

Compliance Update

November 8, 2023

Presented by:

Misty Baker, Director of Compliance & Government Affairs

Carol Taylor, JM-Compliance, REBC Compliance Analyst



DISCLAIMER



The information herein should not be construed as legal or tax advice in any way.



This presentation is meant for informational and educational content only. Neither the presenter, or the sponsors, or sources referred to make any warranty of any kind concerning this information.



You should seek the advice of your attorney or tax advisor for specific information pertaining to any business.

Agenda:

- MHPAEA-Mental Health Parity and Addition Equality Act
- Medicare Secondary payer
- QHDHP & HSA Limits
- A & B Penalties
- Electronic filing requirements
- Affordability Calculator tool
- PCORI Fees
- Gag Clauses
- Open for your questions!

Proposed Guidance on MHPAEA Mental Health Parity and Addiction Equity Act

Rules are not final yet on revising the Non-Quantitative Treatment Limits (NQTLs)

- Meant to prevent group health plans and issuers from offering group or individual plans that provide both medical/surgical benefits AND mental health or substance use disorder benefits from using NQTLs to put more stringent limits on access to MH/SUD benefits as compared to medical/surgical benefits
- Data collection and evaluation requirements
- Network adequacy requirements
- Reporting will be required, with comparative analyses

Proposed Guidance on MHPAEA

Mental Health Parity and Addiction Equity Act (Cont'd)

What does it mean for Fully-Insured Group Health Plans?

- Carriers will be required to perform the compliance measures once final guidance is released.
 - Prepare comparative analysis and reporting
 - Make any necessary modifications to prior authorizations or pre-certification criteria for MH/SUD treatments to be similar to medical/surgical determinations
 - Ensure network adequacy
 - Be subject to the “naming and shaming” plus any potential penalties for non-compliance

Proposed Guidance on MHPAEA Mental Health Parity and Addiction Equity Act (Cont'd)

What does it mean for Self-Funded/Level-Funded Group Health Plans?

- Group health plan sponsors (employers) will be ultimately responsible but may contract with ASO/TPA to perform.
 - Be subject to the “naming and shaming” plus any potential penalties for non-compliance
- ASO/TPA will likely charge fees
 - Prepare comparative analysis and reporting
 - Make any necessary modifications to prior authorizations or pre-certification criteria for MH/SUD treatments to be similar to medical/surgical determinations
 - Ensure network adequacy

Medicare Secondary Payer Reporting – New Guidance/FAQ Released Oct/Nov 2023

- Will specify how and when CMS must calculate and impose civil money penalties (CMPs) when group health plan (GHP) and non-group health plan (NGHP) responsible reporting entities (RREs) fail to meet their Medicare Secondary Payer (MSP) reporting obligations by failing to register and report as required by MSP reporting requirements
- Will also establish CMP amounts and circumstances under which CMPs will and will not be imposed

Medicare Secondary Payer Reporting – New Guidance/FAQ released Oct/Nov 2023 (Cont'd)

- Final rule is effective on December 11, 2023.
- The provisions of this rule are applicable on or after October 11, 2024.
- The earliest a penalty may be imposed is October 2025.
- No lookback for penalties will be used, only prospective in nature.

Medicare Secondary Payer Reporting – New Guidance/FAQ released Oct/Nov 2023 (Cont'd)

- No amendments regarding any CMP provisions for GHP arrangements that have reporting obligations under section 1862(b)(7) of the Act. GHP arrangements remain subject to *mandatory* CMPs of \$1,000 per calendar day of noncompliance and per individual for whom submission of information was required.
- These penalties are subject to inflationary adjustments; currently the amount is \$1,325 per calendar day.
- Release details audit process of random sample of 250 records quarterly, with 1,000 records to be reviewed annually.
- [Federal Register: Medicare Program; Medicare Secondary Payer and Certain Civil Money Penalties](#)
- [Medicare Secondary Payer and Certain Civil Money Penalties: \(cms.gov\)](#)

