The limits for 2022 are \$280.



## Affordability Safe Harbors

The safe harbor percentage for 2022 is 9.61%, down from the 2021 level of 9.83%.

## Employer Shared Responsibility Tax

*(employer mandate) for the 2022 Plan Year*

- **4980H(a)** Tax for not offering minimum essential coverage to at least 95% of full-time eligible employees: For 2022, the ESRP is **projected** to be \$2,750 (annually) per all full-time eligible employees (less 30 full-time eligible employees).
- **4980H(b)** Tax for offering coverage that is not minimum value or not affordable to an eligible full-time employee or failing to offer coverage to a full-time employee when coverage is offered to at least 95% of full-time employees: For 2022, the ESRP is **projected** to be \$4,120 (annually) for each eligible employee not offered such coverage that receives an exchange subsidy.

## PCORI Fee

### FEE DUE JULY 31, 2022

Plan year end date	Fee per average covered life
Jan. 2021 – Sept. 2021	\$2.66
Oct. 2021 – Dec. 2021	\$2.79

## Selecting a Benchmark Plan

- The final Market reform rules require self-insured and large insured plans to select one of the three Federal Employees Health Benefit Program (FEHBP) options or a state benchmark plan to define essential health benefits (EHB) for purposes of ensuring the plan imposes no annual or lifetime dollar limits on EHBs.
- This requirement applies to benefits provided in- or out-of-network.



# Wellness Incentive and Reward Limits

## HIPAA

- **Participation-only programs** (e.g., fitness club discounts): unlimited.
- **Outcomes-based:** Tobacco cessation 50% of employer + employee premium contribution. All other programs (e.g., biometrics) 30% of employer + employee premium contribution. Note: If combined, the total can be no more than 50% of employer + employee premium contribution, with any percentage over 30% being attributable to tobacco cessation.

## ADA – NOTE

- New EEOC rules withdrawn per President Biden's regulatory freeze order (January 2021).
- Employers should be careful about structuring incentives for wellness programs that ask for health information or involve medical exams.
- It is possible the EEOC will issue new wellness rules prior to the end of calendar year 2021.

## GINA

Applies to incentives linked to the spouse or children of an employee participating in a medical exam or providing information regarding current or past health status: the maximum inducement to the employee **was** 30% of the employee only rate and if the spouse can participate, an additional 30% of the employee only rate. However, these rules have also been withdrawn.

## Transparency

Plans and issuers must make available or disclose certain cost-sharing and pricing information to participants, the public, and the federal government, including making cost-sharing information available through a self-service tool available on an internet website (e.g., the insurance issuer's, TPA's, or plan sponsor's website). Some rules are applicable starting with the first plan year beginning on or after January 1, 2022, while others are applicable July 1, 2022, or as of the first plan year beginning in 2023. Some rules have been delayed indefinitely.

**Note:** The first report on prescription drug prices, which originally was due December 27, 2021, has been delayed until December 27, 2022 but must include information for 2020 and 2021.



## No Surprises Act

- Prohibits surprise billing for emergency services.
- Prohibits high out-of-network cost-sharing for emergency and non-emergency services.
- Prohibits out-of-network charges for ancillary care (like an anesthesiologist or assistant surgeon) at an in-network facility in all circumstances.
- Prohibits other out-of-network charges without advance notice.
- Applicable to plan years beginning on or after January 1, 2022.

## Outbreak Period

- Extensions for certain deadlines under COBRA, HIPAA, and claims filing timeframes are disregarded until the earlier of
  - a. 1 year from the date they were first eligible for relief, or
  - b. 60 days after the announced end of the National Emergency (the end of the Outbreak Period).
- On the applicable date, the timeframes for individuals and plans with periods that were previously disregarded under the Notices will resume. In no case will a disregarded period exceed 1 year.
- The Outbreak Period has not ended as of December 2021.



## How Brown & Brown Can Help

Connect with your Brown & Brown service team to learn more about how we can help find solutions to fit your unique needs.



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