

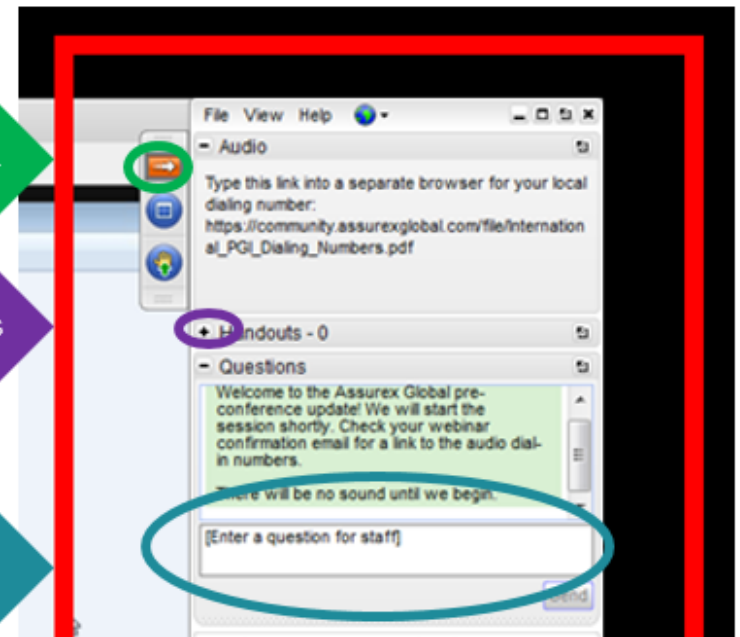
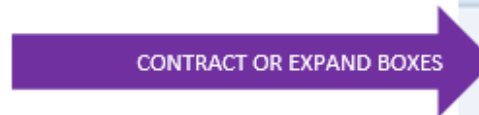
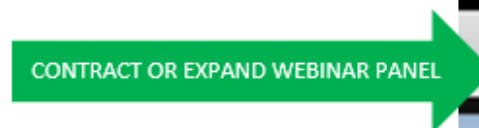
March 2019

# The “Good News” Compliance Webinar

Benefit Comply, LLC

## The “Good News” Compliance Webinar

- Welcome! We will begin at 3 p.m. Eastern
- There will be no sound until we begin the webinar. When we begin, you can listen to the audio portion through your computer speakers or by calling into the phone conference number provided in your confirmation email.
- You will be able to submit questions during the webinar by using the “Questions” or “Chat” box located on your webinar control panel.
- Slides can be printed from the webinar control panel – expand the “Handouts” section and click the file to download.



# Assurex Global Partners

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# Agenda

- Things we don't have to do any more – (or won't have to soon!)
  - Reinsurance fee
  - PCORI Fee
  - HPID Number
  - Medicare data match requests
- Compliance strategies that could save you money
  - Alternative COBRA offers
  - Using IRS safe-harbors to set higher employer contributions
  - Encourage employee Medicaid participation
- Things that could get easier in the near future
  - Making it easier to maintain grandfathered status
  - HSA eligibility and Medicare

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**Things we don't have to do any more  
(or won't have to soon!)**

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# Reinsurance Fee

- Background

- States were required to set up a reinsurance program for the individual market
  - Insurers and group health plans were required to contribute to the reinsurance program
- Insurers & self-insured health plans were required to pay the fee from 2014 – 2016
  - HHS requires 10-year maintenance of records

- Deadlines

- Enrollment data
  - Provided to HHS by November 15 of each year (2014,15,16)
- Payment
  - January 15 (or the next business day) of following year for the first payment (or the total payment if made in one submission)
  - November 15 (or the next business day) of the following year for the second payment if using the bifurcated payment method

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# Reinsurance Fee

- Plans
  - Health plans that provided minimum value (Most HRAs not subject to fee)
  - Only one fee due for individuals covered by multiple self-insured plans
- Amount of Fee
  - 2014: \$63 per covered life (\$5.25 per month)
  - 2015: \$44 per covered life (\$3.67 per month)
  - 2016: \$27 per covered life (\$2.25 per month)
- Covered Lives Calculation Methods
  - Self-insured employers
    - Actual Count
    - Snapshot and Snapshot factor method
    - Form 5500 (Self-Insured Plans Only)
  - Carriers
    - Member Months (Insured Plans Only)
    - State Form (Insured Plans Only)

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# Reinsurance Fee

- What if I never paid the fee?
  - CMS Reinsurance Website with Instructions
    - <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Premium-Stabilization-Programs/The-Transitional-Reinsurance-Program/Reinsurance-Contributions.html>
  - Use Pay.gov to make payments