QHDHP & HSA Limits for 2024

Type of Limit		2023	2024	Change
HSA Contribution Limit	Self-Only	\$3,850	\$4,150	Up \$300
	Family	\$7,750	\$8,300	Up \$550
HSA Catch-Up Contributions (not indexed for inflation)	Age 55 or older	\$1,000	\$1,000	No Change
QHDHP Minimum Deductible	Self-Only	\$1,500	\$1,600	Up \$100
	Family	\$3,000	\$3,200	Up \$200
QHDHP Maximum Out of Pocket Expense Limit	Self-Only	\$7,500	\$8,050	Up \$550
	Family	\$15,000	\$16,100	Up \$1,100

2024 – 4980H A & B Penalties

- Applicable Large Employers are subject to penalties if they do not offer both affordable, minimum value coverage.
- The penalties are triggered if one employee enrolls in Marketplace coverage, receives an Advanced Premium Tax Credit (APTC), and pays the premiums to keep coverage intact.
- Penalty amounts shown are annualized amounts, but are charged per month
 - Count may vary each month for number of employees.
 - Count may vary each month for number receiving APTCs.
- Employers report on 1094-C and 1095-C (remember new electronic filing requirements!).

2024 – 4980H A & B Penalties (Cont'd)

Penalty	2023	2024	Change
(a) – ie no offer penalty	\$2,880	\$2,970	Up \$90
(b) - does not meet all criteria	\$4,320	\$4,460	Up \$140

New IRS Filing Threshold

- The Internal Revenue Service (IRS) recently released draft instructions for preparing, distributing, and filing 2023 Forms 1094-B/C and 1095-B/C. These instructions largely mirror guidance the IRS has published in previous years, **except that the electronic filing threshold has been reduced from 250 forms to ten forms in aggregate.**
- This year, employers could mail their Forms 1094 and 1095 to the IRS if their submission included fewer than 250 forms. **For the 2023 ACA filing and beyond, employers that cumulatively submit at least ten forms to the IRS, including W-2s, 1099s, ACA Forms 1094/1095, and other common form series, must file all of those forms electronically.**

For example, if an entity issues four 2023 Forms W-2, five 2023 Forms 1095-B, and one 2023 Form 1094-B, then that sum of ten forms means they must file all of them electronically with the IRS when due in 2024. This change resulted from a final regulation the IRS issued earlier this year that officially reduced the electronic filing threshold for many form series.

New IRS Filing Threshold (Cont'd)

- Employers that have historically submitted their Forms 1094/1095 to the government via paper mailing will need to consider overall how many forms they will be filing with the IRS in 2024, not just Forms 1094/1095, to determine whether they can continue to do so.

Ultimately, the ten-form aggregate threshold will necessitate electronic filing for nearly every employer. We urge employers that have traditionally paper-filed their ACA forms to either register with the IRS as soon as possible so they can e-File themselves or to contract with a vendor that can confidently e-File on their behalf.

- The IRS guidance release is available online at <https://www.govinfo.gov/content/pkg/FR-2023-02-23/pdf/2023-03710.pdf>.

ACA Affordability Calculator

BenefitMall COMPLIANCE CENTER

2024 ACA Safe Harbor Calculator Employer-Shared Responsibility

Applicable Large Employers (ALEs) are required under the ACA to provide employees with affordable, minimum value coverage in order to not have penalties assessed. For 2024, coverage is considered affordable if the employee's required contribution for their coverage does not exceed 8.39% of the employee's household income for the taxable year. Since employers do not have household income information for employees, the IRS recognized that employers would need safe harbors for affordability considerations. Since employers have the employees Form W-2 wages and the employee's rate of pay, the IRS developed three safe harbors for employers to use, along with the Federal Poverty Level (FPL).

Provided an ALE's offer of coverage is affordable using any of the three safe harbors, then the offer of coverage is deemed affordable for purposes of the employer shared responsibility provisions regardless of whether it was affordable based on the employee's household income (which is the test that applies for purposes of the premium tax credit).

Each safe harbor method calculation is included below. Employers may choose one safe harbor method for each permissible classification of employees. A permissible classification of employees is defined as one that is consistent with the employer's normal or usual business practices and treats similarly situated individuals in a like manner.

