



# Health and Welfare Plan Compliance Checklist 2024

- **ERISA Disclosure Requirements**, including

- Plan document
  - Compliant with content requirements
- Summary plan description (SPD)
  - Compliant with content regulations
  - Compliant with claims procedure regulations
  - Compliant with style and format regulations
- Wrap plan document and wrap SPD (as needed)
- Summary of material modifications or reductions (SMM or SMR) (if applicable)
- Summary of benefits and coverage (SBC) (templates and CLAS County Data to be updated for 2025)
- Use compliant distribution methods (mail, in-person, or electronic)
- Comply with foreign language requirements (e.g., ERISA/SPD and ACA/SBC (CLAS County Data to be updated for 2025))
- Amend plan document and SPD, as necessary, to reflect status of any changes made to plan terms as permitted or required by COVID-19 legislation and agency guidance

- **ERISA Reporting Requirements**, including

- Form 5500 filings
- Summary annual report (SAR)
- Form M-1 (for multiple employer welfare arrangements)

- **IRS Non-Discrimination Testing**, including

- IRC § 105(h) for self-funded plans
- IRC § 125 for cafeteria plans
- IRC § 129 for dependent care assistance programs
- IRC § 79 for group term life insurance

- **Annual and New Hire Notice Requirements**, including

- Women's Health and Cancer Rights Act notice
- Newborns' and Mothers' Health Protection Act notice
- Notice of special enrollment rights under HIPAA
- CHIP notice
- Medicare Part D creditable/non-creditable coverage notice
- Michelle's Law notice
- Initial COBRA notice (new hire)
- Employer Notice to Employees of Coverage Options (Notice of Exchange) (new hire) (recently updated)
- HIPAA Notice of Privacy Practices (if plan is self-funded, including health FSA, every 3 years)
- HIPAA and ADA wellness program notices (if applicable)
- Notice of grandfathered status (if applicable)
- Notice of Patient Protections (if applicable)
  - If applicable, add to grandfathered plans (CAA)
- Mental Health Parity and Addiction Equity Act (MHPAEA) notice (if applicable)
- Best practice: Create contribution schedules and enrollment/waiver forms that address ACA shared responsibility reporting requirements

- **Consolidated Appropriations Act, 2021 (CAA),** including
  - Rx Reporting (RxDC): Prepare to timely report on pharmacy benefits and drug costs
    - Contract with carrier or TPA
    - File annual report (June 1)
  - On-Line Price Comparison Tool: Create on-line price comparison tool (also mandated by TiC Final Rule)
- Update plan documents, as necessary
  - Expand covered items and services included in 2024
  - ID Cards: Update ID cards and distribute
- Provider Directories: Create protocol to timely verify network status, create protocol to respond to inquiries, create on-line database, and update printed directories
  - Update claims procedure manuals
  - Update plan documents, as necessary
- Balance Billing Disclosure: Modify model form and make balance billing disclosure publicly available, post on public website of plan, and include in certain EOBs (use newest template)
- Surprise Billing: For limitations on surprise billing for emergency services, non-emergency services, ancillary care, and air ambulance services
  - Update plan documents, as necessary
  - Update claims procedure manuals and notices/EOBs
  - Apply patient protection rules, if applicable, to grandfathered plans
  - Apply emergency services billing restrictions to grandfathered plans and update for non-grandfathered plans
  - Implement new rules for Independent Dispute Resolution (IDR) system
- Air ambulance reporting: Prepare to timely report (awaiting final guidance)
  - Contract with carrier or TPA
- Advanced Explanation of Benefits (AEOB) (delayed)
  - Create infrastructure and forms
- Update plan documents, as necessary
- Update claims procedure manuals
- Continuity of care:
  - Update plan documents, as necessary
  - Update claims procedure manuals and notices
  - Create notice of termination of provider/facility
- Mental health parity:
  - Complete DOL MHPAEA Self-Compliance Tool
  - Perform and document comparative analyses of “non-qualitative treatment limitations” (NQTLs)
- Gag clauses:
  - Update contracts to remove gag clauses
  - File annual attestation (December 31)
- Covered service provider (providing consulting or brokerage services) disclosure
  - Follow up with covered service providers to request disclosures
  - Review fiduciary responsibilities and implement procedures for selecting and monitoring service providers
- **ACA Reporting, Disclosure, and Compliance Obligations,** including
  - Notice of grandfather status and Notice of Patient Protections (if applicable)
  - Updated claims appeal language and processes for health and disability benefits
  - Determination of whether employer is an “applicable large employer” (ALE)
    - Application of IRS aggregated (control) group rules
  - ALE tracking and reporting (IRS Forms 1094/1095)
    - Where required, distribute and file data/forms for state individual coverage mandate (e.g., CA (FTB), DC, MA, NJ, RI, VT)
  - ALE shared responsibility penalties (§4980H(a) and (b) penalties)
    - Structure benefits to avoid penalties (offer “minimum essential coverage” (MEC) that is “affordable” and “minimum value” (MV))
    - Choose affordability safe harbor and calculate affordable contributions
    - Determine full-time status of “common law” employees
    - Establish full-time status measurement methodology and track employees
  - Update plan document and SPD to include eligibility language explaining measurement methodologies, other eligibility terms, and employee contributions
  - Summary of benefits and coverage (SBC) (templates and CLAS County Data to be updated for 2025)
  - Compliant waiting period
  - Patient-Centered Outcomes Research Institute Fee (PCORI) and IRS Form 720
  - W-2 reporting
  - Medical loss ratio (MLR) rebates and ERISA plan asset rules
  - Update plan limits annually (e.g., HSA contribution limits, HDHP deductible & out-of-pocket limits)
  - Transparency in Coverage (TiC) Final Rule
    - Create three machine-readable files (MRFs) and an on-line self-service tool
    - Contract with carrier or TPA
    - If plan has a public website, post a link to MRFs
  - Non-discrimination rules for fully insured plans (awaiting guidance)