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# PCORI Fee

- Background

- ACA created a nonprofit called the Patient-Centered Outcome Research Institute to do health outcome research
- Partially funded through fees paid by insurers and plan sponsors of self-insured health plans
- Fee due for plan years ending after 10/01/12 and before 10/01/19
- Report and pay fees on excise tax Form 721 by July 31st of the year following the last day of the plan year

- Plans Subject to Fee

- Most self-insured group health benefits subject to the fee (e.g. medical, HRA, etc.)
- Excepted benefits not subject to fee (stand-alone dental, most health FSAs, etc.)
- IRS website on benefits subject to fee:
  - <https://www.irs.gov/newsroom/application-of-the-patient-centered-outcomes-research-trust-fund-fee-to-common-types-of-health-coverage-or-arrangements>

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# PCORI Fee

- This is the last year!
  - PCORI fees are no longer due for plan years that end on or after 10/01/19
    - Calendar year plans will report and pay for the last time by July 31, 2019 (for the 2018 plan year)
      - Example 01/01/18 – 12/31/18 plan year
    - Non-calendar year plans ending before 10/01/19 will report and pay for the last time by July 31, 2020
      - Example 07/01/18 – 06/30/19 plan year

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# PCORI Fee

- Amount of Fee
  - For plan years ending on or after October 1st, 2017, and before October 1st, 2018, the fee is equal to \$2.39 times the average number of covered lives during the plan year.
  - For plan years ending on or after October 1st, 2018, and before October 1st, 2019, the fee is equal to \$2.45 times the average number of covered lives during the plan year.
- Covered Lives Calculation Methods
  - Actual Count
  - Snapshot and Snapshot factor method
  - Form 5500

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# Health Plan ID Number (HPID)

- **Self-funded Employers Were Required to Get an HPID**
  - HIPAA requires Covered Entities (CE) to follow specific standards for certain electronic transactions
    - Employer sponsored group health plans are HIPAA covered entities
  - Self-funded health plans were originally required to obtain an HPID from CMS
    - Nov. 5th, 2014 for large health plans (\$5 million in claims)
    - Nov. 5th, 2015 for small health plans
    - Plans were then required to provide a certification to CMS that the plan is correctly processing certain electronic transactions
- **First Delay**
  - Requirement was delayed by CMS on the eve of the deadline (Oct. 31, 2014)
- **Proposal for Formal Removal**
  - On December 19, 2018, the Department of Health and Human Services (HHS) issued proposed regulations to rescind the requirement that employers and plan sponsors obtain and use an HPID

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# IRS/SSA/CMS Data Match

- Background
  - CMS began an employer data match program to help identify Medicare eligible individuals who were also eligible for employer sponsored coverage
  - Purpose was to help identify situations where Medicare should have been secondary to another payer
  - Employers who received a letter from CMS were required to report detailed employee and enrollment data to CMS
- Data Match Employer Reporting Program Has Been Suspended
  - First indication was when CMS shut down the reporting website in Feb. 2018!
  - CMS Formal announcement later in 2018
    - [CMS will] no longer require this information on or after July 1, 2016...the IRS-SSA-CMS Data Match program has been discontinued. Employers wishing to report outstanding IRS-SSA-CMS Data Match questionnaires or MSP occurrences may contact the BCRC at 1.8555.798.2627.

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# Compliance strategies that could save you money

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# COBRA Alternatives

- Background
  - COBRA claims loss ratio is higher than normal participants.
  - Is it OK to “help” COBRA QBs make other choices?
    - Yes – as long as the regular COBRA offer is also made
      - DOL added Exchange information to Model COBRA notices
      - COBRA rules allow and employer to offer an alternative benefit option to COBRA QBs
  - Individual insurance available on Exchange
    - COBRA events will generally create a special enrollment opportunity to purchase individual health insurance on the exchange
    - QBs don’t understand how to get individual insurance & don’t understand that they may pay low premiums - so they take COBRA because it is easy
      - Often after COBRA events (termination, divorce, dependent aging out) the QBs income is “depressed” making them eligible for large subsidies
    - Important Note - If a QB elects COBRA, they are not eligible to purchase individual health insurance until the next open enrollment or when their COBRA expires

# COBRA Alternatives

- Understanding Individual Health Insurance Costs

- Premiums for an individual who qualifies for a subsidy are based on a % of household income for a silver plan – it doesn't matter what the actual “retail” cost of the insurance is – Examples:

	FPL	Household Income	Plan Cost % of Income	Silver Plan Premium
Family of 4	200%	\$51,500	6.54%	\$274/mo.
Family of 4	350%	\$90,125	9.86%	\$599/mo.
Single Individual	200%	\$24,980	6.54%	\$132/mo.
Single Individual	350%	\$43,714	9.86%	\$349/mo.

