

Compliance News to Know

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**BENEFITS
WATCH**

2nd Wednesday each month at 1 pm EST

March 13 – ERISA Essentials
April 10 – ERISA Plan Docs. 101
May 8 – ERISA Plan Docs. 201

[Register Here!](#)

Upcoming Deadlines

- **February 28** – Paper filing deadline -1094/1095 Series*
- **February 29** – Medicare Part D Disclosure due to CMS
- **March 1** – File Form M-1 for MEWAs
- **March 1** – Furnish 1094/1095 forms to individuals.
- **April 1** - Electronic filing deadline – 1094/1095 Series

Access the [2024 Benefits Compliance Checklist](#) or ask your Patriot Advisor!

**Most Plans must file electronically*

5 Employee Benefits “Big Rocks” in 2024

1. **Mental Health Parity** – employers will be faced with more stringent regulations regarding parity between med./surg. & mental health services, requiring revised administrative processes.
2. **Paid Leave Laws** –14 states (+Puerto Rico & D.C.) have implemented paid family & medical leave laws. Given the amount of remote work, employers are pivoting to support revised administrative processes of complying with multiple state’s laws.
3. **ACA Legislation** – making its way through the courts is legislation clarifying ACA’s preventive care services; expect rules promoting OTC contraceptive access since the *Dobbs* decision.
4. **PBM Oversight** – 2024 is likely to bring legislation around Pharmacy Benefits Managers (PBMs), as this piece of the insurance pie has seen little oversight yet an uptick in utilization.
5. **Soft Skills** – employers must support initiatives to “foster belonging” such as creating time to connect socially, encouraging open communication, training leaders, and establishing fair compensation practices.

March 13th Benefits Watch Webinar: [ERISA Essentials](#) at 1 pm EST

When it comes to benefit plan compliance, ERISA is king. Any fund, program, or plan sponsored by the employer to provide benefits to participants or beneficiaries is a health and welfare plan subject to ERISA's requirements. *Benefits* includes the big players: medical, surgical, and hospital benefits. Yet *benefit plans* may also include vacation benefits, scholarship funds, or prepaid legal services. How do you know which plans are subject? Well, it depends. Join Patriot's Benefits Compliance Counsel, Olivia Ash, for a review of ERISA's essential welfare plan requirements.



The Rundown

Medicare MSP User Guide Updated

The Centers for Medicare & Medicaid Services (CMS) updated their Medicare Secondary Payer (MSP) User Guide, adding language about civil penalties for untimely reporting by insurers or TPAs. [Access the guide at CMS.](#)

- CMS Issues [Revised RxDC Reporting Instructions](#) – use for June 1, 2024, Reporting Due Date
- IRS [Decreases](#) 2025 Employer Shared Responsibility Penalties
- IRS Releases [FAQs](#) about Premium Tax Credit
- IRS Updates Forms [5558](#) & [8868](#) for Form 5330 Extensions
- IRS Releases Informational [Form 1099-R](#) re: Distributions
- The Office of Civil Rights (OCR) Settles [HIPAA-Breach by Insider](#) at New York Hospital for \$4.75 million



Fiduciary Failures

Under the Employee Retirement Income Security Act (ERISA) plan sponsors are to discharge their *fiduciary duties* with diligence and prudence. This includes timely responses to participant requests for documents and properly managing plan assets. Employers who fail as fiduciaries may be liable personally & professionally.

A California court in *Zavislak* (2024) awarded \$6,465 to a plan participant for the employer's failures to timely furnish plan documents in accordance with ERISA's guidelines for the self-funded medical, vision, and dental coverages. The employer sustained, after the court's review of facts & circumstances, a decreased penalty of \$15 per day for 431 days (reduced from \$110 per day).

On February 5, 2024, an [employee sued Johnson & Johnson](#) for breaching several fiduciary duties & mismanaging the Rx drug benefit, resulting in higher plan costs to participants. The Plaintiff cites excessive payments to the Pharmacy Benefits Manager (PBM) for medications cheaper at retail pharmacies. These allegations address failures in plan management and oversight of providers.



ERISA's 5 Fiduciary Duties



- **Act** solely in the interest of plan participants and their beneficiaries and with the exclusive purpose of providing benefits to them;
- **Carry** out duties prudently;
- **Follow** the plan documents;
- **Hold** plan assets in trust; and
- **Pay** only reasonable plan expenses.

Learn more about fiduciary duties under ERISA [on the DOL's website](#).

“Rather than prudently manage the Plans’ prescription-drug program, Defendants agreed to pay extraordinarily high prices for prescription drugs . . . and failed to supervise third parties or otherwise ensure that decisions were made in the best interests of the Plans and their beneficiaries; conduct adequate reviews of the Plans’ prescription-drug costs; and take available steps that would have saved the Plans and their beneficiaries millions of dollars.”

A HIPAA Cybersecurity Guide

The National Institute of Standards and Technology published a [free cybersecurity resource guide](#). This 122-page PDF provides “practical guidance and resources for use by regulated entities...to safeguard electronic Protected Health Information (ePHI) and better understand security concepts discussed in the HIPAA Security Rule. Plans are HIPAA Covered Entities; self-funded Plans especially must implement strong HIPAA Privacy and Security Rule measures to ensure ePHI is accessible when required or requested, and secure from cyber-attacks.

Mental Health Parity Compliance – 6 Parity Problems



The 2023 report to Congress regarding mental health parity measures has landed. This is the second annual such report since it became a statutory requirement under the Consolidated Appropriations Act of 2021. The report reviews audits of certain Plans’ comparative analyses of their nonquantitative treatment limitations (“NQTLs”) to demonstrate the Plan does not impose more stringent limitations on Mental Health/Substance Use Disorder benefits as compared to Medical/Surgical benefits. The 2023 report noted:

- Of 182 requests for comparative analyses, 76% receive “insufficiency” letters; 29% received initial findings of violations; and 3 received final determinations of violations, requiring these Plans to send violation letters to participants & beneficiaries.
- Most violations stemmed from lack of supporting documentation showing how Plans apply NQTLs in practice. Review the list below for insight on shoring up your NQTL analyses.
- Penalties for failing to provide an analysis if requested are \$100/day/individual & possible litigation.

6 “Parity Problems” from the 2023 Report to Congress:

1. Prior authorization requirements for both in & out of network inpatient services.
2. Concurrent care review for in & out of network inpatient & outpatient services.
3. Standards for provider admission to participate in a network, including reimbursement rates.
4. Out of network reimbursement rates & how they were determined.
5. Impermissible exclusions of key treatments for mental health conditions.
6. Adequacy standards for mental health provider networks.