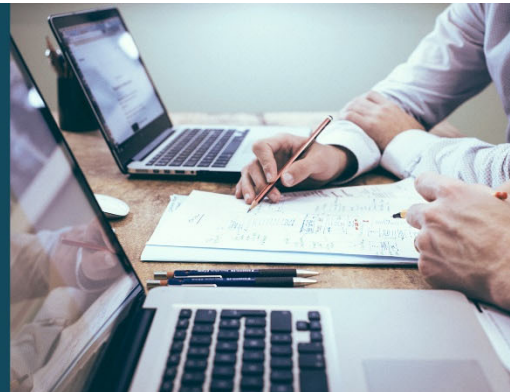




# What every HR leader should know about compliance



## Federal Requirements for Fully Insured and Self-Funded Plans

Updated January 2020

A plan sponsor’s requirements under federal law will vary depending on factors such as group health plan design, size, grandfathered status, and whether the plan is fully insured or self-funded.

The lists below highlight the main federal requirements that apply when a plan is fully insured and when a plan is self-funded.

### Plan Documents

Fully Insured Plans	Self-Funded Plans
<ul style="list-style-type: none"> <li>• Cafeteria plan document if contributions are run through a cafeteria plan</li> <li>• Summary of Material Modification, if the plan is subject to ERISA</li> <li>• Summary Annual Report, if the plan is subject to ERISA and required to file a Form 5500</li> <li>• Summary of Benefits and Coverage, if the plan is subject to ERISA</li> <li>• Plan document and Summary Plan Description (SPD) (or combination plan document/SPD or wrap plan document), if the plan is subject to ERISA</li> </ul>	<ul style="list-style-type: none"> <li>• Cafeteria plan document if contributions are run through a cafeteria plan</li> <li>• Summary of Material Modification, if the plan is subject to ERISA</li> <li>• Summary Annual Report, if the plan is subject to ERISA and required to file a Form 5500</li> <li>• Summary of Benefits and Coverage, if the plan is subject to ERISA</li> <li>• Plan document and Summary Plan Description (SPD) (or combination plan document/SPD or wrap plan document), if the plan is subject to ERISA</li> </ul>

### Affordable Care Act

Fully Insured Plans	Self-Funded Plans
<ul style="list-style-type: none"> <li>• Employer shared responsibility provisions if employer has 50 or more full-time or full-time equivalent employees (50 FTEs)</li> <li>• Elimination of pre-existing condition limitations</li> </ul>	<ul style="list-style-type: none"> <li>• Employer shared responsibility provisions if employer has 50 or more full-time or full-time equivalent employees (50 FTEs)</li> <li>• Elimination of pre-existing condition limitations</li> </ul>



## Affordable Care Act (continued)

Fully Insured Plans	Self-Funded Plans
<ul style="list-style-type: none"> <li>• Dependent child coverage to age 26</li> <li>• Lifetime and annual dollar limit prohibitions on essential health benefits</li> <li>• No rescissions of coverage except for fraud or intentional misrepresentation of material fact</li> <li>• Eligibility waiting period limits</li> <li>• Summary of Benefits and Coverage, unless the plan is a certain excepted benefit or retiree-only plan</li> <li>• Notice regarding the exchanges</li> <li>• W-2 reporting of health care coverage costs (this only applies if the employer provided 250 or more W-2s for the prior calendar year)</li> <li>• Wellness program rules</li> <li>• Employer reporting to the IRS on coverage</li> <li>• Automatic enrollment (applies only to employers with more than 200 full-time employees; requirement has been delayed indefinitely)</li> </ul>	<ul style="list-style-type: none"> <li>• Dependent child coverage to age 26</li> <li>• Lifetime and annual dollar limit prohibitions on essential health benefits</li> <li>• No rescissions of coverage except for fraud or intentional misrepresentation of material fact</li> <li>• Eligibility waiting period limits</li> <li>• Summary of Benefits and Coverage, unless the plan is a certain excepted benefit or retiree-only plan</li> <li>• PCORI Fee: The fee applies from 2012 to 2029, based on plan/policy years ending on or after October 1, 2012. Plan sponsor pays the fee.</li> <li>• Notice regarding the exchanges</li> <li>• W-2 reporting of health care coverage costs (this only applies if the employer provided 250 or more W-2s for the prior calendar year)</li> <li>• Wellness program rules</li> <li>• Employer reporting to the IRS on coverage</li> <li>• Automatic enrollment (applies only to employers with more than 200 full-time employees; requirement has been delayed indefinitely)</li> </ul>
<p>The following do not apply to grandfathered plans:</p> <ul style="list-style-type: none"> <li>• Coverage of preventive care without employee cost-sharing, including contraception for women</li> <li>• Limitations on out-of-pocket maximums</li> <li>• Essential health benefits (these apply to insured small group plans)</li> <li>• Modified community rating (applies to insured small group plans)</li> <li>• Guaranteed issue and renewal (applies to insured plans)</li> <li>• Nondiscrimination rules for fully insured group health plans (requirement has been delayed indefinitely)</li> <li>• Expanded claims and appeal requirements</li> </ul>	<p>The following do not apply to grandfathered plans:</p> <ul style="list-style-type: none"> <li>• Coverage of preventive care without employee cost-sharing, including contraception for women</li> <li>• Limitations on out-of-pocket maximums</li> <li>• Expanded claims and appeal requirements</li> <li>• Additional patient protections (right to choose a primary care provider designation, OB/GYN access without a referral, and coverage for out-of-network emergency department services)</li> <li>• Coverage of routine costs associated with clinical trials</li> <li>• Reporting to the Department of Health and Human Services (HHS) on quality of care (requirement has been delayed indefinitely)</li> </ul>