- Subsidy Calculator - <https://www.kff.org/interactive/subsidy-calculator/>



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# COBRA Alternatives

- How to Do It
  - Employers should explain in great detail to every individual experiencing a COBRA event:
    - How subsidized individual insurance premiums work and
    - How to find out about individual insurance
  - Problem - Most COBRA administrators won't help – they have no interest in reducing the number of COBRA elections

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# Affordability – Employer Mandate

- Background

- Applicable large employers (ALEs) must offer minimum value, affordable coverage to full-time employees and their dependent children to avoid §4980H payments
- §4980H(a)
  - Applies if employer does not offer minimum essential coverage (MEC) to 95% (70% in 2015) of full-time employees & at least one full-time employee purchases subsidized coverage through a public Marketplace/Exchange
  - Calculated for 2016 as \$180.00/mo. (\$2,160/yr) times number of full-time employees not counting first 30
- §4980H(b)
  - Applies if employer offers coverage to substantially all full-time employees and their dependent children, but coverage is not offered to some full-time employees or coverage is “unaffordable” or not “minimum value”
  - Calculated for 2016 as \$270/mo. (\$3,240/yr) for each full-time employee who purchases subsidized coverage through a public Marketplace/Exchange

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# Affordability

- ACA Affordability is Based on Household Income
  - Modified adjusted gross income (MAGI) of individual, spouse and tax dependent in household required to file tax return

\$24,000 Household Income	\$2,000 mo.
2019 Affordability Index	X 9.86%
Affordable if employee contribution for single coverage is less than -	\$196.20 mo.

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# Setting Employer Contributions

- Using Employer Safe-Harbors
  - Background - What a safe-harbor does
    - Employer plan “affordability“ for ACA subsidies is based on an employee’s household income - which the employer does not know
    - The safe harbors let an employer avoid the 4980H(b) penalty based on employee contributions compared to a number the employer does know
  - There are three safe harbors
    - Federal Poverty Level
    - W-2 Wage
    - Rate of Pay
  - How the safe harbor works
    - If an employer sets the employee contribution for single coverage (in the cheapest minimum value plan) at 9.86% (2019) of one of the safe harbor numbers the employer will not owe a (b) penalty no matter what

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# Setting Employer Contributions

- Safe Harbor Examples
  - FPL of a 1/1/2019 Plan
    - 2019 single FPL = \$12,490
      - $\$12,490 \div 12 \text{ times } 9.86\% = \$102.63$
    - Set employee contribution for single coverage at less than \$102.63 and employer will not pay a (b) affordability penalty
  - Rate of Pay
    - Lowest rate of pay \$10.00/hr:  $\$10.00 \times 130 \text{ hours} = \$1,300 \times .0986 = \$128.18$
    - Set employee contribution for single coverage at less than \$128.18 and employer will not pay a (b) affordability penalty

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# Setting Employer Contributions

- Don't Worry about Plan Being Unaffordable for a Few People
  - What Our ACA Penalty Analysis Tool Has Found
  - We use census data and DOL compensations information to analyze an employee census and estimate the number employees likely to qualify for a subsidy
    - Fewer lower paid employees are subsidy eligible than employers expect - remember that subsidy eligibility is based on household income
      - Many lower paid employees have a second job or source of income
      - Lower income households are more likely to have multiple earners in the household
      - Some have coverage available through their spouse
    - Lowest income households are eligible for Medicaid in states with expanded Medicaid – no employer penalty for an employee who enrolls in Medicaid
  - Additionally our experience with the first two years of employer reporting show that only a small number of potentially subsidy eligible employee's actually purchase subsidized individual coverage

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# Affordability – Employer Mandate

- Solve for (a) first:
  - You must be able to answer the question “Has the employer set eligibility rules so that there will never be more than 5% of full-time employees not offered coverage in a given month?”
- §4980H(b): Is it better to pay some (b)?
  - Employers are often making choices simply in an attempt to avoid the (b) payment. In some cases it is a better decision to do nothing and face the possibility of small (b) payments
  - Key Considerations:
    - Understand employer safe harbors for (b) penalty
    - Employers can pay more if someone enrolls in employers plan
    - Think of the (b) payment as a financial analysis...not a penalty
  - Employer can usually set the contribution for a safe harbor at a higher rate and leave a number of lower paid employees “unsafe” since very few of these will actually purchase individual subsidized coverage and the penalty is only \$290 per month for those who do.

