

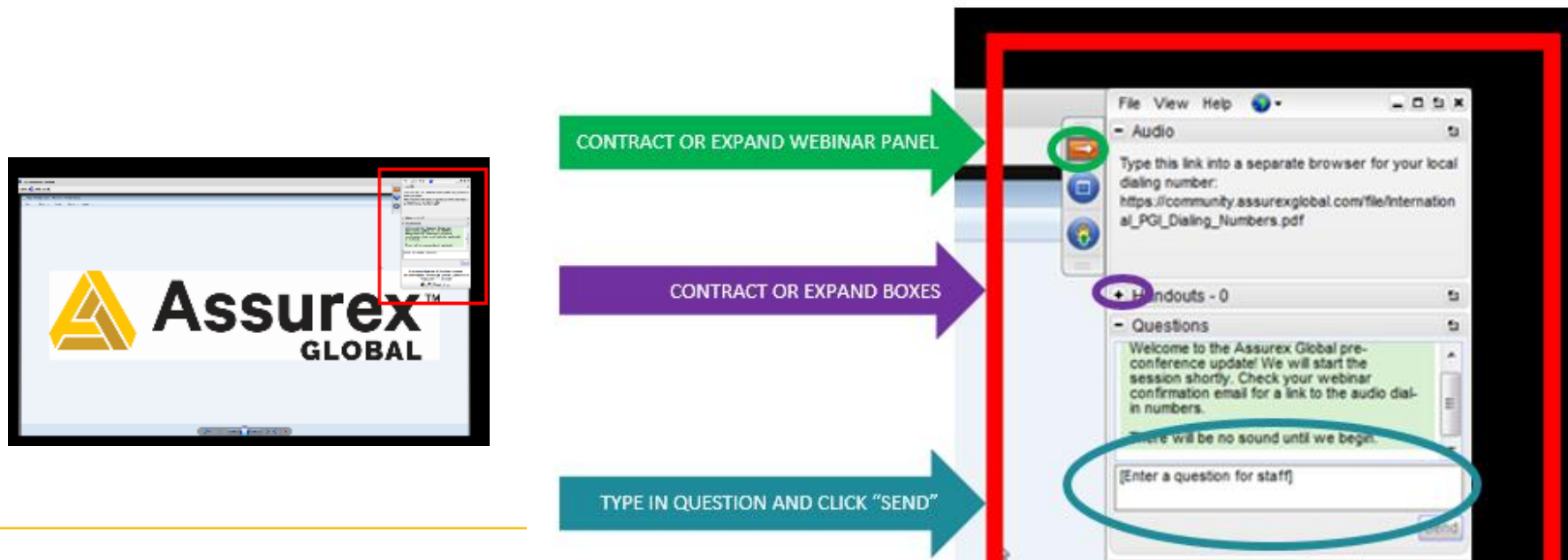
2022

# 2022 Regulatory Review and Wrap-Up

Presented by Benefit Comply

## 2022 Regulatory Review and Wrap-Up

- 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.



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# Assurex Global Partners

- Bolton & Company
- Cottingham & Butler
- Cragin & Pike, Inc.
- Daniel & Henry
- The Graham Company
- Henderson Brothers, Inc.
- The Horton Group
- Houchens Insurance Group
- The IMA Financial Group
- INSURICA
- Kapnick Insurance Group
- Lyons Companies
- The Mahoney Group
- MJ Insurance
- Oswald Companies
- Parker, Smith & Feek, Inc.
- R&R Insurance
- RCM&D
- RHSB
- The Rowley Agency
- Starkweather & Shepley
- Sterling Seacrest Pritchard
- Woodruff Sawyer
- York International

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# Agenda

- A Look Back
- The 2023 Numbers
- 2022 Legislative and Regulatory Review
- Looking Forward to 2023

# A Look Back

# 2022 Legislation & Supreme Court Decisions

SCOTUS Blocks OSHA  
Employer Vaccine Mandate



JANUARY

Inflation Reduction Act Passed



AUGUST

JUNE



SCOTUS Dobbs Decision  
SCOTUS ESRD Decision

# The 2023 Numbers

# 2023 Important Employee Benefits Numbers

	2023 Limits	2022 Limits
<b>Health Flexible Spending Accounts (FSAs)</b>		
Employee Salary Reduction Contributions	\$3,050	\$2,850
Maximum Carryover	\$610	\$570
<b>Health Savings Accounts (HSAs) &amp; Qualified High Deductible Health Plans (HDHPs)</b>		
Max Contribution Self-Only HDHP Coverage	\$3,850	\$3,650
Max Contribution Family HDHP Coverage	\$7,750	\$7,300
Max Catch-Up Contribution (Age 55 or older)	\$1,000	\$1,000
Min Deductible Self-Only QHDHP Coverage	\$1,500	\$1,400
Min Deductible Family QHDHP Coverage	\$3,000	\$2,800
Max OOP Self-Only QHDHP Coverage	\$7,500	\$7,050
Max OOP Family QHDHP Coverage	\$15,000	\$14,100
<b>ACA OOP Maximum</b>		
Self-Only Coverage	\$9,100	\$8,700
Family Coverage	\$18,200	\$17,400
<b>Qualified Transportation Fringe Benefits</b>		
Parking	\$300	\$280
Transit Pass/Commuter Vehicle	\$300	\$280



