

Compliance Update • Election Edition

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A graphic of the American flag, showing the stars and stripes, positioned on the left side of the slide.

Election Results

- There are 3 Senate seats left in play: Arizona, Nevada and Georgia
- 48 Democrats
- 49 Republicans
- 51 needed to win vote



Election Results

- Seven Competitive races in the House: Alaska, Arizona California
- 192 Democrats
- 209 Republicans
- 218 to control the House

COBRA as Creditable Coverage

- Seniors who are enrolled in COBRA coverage but are eligible for Medicare face financial penalties for not enrolling within the mandated time-frame.
- Seniors who are enrolled in similar employer-sponsored plans are not penalized as their coverage is considered creditable for Medicare.
- Switching from a COBRA plan to Medicare could be disruptive for the beneficiary's care and may come with financial consequences for terminating their COBRA coverage early to meet the Medicare enrollment windows.
- Seniors should be able to remain on their COBRA coverage without penalty the same as seniors who remain on similar employer-sponsored coverage.

How Did They Fix The Family Glitch?

- The 2022 Regulations fix this “glitch” by basing the affordability of employer-sponsored coverage for a family member on the cost of family coverage, rather than self-only coverage.
- The family glitch fix will be in effect as of 2023. When families apply for 2023 coverage during the open enrollment period in the fall of 2022, the new rules will be used to determine whether anyone in the household qualifies for a premium subsidy.
- If a family has to pay more than a certain percentage of household income (9.12% in 2023) for the employer-sponsored plan, they will potentially be eligible for premium tax credits in the marketplace.
- The same would also be true if the coverage offered to the family does not provide minimum value.
- There will be a separate affordability determination for the employee (based on self-only coverage), and for family members (based on the total cost of family coverage).

How Did They Fix The Family Glitch? (cont'd)

Scenario 1: Carrie is married to John, and they file a joint tax return. John does not have access to employer-sponsored coverage, but Carrie does. Carrie's employer offers them coverage as a couple that is unaffordable based on their household income. However, the coverage would be affordable for Carrie if she joined the plan as a single individual.

Who Has Affordable Coverage?	Who Qualifies for Subsidized Individual Coverage?	Does the Employer Have Penalty Liability?
Carrie has an offer of affordable employer coverage.	John qualifies for subsidized coverage because he does not have an affordable offer from either his or Carrie's employer.	Carrie's employer does not. If John's employer is an ALE, then they are at risk of receiving a penalty for not offering him affordable employee-only coverage.

How Did They Fix The Family Glitch? (cont'd)

Scenario 2: The facts of Scenario 1 remain the same, except that John gets a job at a company that offers him affordable coverage based on the single premium rate.

Who Has Affordable Coverage?	Who Qualifies for Subsidized Individual Coverage?	Does the Employer Have Penalty Liability?
<i>Carrie and John</i> now both have affordable employer offers of employee-only coverage.	Nobody	No

Section 125 and the Family Glitch

- If an employer's open enrollment period aligns with the annual exchange open enrollment period, then it will be simple for qualified individuals to decline group coverage and enroll in subsidized individual coverage through an exchange. However, the IRS has published [Notice 2022-41](#) to address the complications that could arise under this final rule when an employer's plan year does not correspond with the exchange's open enrollment period.
- In most cases, individuals who enroll in an employer-sponsored medical plan can only drop their coverage midyear if they have a "qualifying event."
 - This is due to the Section 125 Cafeteria Plan regulations that allow employees to pay for medical coverage on a pre-tax basis. Currently, a spouse and/or dependent children realizing they may be eligible for subsidized exchange coverage is **not** a qualifying event.
 - Notice 2022-41 amends the existing Section 125 rules so that employers with non-calendar plan years can now include this scenario as a qualifying event within their Section 125 plan documents.
 - The existing Section 125 regulations already permit employees to prospectively revoke their election for employer-sponsored coverage midyear in order to enroll in exchange-based coverage during the annual open enrollment or if they become eligible for a special enrollment period.