## Affordable Care Act (continued)

Fully Insured Plans	Self-Funded Plans
<ul style="list-style-type: none"> <li>• Additional patient protections (right to choose a primary care provider designation, OB/GYN access without a referral, and coverage for out-of-network emergency department services)</li> <li>• Coverage of routine costs associated with clinical trials</li> <li>• Reporting to the Department of Health and Human Services (HHS) on quality of care (requirement has been delayed indefinitely)</li> <li>• Prohibition of discrimination based on health-status related factors</li> <li>• Transparency in coverage reporting and cost-sharing disclosure requirements (transparency in coverage reporting requirement for group health plans has been delayed indefinitely)</li> <li>• Nondiscrimination in health care providers requirement</li> </ul>	<ul style="list-style-type: none"> <li>• Prohibition of discrimination based on health-status related factors</li> <li>• Transparency in coverage reporting and cost-sharing disclosure requirements (transparency in coverage reporting requirement for group health plans has been delayed indefinitely)</li> <li>• Nondiscrimination in health care providers requirement</li> </ul>

## Plan Notices

Fully Insured Plans	Self-Funded Plans
<ul style="list-style-type: none"> <li>• Medicare Part D creditable coverage notice</li> <li>• Women’s Health and Cancer Rights Act notice</li> <li>• Newborns’ and Mothers’ Health Protection Act notice</li> <li>• Premium Assistance under Medicaid and CHIP notice</li> <li>• Wellness Program Notice of Reasonable Alternatives</li> <li>• Wellness Program Disclosure, if the plan is subject to ERISA</li> <li>• Wellness Program voluntary notice if the plan is subject to the ADA</li> <li>• Notice Regarding Wellness Program</li> <li>• Grandfathered Plan Notice</li> <li>• Patient Protection Notice, applicable to all non-grandfathered group health plans</li> <li>• HIPAA Notice of Privacy Practices</li> <li>• HIPAA Notice of Special Enrollment Rights</li> <li>• COBRA notices, if the plan is subject to COBRA</li> </ul>	<ul style="list-style-type: none"> <li>• Medicare Part D creditable coverage notice</li> <li>• Women’s Health and Cancer Rights Act notice</li> <li>• Newborns’ and Mothers’ Health Protection Act notice (or opt out notice)</li> <li>• Premium Assistance under Medicaid and CHIP notice</li> <li>• Wellness Program Notice of Reasonable Alternatives</li> <li>• Wellness Program Disclosure, if the plan is subject to ERISA</li> <li>• Wellness Program voluntary notice if the plan is subject to the ADA</li> <li>• Notice Regarding Wellness Program</li> <li>• Grandfathered Plan Notice</li> <li>• Patient Protection Notice, applicable to all non-grandfathered group health plans</li> <li>• HIPAA Notice of Privacy Practices</li> <li>• Notice to Enrollees regarding Opt-Out</li> <li>• HIPAA Notice of Special Enrollment Rights</li> </ul>