# 2023 Important Employee Benefits Numbers

	2023 Limits	2022 Limits
<b>HRAs</b>		
<i>Qualified Small Employer Health Reimbursement Arrangement (QSEHRA)</i>		
Self-Only Coverage	\$5,850	\$5,450
Family Coverage	\$11,800	\$11,050
<i>Excepted Benefit HRA</i>		
Maximum Benefit	\$1,950	\$1,800
<b>PCORI Fee (per covered life)</b>		
	\$2.79 for plan years ending in January 2022 – September 2022.	\$2.66 for plan years ending in January – September 2021.
	\$3.00 for plan years ending in October – December 2022.	\$2.79 for plan years ending in October – December 2021.
<b>Benefit</b>		
4980H(a)	\$2,880/year (\$240/month)	\$2,750/year (\$229.16/month)
4980H(b)	\$4,320/year (\$360/month)	\$4,120/year (\$343.33/month)
Affordability Percentage	9.12%	9.61%

# 2023 §4980H Affordability Percentage

- 2023 §4980H affordability percentage = 9.12% (down from 9.61%)
  - Effective for plan years beginning on or after January 1, 2023

## Employer Affordability Safe Harbors Examples

1. Federal Poverty Level Safe Harbor = \$103.28/mo. ( $\$13,590 \times 9.12\%/12$ )

### 2. Rate of Pay Safe Harbor

Employee Wages	Rate of Pay
	<i>Amount that is affordable</i>
HOURLY	
\$8	\$94.85
\$10	\$118.56
\$12	\$142.27
\$14	\$165.98
\$16	\$189.70
\$18	\$213.41
\$20	\$237.12

### 3. W-2 Safe Harbor

Employee Wages	Form W-2 (Box 1)
	<i>Amount that is affordable</i>
BOX 1 WAGES (hourly or salaried)	
\$20,000	\$152.00
\$30,000	\$228.00
\$40,000	\$304.00
\$50,000	\$380.00
\$60,000	\$456.00

# 2022 Legislative and Regulatory Review

# Health Cost Transparency

2021

January 2021

Hospital Cost Reporting

2022

January 2022

No Surprises Act  
No Gag Clauses in Contracts  
Continuity of Care  
ID Card Changes  
Provider Directory Accuracy

July 2022

Carriers & Plan Release Health  
Plan Cost Data in Machine  
Readable Files

December 2022

Rx & Health Care Spending  
Reporting for 2020 and 2021  
data by Dec. 27, 2022

2023

January 2023

Plan Cost Transparency Tools  
(500 Items & Services)

By June 1, 2023

Rx & Health Care Spending  
Reporting for 2022 data

2024

January 2024

Plan Cost Transparency Tools  
(All Items & Services)

**Delayed Until Additional  
Guidance Is Released**

Prescription Cost Data  
Machine Readable File

Provider Treatment Cost  
Estimate & Advanced EOB

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# Health Cost Transparency Developments

- Machine Readable Health Cost Data Files
  - First required to be posted publicly by Jul. 1, 2022
  - CMS guidance released Aug. 2022 – Employers are not required to post a link on the employer website to the data files maintained by their carrier or TPA
- Rx Cost Reporting
  - First reports for 2020 and 2021 data (9 files) due to CMS by Dec. 27, 2022
  - Many employers will rely on carrier, TPA, or PBM to submit data, but some TPAs and PBMs will not submit all the files (e.g., D1)
  - Reporting for 2022 data due in Jun. 2023
- Price Comparison Tool
  - Carriers and TPAs to roll out beginning Jan. 2023

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# Surprise Billing Update

- Types of Claims Affected
  - Out-of-Network Emergency Services
  - Air Ambulance (not ground ambulance)
  - Out-of-Network Providers in an In-Network Facility
- Balance Billing Protection
  - Member cost sharing calculated as in-network and must count toward in-network deductible and OOP maximum
    - Provider is prohibited from balance billing the individual
  - Plan and provider must negotiate a total payment amount
    - Based on All-Payer Model agreement or state law, or “Qualified Payment Amount”
      - (QPT) = Median of the payer’s contracted rates for that particular service
    - If they cannot agree, they may use the Independent Dispute Resolution (IDR) process

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# Surprise Billing Update

- Surprise Billing Statistics
  - Gov. required to provide a quarterly report
  - First report issued in Aug. 2022 (Apr. 15 – Aug. 11 statistics)
    - 46,000 instances of the IDR process were initiated – Many more than predicted
    - 21,000 challenged as ineligible, and 7,000 found to be ineligible for the process
    - Certified IDR entities rendered a payment determination for 1,200 cases
- Updates and Legal & Regulatory Activity
  - Continuing disputes over qualified payment amounts and the IDR process
  - No air ambulance reporting in 2023
  - No employer surprise billing notice necessary if TPA or Carrier posts

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# Telemedicine and HSA Eligibility

