Medcom
BENEFIT SOLUTIONS

BENEFITS LEADER

Your Guide to Health & Welfare Compliance

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IN THIS ISSUE

HIPAA & REPRODUCTIVE HEALTH RIGHTS
A BATTLEGROUND FOR PRIVACY

Michelle Barki, RN, JD, Senior Legal Counsel

In the wake of the Supreme Court's Dobbs v. Jackson Women's Health Organization ruling, which overturned Roe v. Wade, the protection of reproductive privacy and patient-doctor privilege has become a paramount concern. The Department of Health and Human Services (HHS) responded by issuing new HIPAA regulations designed to bolster safeguards for reproductive health information.

These regulations, finalized in July 2024, prohibit covered entities, including healthcare providers, health plans, and their business associates, from using or disclosing protected health information for specific purposes related to reproductive healthcare. This includes conducting investigations or imposing liability on individuals for seeking, obtaining, providing, or facilitating reproductive care as long as such care is lawful under the circumstances. Additionally, the regulations prohibit the identification of any person for the purpose of such investigations or liability.

KEY IMPLICATIONS

- **Cross-state privacy:** Individuals seeking reproductive care in states with restrictive laws can now maintain privacy in their home state.
- **Provider/Health Plan obligations:** Covered entities must undergo training on the new regulations, update their Notices of Privacy Practices, and attest to compliance when responding to disclosure requests.
- **Texas lawsuit:** The State of Texas has challenged HHS's authority, arguing that the HIPAA statute preserves state investigative powers. The case is currently pending in federal court.

The outcome of the Texas lawsuit will significantly impact the scope of reproductive health protections. If Texas prevails, it could undermine the federal government's ability to safeguard reproductive privacy through HIPAA

As the new HIPAA requirements approach their effective date in December 2024, the ongoing uncertainty highlights the complex legal landscape surrounding reproductive rights. The battle over reproductive privacy continues to unfold, with significant implications for individuals seeking healthcare across the United States.

A BRIEF WORD OF CAUTION (FROM AI) CONCERNING AI

AI Generated Content

As artificial intelligence (AI) becomes increasingly integrated into our daily lives, it's tempting to view it as a panacea for complex challenges, including employee benefit plan compliance. However, while AI has made significant strides, it's crucial to approach its use in this domain with caution.

AI, despite its impressive capabilities, lacks the nuanced understanding and adaptability required to navigate the intricate landscape of employee benefit plan regulations. These regulations are constantly evolving, and their interpretation often requires a deep understanding of legal, tax, and actuarial principles.

To illustrate this point, we tasked a popular AI program with composing the poem below on the topic of AI and employee benefit plan compliance. While the poem demonstrates creativity, it falls short of providing practical insights or addressing the complexities of the subject matter.

While AI can be a valuable tool for certain tasks, it's essential to rely on human expertise for critical matters like employee benefit plan compliance. Human advisors possess the knowledge, experience, and judgment necessary to provide accurate and timely guidance.

AI'S LIMITATIONS IN GROUP HEALTH PLAN COMPLIANCE: A POEM

Though AI's mind is vast and deep,
Its logic can be prone to sleep.
For health plan rules, complex and wide,
AI's grasp may be a bit too tied.
Regulations, a shifting tide,
AI may miss, where humans abide.
Nuances, exceptions, case by case,
AI may overlook, a risky chase.
While AI aids in tasks mundane,
For compliance, it cannot sustain.
A human touch, a legal mind, Is what compliance truly finds.

AI Generated Content

A GUIDE TO PREVENTIVE CARE UNDER THE ACA

Michelle Barki, RN, JD, Senior Legal Counsel

The Affordable Care Act (ACA) has significantly expanded access to preventive services. One of its key provisions requires health insurance plans to cover certain preventive services without cost-sharing. However, the landscape has been evolving, influenced by both policy decisions and legal challenges.

KEY POINTS

HHS ROLE

The Department of Health and Human Services (HHS) plays a crucial role in identifying which services qualify as preventive. The agency relies on recommendations from the U.S. Preventive Services Task Force (USPSTF), Centers for Disease Control and Prevention (CDC), and Agency for Healthcare Research and Quality (AHRQ).

EXPANDED COVERAGE

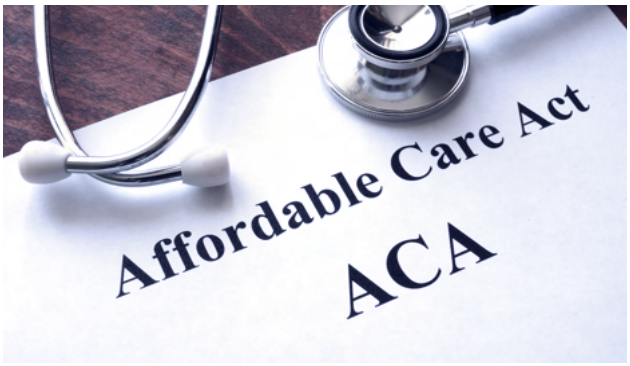
IRS Notice 2019-45 expanded the definition of preventive services to include certain chronic disease treatments. This means that treatments for conditions like diabetes, heart disease, cancer, asthma, and arthritis may now be covered without cost-sharing.