## Plan Notices (continued)

Fully Insured Plans	Self-Funded Plans
<ul style="list-style-type: none"> <li>• National Medical Support Notice, if the plan is subject to ERISA</li> <li>• Michelle’s Law Enrollment Notice, if the plan is subject to ERISA</li> <li>• Mental Health Parity and Addiction Equity Act (MHPAEA) notices, if the plan is subject to ERISA</li> <li>• Employer Notice to Employees of Coverage Options, if the plan is subject to ERISA</li> <li>• Summary of Benefits and Coverage Notice, if the plan is subject to ERISA</li> <li>• Internal Claims and Appeals and External Review Notices, applicable to all non-grandfathered group health plans</li> <li>• External Review Process Disclosure, applicable to all non-grandfathered health plans, only if no state process applies and is binding</li> <li>• Employer Notice to Employees of Coverage Options available through the Exchange, applicable to all employers subject to the Fair Labor Standards Act</li> <li>• Advance notice to each participant who will be affected by a rescission of coverage</li> <li>• DOL claims procedure notices</li> <li>• Notice of rebate for failure to meet medical loss ratio (MLR) standards</li> </ul>	<ul style="list-style-type: none"> <li>• COBRA notices, if the plan is subject to COBRA</li> <li>• National Medical Support Notice, if the plan is subject to ERISA</li> <li>• Michelle’s Law Enrollment Notice, if the plan is subject to ERISA</li> <li>• Mental Health Parity and Addition Equity Act (MHPAEA) notices, if the plan is subject to ERISA</li> <li>• Employer Notice to Employees of Coverage Options, if the plan is subject to ERISA</li> <li>• Summary of Benefits and Coverage Notice, if the plan is subject to ERISA</li> <li>• Internal Claims and Appeals and External Review Notices, applicable to all non-grandfathered group health plans</li> <li>• External Review Process Disclosure, applicable to all non-grandfathered health plans, only if no state process applies and is binding</li> <li>• Employer Notice to Employees of Coverage Options available through the Exchange, applicable to all employers subject to the Fair Labor Standards Act</li> <li>• Advance notice to each participant who will be affected by a rescission of coverage</li> <li>• DOL claims procedure notices</li> </ul>

## Government Filings

Fully Insured Plans	Self-Funded Plans
<ul style="list-style-type: none"> <li>• Form 5500, if subject to ERISA, unless an exemption applies</li> <li>• Employer reporting to the IRS on coverage (insurer will file Form 1094-B with the IRS if there are fewer than 50 FTEs; if there are 50 or more FTEs, insurer will file Form 1094-B (with copies of all Forms 1095-B) with the IRS; employer will file Form 1094-C (with copies of all Forms 1095-C) with the IRS)</li> </ul>	<ul style="list-style-type: none"> <li>• Form 5500, if subject to ERISA, unless an exemption applies</li> <li>• Employer reporting to the IRS on coverage (plan sponsor (generally the employer) will file Form 1094-B (with copies of all Forms 1095-B) with the IRS if there are fewer than 50 FTEs; if there are 50 or more FTEs, plan sponsor (generally the employer) will file Form 1094-C (with copies of all Forms 1095-C) with the IRS)</li> </ul>



## Government Filings (continued)

### Fully Insured Plans

- W-2 reporting of health care coverage costs (if the employer provided 250 or more W-2s for the prior calendar year)

### Self-Funded Plans

- W-2 reporting of health care coverage costs (if the employer provided 250 or more W-2s for the prior calendar year)
- Form 720 to report and pay the PCORI fee which applies from 2012 to 2029, based on plan/policy years ending on or after October 1, 2012.

## Other

### Fully Insured Plans

- Section 125 nondiscrimination testing if contributions are run through a cafeteria plan
- Wellness program rules
- HIPAA privacy policy and security policy
- Business Associate Agreements

### Self-Funded Plans

- Section 125 nondiscrimination testing if contributions are run through a cafeteria plan
- Section 105(h) nondiscrimination testing
- Wellness program rules
- HIPAA privacy policy and security policy
- Business Associate Agreements

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This information is general and is provided for educational purposes only. It is not intended to provide legal advice. You should not act on this information without consulting legal counsel or other knowledgeable advisors.