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# §4980H Strategies

- Case Study
  - Employer with approximately 500 full-time employees
    - Employer contribution toward single coverage was already over \$400 per month
  - Estimated the plan was unaffordable for approximately 25 low wage full-time workers
    - Very few of these workers currently participated in the plan
  - Employer was considering two strategies
    - Raising employer contribution for single coverage \$30 per month on all employees
    - Setting a 2-tier employer contribution rate that was higher for lower wage workers
      - Employer was afraid that by doing this it would create significant new enrollments among this subgroup of employees



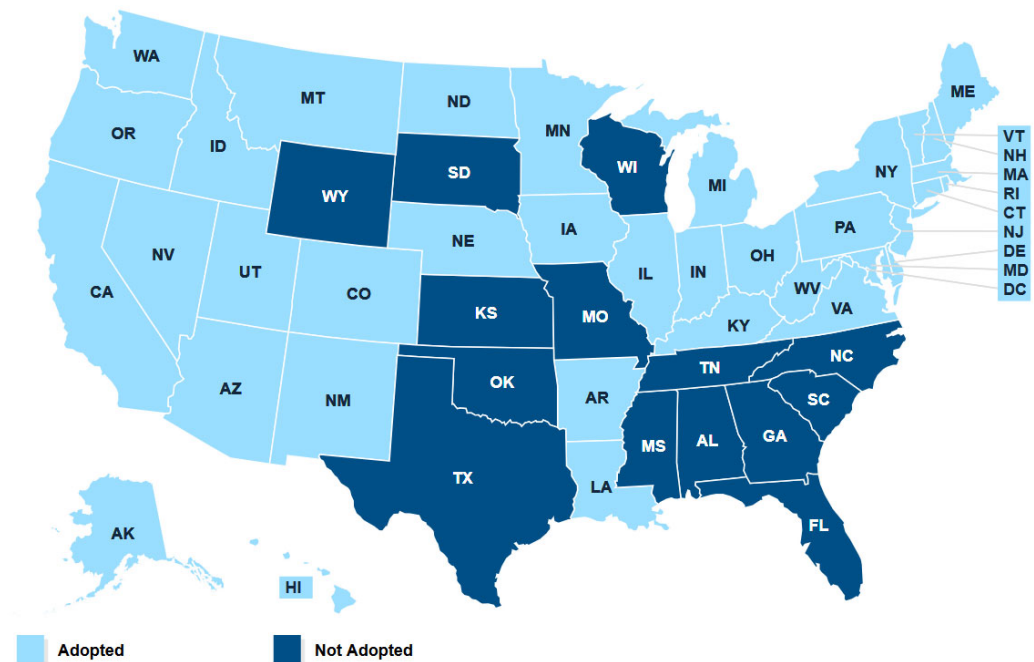
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# Encourage Employee Medicaid Participation

- Background
  - ACA expanded Medicaid
  - Employers with a large number of lower wage workers in states with expanded Medicaid should invite state Medicaid staff to present or provide information to employees on Medicaid eligibility
    - Example - 2019 138% of FPL for family of 4 = \$35,535

# Setting Employer Contributions

- Encourage Employee Medicaid Participation
  - Employers with a large number of lower wage workers in states with expanded Medicaid should invite state Medicaid staff to present or provide information to employees on Medicaid eligibility
    - Example - 2019 138% of FPL for family of 4 = \$35,535
  - 36 states and Wash. D.C. have adopted Medicaid expansion
    - Some states will provide Medicaid information and assistance to employers



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# Things that could get easier in the near future

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# Looking Forward

- Grandfathered Status
  - February 21, 2019, the DOL, HHS and IRS released an RFI to ask for input on challenges related to maintaining grandfathered plan status
  - Agencies will not consider allowing non-grandfathered plans to change back to grandfathered status
- HSA and Medicare
  - Background
    - Entitlement (i.e. enrollment) to Medicare makes an individual ineligible to make contributions to an HSA account
    - As soon as an individual elects to receive social security benefits they are automatically entitled to Medicare Part A
      - There is no way to “opt-out” of Part A – an individual must delay receipt of social security benefits to remain HSA eligible
  - Congressional activity
    - Bi-partisan 2018 bill contained language that Medicare entitlement would no longer make individual ineligible
      - Language was removed from final bill but could be re-introduced

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