HDHP/HSA COMPATIBILITY

Preventive services do not disqualify you from participating in a High-Deductible Health Plan (HDHP) or Health Savings Account (HSA). This means you can still save for future healthcare expenses while taking advantage of preventive care.

LEGAL CHALLENGES

The appointment clause of the Constitution has led to legal challenges regarding the USPSTF's authority to recommend preventive services. While the outcome of these challenges remains uncertain, they could potentially affect the scope of preventive services covered under the ACA.



PREVENTIVE SERVICES RECOMMENDATIONS

- **CDC Recommendations:** Vaccinations, chronic disease prevention, maternal and child health, mental health, environmental health, and injury prevention
- **AHRQ Recommendations:** Chronic disease management, surgical procedures, quality of care, patient safety, and health disparities
- **USPSTF Recommendations:** Cancer screenings, cardiovascular disease prevention, immunizations, maternal and child health, mental health, and chronic disease management
  - These recommendations have been challenged under the appointment clause

The ACA's preventive health provisions have made significant strides in improving access to essential healthcare services. However, the landscape is dynamic, and it's important to stay informed about the latest developments. By understanding the key points outlined in this article, you can make informed decisions about your healthcare coverage and take advantage of the benefits offered by preventive care.

CYBERSECURITY: FIDUCIARY OBLIGATION FOR WELFARE PLANS

Michelle Barki, RN, JD, Senior Legal Counsel

On September 6, 2024, The Department of Labor (DOL) made a significant declaration: Cybersecurity is a fiduciary obligation under the Health Insurance Portability and Accountability Act (HIPAA). This means that healthcare plan fiduciaries, such as trustees, plan administrators, and investment managers, are responsible for protecting the security and confidentiality of plan participants' protected health information (PHI).

The DOL's ruling underscores the critical importance of cybersecurity in healthcare. A breach of PHI can have devastating consequences for individuals, including identity theft, financial loss, and emotional distress. By recognizing cybersecurity as a fiduciary duty, the DOL is holding healthcare plan fiduciaries accountable for ensuring that adequate measures are in place to protect PHI.

This ruling has implications for healthcare organizations of all sizes. It is essential for fiduciaries to conduct regular risk assessments, implement robust security measures, and provide ongoing training to employees on cybersecurity best practices. By taking these steps, healthcare organizations can help to protect the privacy and security of their plan participants' PHI and fulfill their fiduciary obligations under HIPAA.

MENTAL HEALTH PARITY & ADDICTION EQUITY ACT

Michelle Barki, RN, JD, Senior Legal Counsel

The Mental Health Parity and Addiction Equity Act (MHPAEA) is not new. It was signed into law in 2008, and the first rules went into effect in 2013. It was intended to prevent group health plans and insurance carriers that provide coverage for mental health and/or substance abuse disorders from imposing less favorable benefit limitations on those benefits than they do for medical/surgical benefits. There are two broad categories of limitations that are prohibited:

1. **Quantitative Treatment Limitations (QTL):** These are financial limitations such as co-payments, deductibles, and out-of-pocket limits.
2. **Non-Quantitative Treatment Limitations (NTQL):** These are more abstract but do restrict coverage (stricter pre-certification and concurrent review guidelines, limited treatments available, scant providers, and more stringent credentialing and payment rates of providers). Both QTLs and NQTLs may hinder participants from receiving the necessary treatment.

In their MHPAEA Comparative Analysis Report to Congress dated July 2023, the three agencies (treasury, Department of Labor, and Department of Health and Human Services), reported that mental illness in the United States is staggering, especially following COVID-19. In addition, we only have to listen to news reports to realize that social media has affected the well-being of children. In this report to Congress, the Departments found that in 2021, over 20% of adults in the United States (50 million people) were estimated to have experienced mental illness. COVID-19 deleteriously affected healthcare workers, with 34% of nurses and 25% of physicians saying they were clinically depressed and 2/3 saying they were colloquially depressed. Teachers were not spared either. In January 2022, 28% of teachers and principals reported depression. In short, no one was spared.

Article continues on next page.

If the adult population is suffering, so are the children. Even before the pandemic, 15% of children between 12-17 experienced at least one major depressive episode, and 10.6% experienced severe depression. Suicide rates have also increased in our children (Id. P 10)

MHPAEA is supposed to address these concerns and ensure that treatment is readily available. However, there have been roadblocks. Prior to 2021, the responsibility for doing quantitative analysis fell to the Departments. It was expensive and time-consuming, and few analyses were provided. No one passed. That changed with the Consolidated Appropriations Act of 2021 (CAA). Under the CAA, health plans and carriers are now responsible for performing and documenting comparative analysis of the plan design and application of their NQTLs. Upon demand, the plans and carriers must provide this analysis to the Departments. It also requires the Departments to report to Congress annually on their enforcement activity and results.

