

# COMPLIANCE ALERT

## Making Sense of the End-of-Year Benefits Legislation

January 6, 2025

### Action Required:

**Ensure your HDHP does not include first-dollar telehealth coverage.**

**Change distribution policies to align with the new PBRA rules, including Forms 1095-B/-C to employees when requested.**

**Align ACA information reporting & ESR policies to the new ERIA rules.**

**Decide if you will send out fixed indemnity notices to employees, which are no longer required.**

As we neared the end of 2024, Congress introduced, finalized and then rescinded a plethora of new bills with new benefits rules, but not all were signed into law. The two main areas of benefits rules impacted were the Affordable Care Act (ACA) information reporting rules and rules that were expected to extend COVID-era telehealth relief applicable to high deductible health plans (HDHPs). Additionally, while not a legislative change, a federal court in Texas has struck down the requirement to provide a required notice about fixed indemnity coverage. This e-Alert aims to sort out the confusion from these end-of-the year rule changes in order to help employers and plan sponsors understand how these areas of benefits regulation will operate in 2025.

### Telehealth Relief for HDHPs Ends

Beginning January 1, 2025, HDHPs will no longer be allowed to offer first-dollar coverage of telehealth services while maintaining their participants' health savings account (HSA) eligibility. As background, Congress passed the CARES Act in March of 2020 during the COVID-19 pandemic, part of which allowed HDHPs to cover 100% of the cost of telehealth services without application of the deductible (first-dollar coverage) and while still permitting the HDHP's participants to remain eligible for their HSAs. The

CARES Act allowed this first-dollar coverage through the end of 2021, which was then renewed in April of 2022 through the Consolidated Appropriations Act of 2022, and was then renewed again with another extension through the Consolidated Appropriations Act of 2023 until January 1st of 2025.

While it was anticipated that Congress would act to extend the relief for another two years as a part of the funding bill to prevent the government shutdown (as discussed in our recent E-Alert [here](#)), the relief did not make it into the final funding bill that was passed and signed into law by President Biden. Since this telehealth relief was not extended, HDHPs must now charge the fair market value for the telehealth services provided beginning January 1, 2025.

### ACA Changes

On December 23, 2024, President Biden signed two bills into law overhauling the current process for ACA information reporting and related Employer Shared Responsibility (ESR) requirements: [H.R. 3797](#), the Paperwork

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Burden Reduction Act (PBRA), and [H.R. 3801](#), the Employer Reporting Improvement Act (ERIA). Both of these new laws set in motion changes to ACA information reporting and ESR standards that ease these requirements on employers and plan sponsors.

## *How Does this Development Change the Law?*

As background, there are requirements in place under the ACA for reporting information about employer-sponsored health insurance coverage on Forms 1094 and 1095 (the “Forms”), including about whether the coverage is affordable and meets the standards of minimum essential coverage (MEC) and minimum value (MV).

Prior to these new laws, employers with more than 50 full-time employees, including full-time equivalents, were required to provide paper copies of the Forms 1095-B/1095-C to all full-time employees.

## *PBRA Rule Changes:*

The PBRA now allows employers to provide copies of the Forms 1095-B/1095-C only to employees who request it. If requested by an employee, the applicable Form must be provided by the later of January 31 or 30 days after the date of the request. However, there is one important requirement that must be satisfied first—in order for employers and sponsors to take advantage of this rule change, they must first provide a notice to employees that tells them about their right to ask for a Form.

While we expect more guidance on the requirements for the form and content of these notices, for now, a good faith effort to provide such notices will likely be ACA-compliant. This development is much welcomed by employers and plan sponsors and has the potential for considerable savings in distribution costs.

## *ERIA Rule Changes:*

Under the current rules, employers are required to use the employee’s Tax Identification Number (TIN) in these Forms, most commonly the employee’s social security number. The ERIA allows the employer to use an employee’s birthday in lieu of their TIN when the TIN is not available.

Additionally, the ERIA codifies the IRS’ current practice of allowing employers to offer the Forms 1095-B and 1095-C to individuals electronically if an individual affirmatively consented to receive forms electronically at any prior time. However, an individual may revoke such prior consent in writing.

The ERIA also implements a six-year statute of limitations that applies to collecting ESR penalty assessments. Previously, the IRS had stated that no statute of limitations applied to collecting ACA ESR penalties. Now, the ERIA provides that the six-year period for this statute of limitations will begin to run on the later of the due date for filing the requisite ACA information reporting Form or the actual date that the applicable ACA Form was filed.

Lastly, under current rules, if an employer receives an ESR penalty assessment from the IRS (an IRS Letter 226J) due to the lack of MEC being offered to at least 95% of full-time employees and their dependent children, or due to the coverage not being considered MV or affordable, employers must respond to the penalty assessment letter within 30 days. The ERIA provides a longer response time of 90 days to such an ESR penalty assessment letter. The extension of time for response to ESR penalty letters should alleviate the need for an extension request, which is currently a common practice.

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## **When do these ACA-related Rule Changes Go into Effect?**

PBRA: The applicability date for the PBRA is for any Forms due after December 31, 2023, so it is applicable to 2024 Forms (i.e., the Forms that must be distributed at the end of this month—January of 2025), and so, the new rules allowing furnishing of the Forms to employees “upon request” is in effect now.

ERIA: The applicability date for the ERIA is for any Forms due after December 31, 2024 (so, for 2025 Forms and later).

## **Notice for Fixed Indemnity Plans No Longer Required**

While not technically “end-of-year legislation,” a federal court in Texas has struck down the requirement to provide a notice for fixed indemnity plans. Specifically, an Eastern District of Texas district court has ruled that the fixed indemnity notice requirement contained in final regulations issued in April of 2024 (explained in more detail in our E-Alert [here](#)) is no longer applicable for group health plans<sup>1</sup>. The court ruled that the notice requirement exceeded the Departments of Labor, Health and Human Services, and Treasury’s (the “Agencies”) statutory authority, and as such, is not required. While it’s unclear if the Agencies will appeal this decision, the notice is not required to be provided at this time.

## **What Should Employers and Plan Sponsors Do Next?**

Regarding the cessation of the telehealth relief, employers and plan sponsors need to ensure that their HDHP offering does not include first-dollar telehealth coverage in order to maintain the HSA eligibility of participants in the HDHP/HSA plan.

Regarding the ACA changes, employers and plan sponsors can now change their distribution policies to align with the new PBRA rules, including the rule allowing them to only distribute Forms 1095-B/1095-C to employees who request the Form. Additionally, they can take steps to align their ACA information reporting and ESR policies to the new ERIA rules going into effect for the 2025 Forms. As always, employers and plan sponsors should discuss the impact of these regulatory changes with their trusted advisors and reporting vendors.

Regarding the fixed indemnity notice, there is no obligation to send that out at this time, and for employers and plan sponsors who have already distributed this notice, they do not need to take any additional action at this time—while the notice is not required, it can still provide helpful information for plan participants.

**If you have any additional questions, call your Corporate Synergies Account Manager or 866.CSG.1719.**

<sup>1</sup>The decision (available [here](#)) is *ManhattanLife Insurance and Annuity Co. et al. v. U.S. Department of Health and Human Services et al.* (E.D. Texas Dec. 4, 2024).