Enter the plan, pay and contribution information in the first section below:	
Enter the Employee Class for this Calculation: All Employees	Insurance Carrier Plan Name for Lowest Cost Plan
Enter the employee's monthly premium contribution for employee-only health insurance coverage, for the lowest-cost plan: \$	101.93
Enter the employee's annual premium contribution for employee-only health insurance coverage: \$	1,223.16
Enter the Box 1 of W-2 wages for the lowest wage earner: \$	15,080.00
Enter the hourly rate of pay for the lowest wage earner/hourly employee: \$	15.00
W-2 Method	
Employee's annual premium contribution for employee-only health insurance coverage (entered above): \$	1,223.16
Employee's current Box 1 of W-2 wages (entered above): \$	15,080.00
This is the calculated percentage the lowest wage earner, using Box 1 of the W-2. <i>This percentage must not be higher than 8.39%, in order to meet the affordability safe harbor using the W-2 method.</i>	8.11% Pass
Rate of Pay	
Employee's monthly premium contribution for employee-only health insurance coverage (entered above): \$	101.93
Employee's hourly rate of pay (entered above): \$	15.00
This is the calculated hourly rate of pay x 130. If you need to test for a salaried employee, enter in the first set of boxes with the salary per month. This is the calculated percentage the lowest wage earner, using the Rate of Pay method. <i>This percentage must not be higher than 8.39%, in order to meet the affordability safe harbor.</i>	5.23% Pass
Federal Poverty Level (FPL)	
Enter the employee's annual premium contribution for employee-only health insurance coverage: \$	1,223.16
The published mainland poverty guidelines for a single individual (prior year) is (for HI and AK, the number is different and you can enter that to the right): \$	14,580.00
Calculated FPL minimum monthly employee deduction: \$	101.93
This is the calculated percentage for the FPL method. <i>This percentage must not be higher than 8.39%, in order to meet the affordability</i>	8.39% Pass

NOTES
Affordability is based on employee-only (single) coverage no matter how many family members are covered under the plan, for Employer Shared Responsibility (ESR) purposes. The affordability safe harbor applies to the lowest-cost option available to the employee that also meets the minimum value requirement, for employers that offer multiple plans.

- If you are looking to calculate affordability for your groups, use our new resource here: https://www.benefitmall.com/documents/66/ACA_Affordability_Safe_Harbor_Calculator.xlsx

- Pro tip:** Make sure you use the correct tab at the bottom of the page for 2024



- Can calculate:** Rate of Pay, FPL and W-2

PCORI Fees

- The [IRS Notice 2023-70](#) announced the adjusted applicable amount for the Patient-Centered Outcomes Research Institute (PCORI) fee for policy or plan years ending on or after October 1, 2023, and before October 1, 2024, will be **\$3.22**. The PCORI fee is calculated based on the average number of lives covered under the policy or plan.
- PCORI fees are reported and paid annually using IRS Form 720 (Quarterly Federal Excise Tax Return). These fees are due each year by July 31 of the year following the last day of the plan year. This means, for plan years ending in 2023, the PCORI fees are due by July 31, 2024. The IRS instructions for filing Form 720 include information on reporting and paying the PCORI fees. Information about calculating the fee can be found on the [IRS PCORI Overview page](#).

Gag Clause: What Is It?

- The Federal Consolidated Appropriations Act (CAA) contains a provision known as the **Gag Clause**. This provision requires commercial health plans to attest annually that their provider agreements comply with the Gag Clause.
- **The first attestation is due by December 31, 2023** and must cover the period between December 27, 2020 and the date of submission. **Beginning in 2024, attestations must be made each year by December 31.**



CLICK HERE
to Place Your Logo

Gag Clause Attestation

The Gag Clause Prohibition Compliance Attestation (GCPCA), reference in this document as the Gag Clause Attestation (GCA), is a government-required disclosure by carriers and plan sponsors to ensure medical carriers, PBMs, TPAs, or other vendor contracts do not restrict the release of certain information, such as network-contracted rates, service codes, or other claim-related information.

