

EMPLOYEE BENEFITS

2023 Compliance Issues to Consider



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2023 ACA Maximum Out-of-Pocket Expenses

(non-grandfathered plans)

Applicable to plan years beginning on or after 1/1/2023:

- \$9,100 for self-only coverage (increase from \$8,700 in 2022)
- \$18,200 for family coverage (increase from \$17,400 in 2022)

2023 HSA & HDHP Design Maximums

HDHP	2022	2023	Change in 2023
Minimum Annual Deductible <i>(per plan year)</i>	\$1,400 for self-only coverage	\$1,500 for self-only coverage	\$100 increase
	\$2,800 for family coverage*	\$3,000 for family coverage*	\$200 increase
Out-of-Pocket Maximums <i>(per plan year)</i>	\$7,050 for self-only coverage	\$7,500 for self-only coverage	\$450 increase
	\$14,100 for family coverage	\$15,000 for family coverage	\$900 increase
Maximum Annual HSA Contribution <i>(per calendar year)</i>	\$3,650 for self-only coverage	\$3,850 for self-only coverage	\$200 increase
	\$7,300 for family coverage	\$7,750 for family coverage	\$450 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.

*When the HDHP includes an embedded deductible for those with family coverage, no plan benefit (other than for preventive care or other permitted coverage) may be available until one or more family members has satisfied the full minimum annual family deductible.

Health FSA Limits

- The annual limit on employee salary reduction contributions for plan years beginning in 2023 is \$3,050.
- The limit on the amount that may be carried over from the plan year beginning in 2023 to the plan year beginning in 2024 is \$610.

Dependent Care FSA limits

- Dependent Care FSA annual (calendar year) limit on the amount of benefits excluded from income is \$5,000 (\$2,500 for married filing separately).

Transportation Limits

The 2023 monthly limitation for the qualified transportation fringe benefit is \$300, as is the 2023 monthly limitation for qualified parking.

Affordability Safe Harbors

The safe harbor percentage for 2023 is 9.12%, which is a .49% reduction from the 2022 level of 9.61%.



Employer Shared Responsibility Tax

(employer mandate) for the 2023 Plan Year

- **4980H(a)** Tax for not offering minimum essential coverage to at least 95% of full-time employees: For 2023, the ESRP will be \$2,880 (annually) per full-time employee (less 30 full-time employees).
- **4980H(b)** Tax for offering coverage that is not minimum value or not affordable to a 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 2023, the ESRP will be \$4,320 (annually) for each full-time employee not offered such coverage that receives an exchange subsidy.

PCORI Fee

FEE DUE JULY 31, 2023

Plan year end date	Fee per average covered life
Jan. 2022 – Sept. 2022	\$2.79
Oct. 2022 – Dec. 2022	\$3.00

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

- 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.

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 on July 1, 2022, or as of the first plan year beginning in 2023. Some rules have been delayed indefinitely.

Requirements Currently in Effect

- Publicly Available Machine-Readable Files - Must be posted by the later of July 1, 2022 (for plans with plan years beginning between January 1 and July 1, 2022) or the first day of the 2022 plan year.
- Health Plan ID Card Requirements – Compliance required as of first day of plan year beginning on or after January 1, 2022.
- Health Provider Directories – Compliance required as of first day of plan year beginning on or after January 1, 2022.
- Continuity of Care – Compliance required as of first day of plan year beginning on or after January 1, 2022.

Requirements Effective 2022

- Reporting on Prescription Drug Costs – First report due December 27, 2022 (with respect to 2020 and 2021 data).
- Prohibition on Gag Clauses – Federal agency guidance expected in 2022.

Requirements Effective 2023

- Price Comparison Information – Compliance required as of first day of plan year beginning on or after January 1, 2023.

Additional Requirements

- Advanced Explanation of Benefits – Enforcement deferred until agencies implement future rulemaking

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 one (1) year.
- The Outbreak Period has not ended as of October 2022.





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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