



2021 Employee Benefit Compliance: Alera Group's Year in Review

January 6, 2022

In 2021, a lot happened in the world of compliance. We've broken down the key events from the past year below.

January

On January 7, 2021, the EEOC issued a [Notice of Proposed Rulemaking on Wellness Programs Under the ADA and GINA](#), addressing the issue of wellness program incentives. The proposed rules deviated somewhat from prior EEOC guidance and positions. These regulations were later retracted under the Congressional Review Act and were not reissued in 2021.

On January 20, 2021, President Joe Biden was sworn in as the 46th President of the United States, following a four-year term of President Donald Trump.

February

On February 18, 2021, the IRS released 2021-15, which [provided guidance](#) related to COVID relief provisions in earlier stimulus bills, as well as relief for cafeteria plans and HRAs. This guidance covered health FSA and DCAP carryovers, as well as spend-down provisions and extended grace periods.

On February 26, 2021, the Department of Labor (DOL) released Notice 2021-01 [which clarifies the end date for the one-year extension relief](#) provided in April 2020 under Notice 2020-01. Per the latest guidance, individuals (and plans) are granted relief based on their own fact-specific time frames and, therefore, may still take advantage of the relief beyond February 28, 2021, until the earlier of (a) one year from the date they were first eligible for relief, or (b) 60 days after the announced end of the COVID-19 National Emergency.

March

On March 11, 2021, President Biden signed the American Rescue Plan Act, 2021 (ARPA), the third COVID-19 stimulus bill. This new [\\$1.9 trillion stimulus package](#) includes several health and welfare benefits-related provisions relevant to employers and plan sponsors, including FFCRA paid leave extensions and enhancements, dependent care assistant program limit increases (for one year) and temporary premium tax credit enhancements.

April

On April 7, 2021, the DOL released a link to its webpage dedicated to the COBRA premium assistance authorized under the American Rescue Plan Act, 2021 (ARPA), the third COVID-19 stimulus bill. [The corresponding webpage includes](#) model notices, frequently asked questions and related information. With the exception of the model notices, the guidance appeared targeted towards impacted workers, which left many employer-related questions unanswered.

May

In Revenue Procedure 2021-25, the IRS [released](#) the 2022 HSA contribution limits, high-deductible health plan minimums and maximums, and the maximum out-of-pocket limits.

On May 10, 2021, the IRS released Notice 2021-26, which [provides additional guidance on relief authorized under the Consolidated Appropriations Act, 2021 \(CAA\), ARPA, and previous IRS guidance issued in Notice 2021-15](#). Specifically, IRS Notice 2021-26 clarifies the maximum amount that can be excluded from an individual's gross income for dependent care expense reimbursements in 2021 and 2022 under a dependent care FSA/dependent care assistance program (DCAP) when the plan is using the extended grace period or carryover pursuant to the CAA.

On May 18, 2021, the IRS released Notice 2021-31, which contained its [much-anticipated guidance](#) on the American Rescue Plan Act (ARPA) COBRA premium assistance provisions.

In May, Alera Group [alerted clients to existing and enhanced](#) mental health parity requirements. All group health plan sponsors of both fully-insured and self-funded plans must consider the requirements of the Mental Health Parity and Addiction Equity Act and the Patient Protection and Affordable Care Act (ACA). The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) is a federal law that generally prevents large group health plans and health insurance issuers that provide mental health or substance use disorder (MH/SUD) benefits from imposing less favorable benefit limitations on those benefits than on medical/surgical benefits. As a result, the ACA required smaller employers to provide coverage of mental health and substance use disorder services as one of the 10 Essential Health Benefit (EHB) categories.

These rules were modified and enhanced by the CAA of 2021, which will require group health plans and health insurance carriers to perform comparative analyses to demonstrate compliance with mental health parity requirements. The results of the testing will be provided to the DOL, Health and Human Services (HHS) and state agencies upon request. These rules went into effect on February 10, 2021. Agencies are now required to audit plans annually. Guidance is required to be issued by these agencies within 18 months of the CAA being enacted. Plan participants, beneficiaries and enrollees are permitted to request copies of the comparative analysis, and plan sponsors are required to provide the information under ERISA

June

Alera Group issued helpful guidance [regarding the incentivizing or asking-for-information request](#) regarding an employee's vaccine status (some of which was superseded by formal guidance at the end of 2021).

July

On July 13, 2021, the DOL, HHS, and IRS released a joint Interim Final [Rule implementing specified provisions of the No Surprises Act](#), a new law included within the Consolidated Appropriations Act, 2021. The No Surprises Act addresses, among other things, a prohibition on surprise billing, which impacts emergency room parity rules previously implemented under the ACA, and ACA provisions related to provider choice.

Alera Group issued [additional guidance](#) to answer common questions regarding employers wishing to charge more for health insurance for employees who declined to be vaccinated against COVID-19.

PCORI fees were [once again due](#) on July 31, 2021 for plan sponsors of all self-insured plans including health reimbursement arrangements (HRAs).