How Does This Apply?

This GCA requirement applies to all-size companies offering health insurance benefits, even groups of one. If you do not offer a health benefit plan, you do not need to file.

What is the Reporting Period?

The initial filing is for 2020, 2021, 2022 and 2023. Plan sponsors (employers) should make sure that all years are accounted for, especially if carrier/TPA/PBM/other vendor changes have taken place during the four years for this first filing. Starting in 2024, the filing will be for one year.

Who is Required to File?

Medical carriers must file a GCA as an insurance issuer. Plan Sponsors are also required to file. However, medical carriers, TPAs, PBMs, and other vendors may file a GCA on behalf of plan sponsors but are not required to do so. You should check with the carrier, TPA, PBM and other vendors to determine if they are filing on behalf of the plan, and if they will charge a fee to do so.

In the event the carrier does not file on the client's behalf (employer-based plan, multi-employer plan, etc.), then the plan sponsor is required to file the GCA. See the steps below for instructions.

What Information Must Be Filed?

- Whether you will be submitting the GCA on behalf of more than one plan or issuer:
 - If attesting for more than one insurance carrier, TPA, PBM, or other vendors, select "yes."
 - If the GCA is for a single insurance carrier, TPA, PBM, or other vendor, select "no."
- The name of your company (known as the Employer/Plan Sponsor/GHP) and the company's nine-digit EIN
- Identify what type of plan sponsor you are: Church plan, ERISA plan (this will be the most common response), or Non-Federal governmental plan
- The three-digit Plan Number that is indicated on the plan's Department of Labor Form 5500 filing (These start with a "5," such as 501, 502, etc.) If the plan does not require you to file a Form 5500, enter N/A.)

Gag Clause Attestation

Gag Clause Attestation

or Employer/Plan Sponsor), email address, and an insurance carrier, a TPA/PBM/other button. Otherwise, select the "no" button. check all that apply as to which provider

nt other than what is contained on ment in the text box.

will be due on December 31 each year.

Submitting your Gag Clause Prohibition CMS FEPS@cms.hhs.gov. Include "GCPCA" https://www.dol.gov/sites/dolgov/files/EBSA/2022_00_00.pdf

an authorized signer on behalf of the entered the Submitter. The authorized signer

or an account online at [www.HIOS-GCPCA-UI](#) and select "code" shown. On the pop-up mail and click on the "Get my unique code" is only valid for two weeks, after need to request another code. This is the Attestor (authorized signer).

the code to login to the system.

5 Verify the type of attester on the next page (most likely, you will be checking the first and third boxes), and enter your name as the electronic signature.

6 Verify the entity (entity) you are attesting on behalf of

7 I attest that I have the authority to bind the plan(s) or issuer(s) entered/uploaded in the entity attestation details

8 Submission Successful

9 Download receipt

10 Return to dashboard

After the GCA is successfully submitted, the Submitter may download a confirmation receipt as a PDF file.

11 If the GCA was submitted by a carrier, you can request a copy of the receipt of submission for your records.



BenefitMall and NEXT GENERATION BROKER SERVICES are trademarks or registered trademarks of Centerstone in the U.S. California License #0639679. *All other trademarks are the property of their respective owners.