- **HIPAA Privacy, Security, and HITECH Requirements**, including
  - Appoint Privacy and Security Officer(s)
  - Assess how protected health information (PHI) and electronic PHI (ePHI) is created and received
  - Conduct an ePHI risk analysis
  - Draft and implement Privacy and Security policy and procedure manuals
  - Draft and distribute Notice of Privacy Practices (if self-funded, every 3 years)
  - Execute business associate agreements
  - Conduct staff training
  - Safeguard PHI and ePHI
  - Draft data breach notification procedures and incident response plan
  - Regularly update Security procedures and safeguards
  - Establish firewall between plan PHI and employment functions
  - Coordinate with California and other state privacy laws
- **Cafeteria Plan Compliance**, including
  - Plan document
  - Summary plan description (for health FSA)
  - Update contribution limits annually
  - Draft and implement annual election process and documentation (including CA A.B. 1554)
  - Perform IRS non-discrimination testing (including IRC § 125)
  - Administer consistent with mid-year election change restrictions
  - Amend plan document and SPD, as necessary, to reflect any changes made to plan terms as permitted by COVID-19 legislation and agency guidance
- **Additional Compliance Challenges**, including
  - COVID-19
  - ERISA fiduciary, prohibited transaction, and plan asset rules
    - Coordinate (and document) responsibilities with vendors; audit and benchmark services
  - Control/aggregated groups
  - Annual CMS Disclosure for Medicare Part D
  - COBRA and state mini-COBRA laws (e.g., Cal-COBRA)
  - Health savings accounts (HSAs)
  - Voluntary plans
  - Excepted and ancillary benefits
  - Wellness programs
  - Employee assistance programs (EAP)
  - Educational assistance programs
  - Fringe benefits
  - Imputed income
  - Application of municipal ordinances (e.g., San Francisco Health Care Security Ordinance (HCSO))
  - Coordinate plan terms with employee handbook, new hire packets, website, job descriptions, employment contracts and severance agreements, and open enrollment materials
  - Coordinate benefits with paid and unpaid leaves (including USERRA, FMLA, CFRA, and PDL)
  - Create documentation and record retention policies
  - Cybersecurity compliance under ERISA fiduciary and record retention rules
  - Prepare for DOL, IRS, and HHS audits
- **CalSavers:**
  - Employers with 5 or more employees must either provide a qualified retirement plan for their workers or register for CalSavers by June 30, 2022
  - Employers with 1 or more employees must either provide a qualified retirement plan for their workers or register for CalSavers by December 31, 2025