

UBA
Compliance Advisor

What every HR leader should know about compliance



Compliance Recap November 2021

November saw quite a bit of activity in the compliance space. Although OSHA's vaccine-or-test mandate for private employers was issued, it was immediately met with resistance in the form of lawsuits and a stay from the Sixth Circuit Court of Appeals. The mandates for federal contractors and health care workers are also facing court challenges in several states. For now, it's a waiting game to see how the mandates play out in the court system. While we wait for more news to come, here are the highlights of what happened in November.

Federal Marketplace Open Enrollment Started November 1

The federal health insurance marketplace began open enrollment for 2022 plan coverage on November 1, 2021. In an effort to boost access to affordable coverage, the marketplace open enrollment period is extended to January 15, 2022. This gives consumers an additional 30 days to review and choose a plan – historically, the open enrollment period ended on December 15.

The extended open enrollment period will be a permanent change for all individual market marketplaces using the federal eligibility and enrollment platform. State marketplaces not using the federal eligibility and enrollment platform are allowed to maintain flexibility regarding open enrollment dates, provided the end of the open enrollment period is no earlier than December 15.

For more information on the updates to the federal marketplace, see the [CMS Newsroom article](#). Find the federal marketplace at www.healthcare.gov.

IRS Issued Cost-of-Living Adjustments for 2022

The Internal Revenue Service (IRS) issued [Revenue Procedure 2021-45](#), which set forth the annual inflation-adjusted amounts for various provisions of the Internal Revenue Code for tax year 2022. The revenue procedure provides adjustments for more than 60 tax provisions, including health flexible spending accounts under cafeteria plans and qualified small employer health reimbursement arrangements.

For health flexible spending arrangement contributions, the dollar limitation on voluntary employee salary reductions is \$2,850. If the cafeteria plan allows carryover of unused amounts, the maximum carryover



amount is \$570. The revenue procedure states that for qualified small employer health reimbursement arrangements, the total amount of payments and reimbursements cannot exceed \$5,450 for self-only coverage or \$11,050 for family coverage.

Health and Human Services Announces 2021 Adjustments to Civil Monetary Penalties

The Department of Health and Human Services (HHS) announced its annual inflation-related adjustments to civil monetary penalties for 2021. The adjustments are effective for penalties assessed after November 15, 2021, for violations occurring on or after November 2, 2015. The final rule includes the indexed penalty amounts for Health Insurance Portability and Accountability Act (HIPAA) violations, Medicare Secondary Payer violations, and Summary of Benefits and Coverage violations.

The [final rule](#), published in the Federal Register, includes a table for all civil monetary penalty authorities administered by HHS.

CMS Posted Petition Process for Certification of Independent Dispute Resolution Entities

The Centers for Medicare and Medicaid Services (CMS) posted its online form for interested independent dispute resolution entities to apply for certification. Applicants can [apply online](#) and submit documentation to show the required experience and staffing to adjudicate cases. Once an applicant is determined to meet the minimum qualification standards, they will be subject to a public petition period of five business days. This public petition period allows interested parties to submit a petition for denial of the application for certification. Anyone who wishes to petition against an entity becoming certified must complete a petition form, outline the reasons for the petition, and provide supporting documentation within the five-day period. A list of applicants for certification as independent dispute resolution entities will be posted weekly on the [CMS feedback page](#).

IRS Released Proposed Regulations with ACA Reporting Relief

The Internal Revenue Service (IRS) released [proposed regulations](#) affecting reporting requirements under the Affordable Care Act (ACA). The proposed regulations make permanent a 30-day automatic extension for furnishing Forms 1095-B and 1095-C to individuals. These forms were originally due January 31, but will now be due on March 2 (or the next business day if March 2 falls on a weekend or holiday). Note that the proposed regulations do not change the due dates for submission to the IRS.

The proposed regulations also confirm the end of the transitional good-faith relief from penalties for ACA reporting, beginning for tax year 2021. The IRS will begin assessing penalties arising from incorrect or incomplete ACA reporting, as well as failure to file with the IRS and failure to furnish forms to individuals. The penalty for the 2021 reporting year is \$280 per return.

Also included in the proposed regulations is an alternative manner of providing Forms 1095-B and 1095-C to part-time employees and non-employees (such as former employees). These forms do not need to be automatically provided if the furnisher posts a clear and conspicuous notice on its website indicating the availability of the forms upon request. The notice must explain how to request a copy of the form and contain contact information for the reporting entity. Forms must be provided within 30 days of the request. This alternative manner of providing forms will only apply to tax years when the shared responsibility payment is \$0.



In Case You Missed It

UBA released the following Compliance Advisors in November:

- [What Employers Should Know About the OSHA Vaccine Emergency Temporary Standard](#)
- [Departments Issue Interim Final Rule on Group Health Plan Cost and Pricing Disclosure](#)
- [2022 Compliance Calendar](#)

UBA also updated the [Annual Benefit Plan Amounts Card for 2022](#).

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