3226-1023 gag 4/24



VENDOR	VENDOR STATUS	FORMAL COMMUNICATIONS	DOCUMENTS
Aetna	<ul style="list-style-type: none"> •Fully insured plans: Aetna will submit the gag clause attestation on behalf of all fully-insured plan sponsors including small group and middle market and Aetna Funding Advantage (AFA) plan sponsors. •Self-insured plans: Aetna will not submit the GPCCA template on behalf of our self-funded plan sponsors. Self-funded employers will be require to submit attestations directly with CMS. •Self-funded plans can request a confirmation of gag clause compliance from Aetna by reaching out to their Aetna account manager. 	<p>Formal Communication is located on Aetna's website: Transparency in Coverage Aetna</p> <ol style="list-style-type: none"> 1.Scroll and click Consolidated Appropriations Act 2.Scroll down to "What is Aetna's approach to Gag Clause Attestation" 	Connect to Aetna website
Allegiance Benefit Plan Management A Cigna Co.	<p>Allegiance confirms that they will be attesting on behalf of their clients with:</p> <ul style="list-style-type: none"> •Cigna network contracts •Montana Allegiance Direct network contracts •Allegiance Administrative Service Agreements •Pharmacy arrangements where Allegiance holds the contract. <p>•If the client does not fall under the aforementioned, the client will need to follow up with their carrier or self report the attestations.</p>	<p>Released August 29, 2023 in the Allegiance Alert email to brokers/clients.</p> <p>*Allegiance will provide this attestation on your plan's behalf for the Cigna network contracts, the Montana Allegiance Direct network contracts, Allegiance administrative services agreements, and for any pharmacy arrangements where Allegiance holds the contract. However, because Allegiance does not have access to a plan's other agreements, including, but not limited to, other regional or domestic network contracts or PBM contracts other than those held by Allegiance, Allegiance is unable to provide attestations for any other contracts or review a plan's other contracts for legal compliance with the CAA. In these circumstances, the health plan must make separate arrangements with those entities to attest for you or provide you with appropriate information to attest on your own behalf. Please keep in mind that although this attestation may be delegated to a TPA or a PBM, the regulations place the ultimate liability for filing on the self-funded health plan.</p> <p>Allegiance will send a notice to our clients once we have completed our filing of the attestation.</p> <p>Please contact your Allegiance Account Executive if you have any questions about this requirement or Allegiance's role in filing this attestation.</p>	
AmeriBen (TPA)	<p>AmeriBen is not reporting on behalf of clients.</p> <ul style="list-style-type: none"> •AmeriBen provides language to support clients with attestations: <p>•IEC Group, Inc. d/b/a AmeriBen represents that the administrative services provided under its Administrative Services Agreements are consistent with the requirements set forth in Section 201 of the Consolidated Appropriations Act, 2021.</p>	AmeriBen email was sent on (or around) June 13, 2023, from clients Account Managers.	