- HSA Eligibility – to make, or receive, HSA contributions:
  - Must be covered a qualified HDHP
  - Cannot have “Disqualifying Coverage” – coverage that reimburses medical expenses (other than preventive) before individual has met minimum HSA qualified HDHP deductible is met (e.g. other health insurance coverage, Medicare, Health FSA, Telemedicine, etc.)
- Temporary Relief Expiring
  - Consolidated Appropriations Act (CAA) included relief so that telemedicine coverage would not be considered for purposes of HSA eligibility through December 31, 2022
  - Beginning January 1, 2023, telemedicine coverage with no cost sharing before the minimum high deductible health plan (HDHP) deductible is satisfied would disqualify an individual from contributing to an HSA
  - Without further legislative relief, in order for these participants to be able to make any HSA contributions for 2023, one of two things would need to happen:
    - Participant drops the telemedicine coverage
    - The telemedicine coverage itself is adjusted to require a participant to pay at least fair market value for services until the minimum HDHP deductible is met



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## Expired §125 and §129 Flexibility & Changes

- Optional Cafeteria Plan Flexibility Plan years Ending in 2020 or 2021 Only
  - Expanded carryovers or grace periods
  - Health FSA post termination reimbursements allowed
  - Special Rule for DCAP Participants with Dependents Who Age Out
  - Election change flexibility
- Annual Increase in DCAP Reimbursement Limit Returned to \$5,000
  - Temporary maximum DCAP pre-tax payroll deduction of \$10,500 ended in 2021
  - Carryover amounts from 2021 did not count toward the 2022 maximum

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## Other

- Transgender Related Health Coverage Issues
  - §1557 nondiscrimination rules
  - Constitution's Equal Protection Clause and Title VII of the Civil Rights Act
- Employer Reporting (1094 & 1095s)
  - IRS enforcement has begun for 2020 reporting year
  - Remember - IRS announced the end of penalty relief for reporting errors beginning with 2021 coverage reporting
- Mental Health Parity
  - Increased enforcement and regulatory activity
  - Non-Quantitative Treatment Limitations (NQTL) analysis requirement
  - Potential for additional regulatory and legislative action

# Looking Forward to 2023

# Public Health Emergency & National Emergency

- Two different kinds of pandemic related “Emergencies”

## Public Health Emergency

Declared by Department of Health and Human Services (HHS) beginning in January 2020 and extended multiple times - Each extension lasts three months.

### Effect On Group Health Plans

Group health plans required to cover COVID-19 diagnostic testing and vaccinations and related services, including out-of-network

## National Emergency

First declared by President Trump in March 2020 - Remains in force until declared over by President.

### Effect On Group Health Plans

“Outbreak Period” = End of National Emergency + 60 days.

- COBRA notices, HIPAA special enrollment notices, and ERISA claims filing deadlines delayed for one year from the original applicable deadline or until the end of the outbreak period (TBD)

- On February 18, 2022, President Biden formally extended the COVID-19 National Emergency

**It is very possible the National Emergency will not be renewed in February 2023**

- **Extended deadlines would cease 60 days later**

## Change to “Family Glitch”

- IRS has changed the definition of affordability for the purpose of qualification for premium tax credits when purchasing individual coverage through the public Exchange

### Current 2022 Affordability Rule

- Affordable for employee and all eligible family members if single coverage is affordable
- Employee contribution for single coverage cannot exceed 9.63% (in 2022) of household income

### New Affordability Rule Effective 1/1/2023

- Affordability for employee based on employee contribution for single coverage (cannot exceed 9.12% of household income)
- Affordability for family members based on employee contribution for family coverage (cannot exceed 9.12% of household income)

Employer will not be penalized for unaffordable family coverage

# How Many Employees Could This Impact?

- When is Family Contribution Unaffordable?

<b>Using 2023 9.12% Affordability</b>				
Mo. Employee Contribution for Family Coverage	\$250.00	\$500.00	\$750.00	\$1,000.00
Unaffordable for Household Incomes Under	\$32,894.74	\$65,789.47	\$98,684.21	\$131,578.95

- The impact will be very group specific...

Significant  
Impact

Groups with lower average household income and higher than average family contribution

Less of an  
Impact

Groups with higher average household income and lower than average family contribution

# Inflation Reduction Act

- Impact of Subsidy Increase

Annual Household Income	Family Size	% FPL	Average "Retail" Monthly Prem.	Subsidized Silver Plan Mo. Prem.
\$20,000	1	157%	\$353	\$5
\$20,000	4	76%	Medicaid	Medicaid
\$40,000	1	313%	\$353	\$211
\$40,000	4	153%	\$1,245	\$4
\$60,000	1	470%	\$353	\$353
\$60,000	4	229%	\$1,245	\$158
\$80,000	4	305%	\$1,245	\$409
\$125,000	4	477%	\$1,245	\$885

- Silver Plan Cost (approx. \$3,000 deductible plan - OOP reduced for lower income)

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## Other Things We May See in 2023

- EEOC Wellness Rules
- HSA eligibility and changes
  - Telemedicine
  - Direct Primary Care
  - Medicare
  - Limits
- Employer Reporting Simplification



2022

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