August

On August 20, 2021, the DOL released an FAQ on the [implementation of a group health plan reporting requirement](#) stemming from the CAA and indicated that the agencies intend to release regulations on this reporting, and until then, encouraged plan sponsors to begin gathering the data necessary to report 2020 and 2021 data by December of 2022. The new, complex reporting requirement applies to group health plans of any size (except for church plans). This means it will apply to any group health plan of any size that is fully insured, self-funded, sponsored by a government or municipality, grandfathered, or grandmothers. The reporting was originally due on December 27, 2021. Beginning in 2022, the reporting will be due annually by June 1st. The reporting will be sent to the tri-agencies – Health and Human Services, the Department of Labor, and the Department of Treasury. Other deadlines found in the CAA [were also delayed](#).

On August 27, 2021, Illinois Governor J.B. Pritzker signed the Consumer Coverage Disclosure Act (SB 1905). This law applies to all employers, including the state; state departments, agencies, municipalities, and school districts; and private employers who have employees gainfully employed in the State of Illinois and provide group health coverage to those in-state employees (“Covered Employers”). It does not matter if the health plan is fully insured, self-funded, grandfathered, grandmothers or level-funded. This requirement applies to Illinois-based employees, not employers, [so an employer based in another state](#) would still be responsible for compliance if they have employees in Illinois who are eligible for the group health plan.

September

On September 9, 2021, President Biden unveiled the White House’s “Path out of the Pandemic,” which is also being referred to as the “six-pronged plan.” Certain prongs of the [plan will impact employers](#) in the United States. The COVID-19 pandemic began impacting the United States in March of 2020. To date, approximately 40 million Americans have been diagnosed with COVID-19, and approximately 656,000 Americans have died due to COVID-19. The plan included [a directive to OSHA](#) to develop an employer vaccine mandate.

Alera Group reminded plan sponsors to [issue the COBRA Subsidy Expiration Notice](#) and issue summary annual reports (SARs) for calendar year plans subject to 5500 reporting.

The IRS released Rev. Proc. 2021-36, which contains the inflation-adjusted amounts for 2022 used to determine whether employer-sponsored coverage is “affordable” for purposes of the ACA employer shared responsibility provisions and premium tax credit program. For plan years beginning in 2022, the affordability percentage for [employer mandate purposes is indexed](#) to 9.61%. Employer shared responsibility payments are also indexed.

Alera Group also [alerted clients to the conflict](#) between certain drug discount programs and federal regulations for HSA eligibility.

In addition, Alera Group also provided [updated information](#) on the four main regulations employers should consider when they are ensuring their employee benefit plans are not discriminatory.

November

On November 4, 2021, the Department of Labor’s Occupational Safety and Health Administration (OSHA) and the Centers for Medicare & Medicaid Services (CMS) released long-awaited regulations regarding President Biden’s September 9, 2021, [directive for mandatory](#) COVID-19 vaccinations. The ETS was immediately challenged by several petitioners, including states and private companies, seeking to permanently enjoin enforcement of the ETS. On November 6, 2021, the United States Court of Appeals for the Fifth Circuit, temporarily stayed enforcement of the ETS pending briefing by the parties and expedited judicial review.

On November 10, 2021, the IRS released Revenue Procedure 2021-45, which [increases the health flexible spending account](#) (FSA) salary reduction contribution limit from 2021 to \$2,850 for plan years beginning in 2022, an increase of \$100 from 2021. Thus, for health FSAs with a carryover feature, the maximum carryover amount is \$570 (20% of the \$2,850 salary reduction limit) for plan years beginning or ending in 2022. The Revenue Procedure also contains the cost-of-living adjustments that apply to dollar limitations in certain sections of the Internal Revenue Code.

The Centers for Medicare and Medicaid Services (CMS) released an interim final [rule regarding mandatory vaccinations of healthcare staff](#) to protect against COVID-19. The interim final rule became effective as of November 5, 2021.

On November 22, 2021, the IRS filed a Notice of Proposed Rulemaking (“Proposed Rule”) which, among other things, provides for an [automatic 30-day extension of the deadline](#) for applicable large employers (“ALEs”) to furnish annual Forms 1095-C to individuals for calendar years beginning after December 31, 2021. Further, the Proposed Rule allows ALEs to voluntarily adopt this extension for calendar years beginning after December 31, 2020, which means this would apply to calendar year 2021 Forms 1095-C, which are due in 2022.

December

On December 17, 2021, the United States Court of Appeals for the 6th Circuit (6th Circuit) dissolved the stay of OSHA’s November 5, 2021 Emergency Temporary Standard (ETS) for private employers with 100 or more employees, issued by the United States Court of Appeals for the 5th Circuit (5th Circuit). As a result of the 6th Circuit’s decision, [OSHA announced that it intends to move forward with implementing](#) the ETS. OSHA indicated it will not issue citations for noncompliance with its November 5, 2021 ETS before January 10, 2022 (which is now the deadline for employers to, among other things, develop their written COVID-19 vaccination policies). Further, if an employer is exercising reasonable, good-faith efforts to come into compliance with ensuring its employees are fully vaccinated or submit to weekly testing, OSHA will not issue citations for any employees who are not fully vaccinated before (or, if the employer is not testing, prior to) February 9, 2022. The Supreme Court will hear this case in January of 2022.

If you have any questions on any of the topics above and their implications for employers, reach out to your Alera Group office or email us at info@alera.com to be connected with an expert.



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