Section 125 and the Family Glitch (cont'd)

According to the new guidance, employers with non-calendar year plans can now allow employees to revoke their family-level (non-health FSA) medical coverage as long as:

- At least one of their dependents wants to enroll in exchange-based coverage, either during the exchange's open enrollment period or because the dependent is eligible for a special enrollment period through the exchange.
- The dependent(s) intention to enroll in exchange-based coverage starts no later than the day after their coverage under the employer-sponsored plan ends. If the employee doesn't also enroll in exchange-based coverage, they cannot revoke their own employer-sponsored coverage midyear. They, and any other individuals they're covering who don't enroll in coverage through an exchange, will need to maintain enrollment in the employer's plan.

Section 125 and the Family Glitch (cont'd)

Employers can rely on an employee's attestation as proof that their relative has enrolled or will enroll in exchange-based coverage.

Employers are **not** required to allow these election changes. However, if they wish to permit the changes, they must:

- Inform employees of their right to make a change in accordance with the new rule
- Adopt a formal plan amendment on or before the last day of the plan year in which the election changes are allowed.
- This amendment may be made retroactively to the first day of the plan year, meaning that election changes can technically be permitted before an amendment to the Cafeteria Plan document is made.

Plans cannot be amended to allow an actual election of coverage to be revoked on a retroactive basis.

Prescription Drug Data Collection (RxDC)

- Under Section 204 (of Title II, Division BB) of the [Consolidated Appropriations Act, 2021](#) (CAA), insurance companies and employer-based health plans must submit information about prescription drugs and health care spending. This data submission is called the RxDC report. The Rx stands for prescription drug and the DC stands for data collection.
- The Centers for Medicare and Medicaid Services is collecting the RxDC report on behalf of the Departments of Health and Human Services, the Department of Labor, the Department of Treasury, and the Office of Personnel Management.

Resources

- [RxDC reporting instructions \(PDF\)](#)
- [RxDC templates and data dictionary \(ZIP\)](#)
- [RxDC drug name and therapeutic class crosswalk \(ZIP\)](#)
- [Regulation](#)
- [Frequently Asked Questions \(PDF\)](#)

Prescription Drug Data Collection (RxDC) cont'd

What information do insurance companies and employers submit to CMS?

The CAA requires insurance companies and employer-based health plans to submit information about:

- Spending on prescription drugs and health care services
- Prescription drugs that account for the most spending
- Drugs that are prescribed most frequently
- Prescription drug rebates from drug manufacturers
- Premiums and cost-sharing that patients pay

How will this information be used?

- The data submitted by insurance companies and employer-based health plans will help to:
- Identify major drivers of increases in prescription drug and health care spending
- Understand how prescription drug rebates impact premiums and out-of-pocket costs
- Promote transparency in prescription drug pricing

What information will be publicly released?

- We will publish findings about prescription drug pricing trends and the impact of prescription drug rebates on patient out-of-pocket costs. You will be able to download the report from this page or from the websites of the Department of Labor or the Department of the Treasury.

Model Notices

- CHIP Notice – **Required Annually**
- COBRA General Notice and COBRA Election Notice
- Genetic Information Nondiscrimination Act (GINA) Disclosures
- Health Insurance Exchange Notice (for companies who offer a health plan)
Non-Annual. Include in new hire packet.
- Medicare Part D Creditable Coverage Notice – **Required Annually**
- Mental Health Parity and Addiction Equity Act (MHPAEA) Disclosure
- Michelle's Law Notice
- Newborns' & Mothers' Health Protection Act Notice – **Non-Annual. Include in the SPD.**
- Notice of Patient Protections – Surprise Billing
- ADA Wellness Program Notice – **Recommended Annually**
- Uniformed Services Employment and Reemployment Rights Act (USERRA) Notice
- Women's Health and Cancer Rights Act (WHCRA) Notice – **Required Annually**
- HIPAA Special Enrollment Notice – **Recommended Annually. Given to employee at initial offering of health plan.**
- HIPAA Notice of Privacy Practices – **Non-annual.**

BenefitMall's Compliance & Legislative Team



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Questions?

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