BenefitMall's Compliance & Legislative Team



 **Call ACA Hotline:** 1.844.5.ACA.411

 **Email** ACA411@benefitmall.com **or** Compliance@benefitmall.com

 **Visit** www.benefitmall.com/compliance

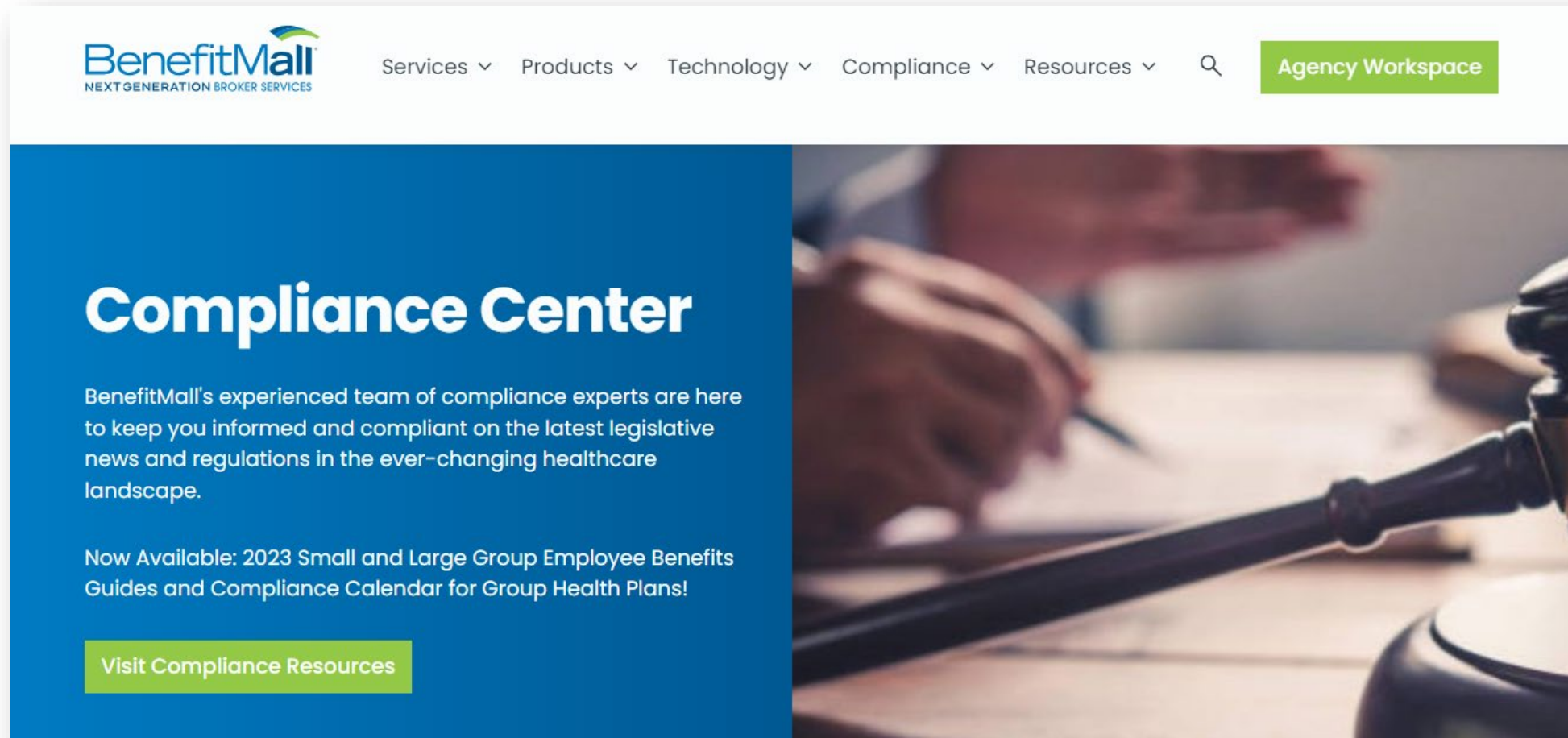
 <https://www.linkedin.com/company/benefitmall>

 <https://www.facebook.com/BenefitMall/>

LinkedIn, the LinkedIn logo, the IN logo and Initial are registered trademarks or trademarks of LinkedIn Corporation and its affiliates in the United States and/or other countries.

The information herein should not be construed as legal or tax advice in any way. Regulations, guidance, and legal opinions continue to change. The preparer has gathered public information and has attempted to present it in an easily readable and understandable format. Situations vary; technical corrections and future guidance may vary from what is discussed in the presentation. This is meant for informational content only. The presenter makes no warranty of any kind concerning this information. You should seek the advice of your attorney or tax consultant for additional or specific information. This presentation is not to be duplicated or distributed.

Have You Used Our Compliance Resources?



The screenshot shows the top navigation bar of the BenefitMall website. The logo "BenefitMall" is on the left, with "NEXT GENERATION BROKER SERVICES" underneath. To the right are dropdown menus for "Services", "Products", "Technology", "Compliance", and "Resources", followed by a search icon. A green button labeled "Agency Workspace" is on the far right. Below the navigation is a blue banner with the text "Compliance Center" in large white font. Underneath, a paragraph reads: "BenefitMall's experienced team of compliance experts are here to keep you informed and compliant on the latest legislative news and regulations in the ever-changing healthcare landscape." Below that, another paragraph says: "Now Available: 2023 Small and Large Group Employee Benefits Guides and Compliance Calendar for Group Health Plans!" At the bottom of the banner is a green button that says "Visit Compliance Resources". To the right of the text is a blurred image of a person's hands writing on a document with a pen.

[Broker Compliance Alerts](#) • [Webinar Library](#) • [Compliance Resources](#) • [Podcasts](#) • [Continuing Education](#) • [Compliance Products & Services](#)



Questions for the Compliance Team?

Misty Baker

Misty.Baker@benefitmall.com

Carol Taylor

Carol.taylor@benefitmall.com

Thank you for attending today's session!