Needless to say, analyses are complex, time-consuming, and expensive. The DOL, which has been charged with reviewing plans, has focused on leads from state and federal agencies, media reports, and private litigation to pinpoint plans to audit. In addition, they have concentrated on the larger carriers where several plans are affected. The results to date have not been favorable. The last three years showed no successful analysis or plans that passed, but there have been some improvements.

Realizing that changes need to be made, the DOL introduced new rules in 2024 that will go into effect on a bifurcated basis in 2025 and 2026. A brief outlook of these changes appears in the table below.

The Mental Health Parity and Addiction Equity Act (MHPAEA) represents a significant step forward in addressing the longstanding disparities in mental health and substance use disorder (MH/SUD) benefits. By requiring parity between mental health and substance use disorder benefits and medical/surgical benefits, MHPAEA has helped to ensure that individuals have access to the care they need to manage their conditions. MHPAEA has led to better health outcomes for individuals with mental health and substance use disorders. By reducing barriers to treatment, individuals are more likely to receive the care they need to manage their conditions and improve their quality of life. MHPAEA has contributed to the overall social well-being of individuals and communities. By addressing mental health and substance use disorders, MHPAEA helps to create a more supportive and inclusive society for all.

The Mental Health Parity and Addiction Equity Act is a critical piece of legislation that has had a significant impact on the lives of individuals with mental health and substance use disorders. By ensuring parity in benefits and improving access to treatment, MHPAEA has helped to address a longstanding public health crisis. As we continue to address the challenges of mental health and substance use disorders, MHPAEA will remain an important tool for promoting the well-being of individuals and communities.

PLAN YEARS COMMENCING 2025	• Updated definitions of terms such as medical/surgical benefits, mental health benefits, and substance use disorders by removing reference to state guidelines • Requirement to adhere to current version of independent medical standards as outlined in DSM and ICD • ERISA fiduciary certification of prudent process in selecting Comparative Analysis Vendor
PLAN YEARS COMMENCING 2026	Meaningful benefits/core treatment requirements: "meaningful benefit," a plan must provide at least one "core treatment" for every MH/SUD condition covered in a classification. e.g., for eating disorders, nutritional counseling for eating disorders. • Prohibition of discriminatory factors and evidentiary standards • Evaluation of outcomes data • Heightened comparative analysis requirements • Ensure that individuals have access to a sufficient number of qualified mental health and substance use disorder providers in their geographic area • Facilitate continuity of care by allowing individuals to see their preferred providers, including out-of-network providers, if necessary

GETTING READY FOR 2025
MEDCOM TRAINING INITIATIVES

Medcom has always prided itself on empowering our broker partners with industry-leading education, and we're thrilled to announce our 2025 initiatives, designed to elevate our training and support for our broker partners even further. Coming in the new year, we're launching several new on-demand paid services and subscription options, bringing you even more flexibility and access to critical compliance knowledge.

ON THE ROAD TO COMPLIANCE

February 6 - March 6, 2025

Embark on a journey to total benefits compliance with Medcom's 5-part training program designed for brokers looking to boost their compliance knowledge! Register between now and January 5, 2025 and take advange of our **Cyber Season Savings**!

LEARN MORE

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Every other Thursday starting January 23, 2025

For just **$99**, enjoy six months of access to **10-12 expert-led webinars** that cover the latest developments in employee benefit compliance. Choose the subscription that best suits your needs.

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Series starts 1/23/25

REGISTER NOW FOR Q3/Q4

Series starts 7/10/25

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Virtual training to help your clients protect health information privacy and security.

LEARN MORE

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COMPLIANCE TRAINING SERIES FOR HR PROFESSIONALS

On-Demand

Stay ahead in compliance with this expert-led training for HR professionals, covering ERISA, COBRA, FMLA, ACA, and more requirements.

LEARN MORE

Registration coming soon.

UPCOMING DEADLINES

JANUARY 31

DISTRIBUTE 1095-B & 1095-C FORMS (IF APPLICABLE)

IRS Form 1095-B: Reports the type of health insurance coverage employees have, dependents covered by the policy, and the period of coverage for the prior year — used to verify that employees and dependents had minimum essential coverage.

IRS Form 1095-C: The Affordable Care Act requires employers with 50+ full-time equivalent employees to offer health insurance to full-time employees and their dependents. This form serves as an annual statement employers should send to employees eligible for coverage, describing the insurance available.

FEBRUARY 28

DEADLINE TO FILE PAPER ACA FORMS 1094-C & 1095-C

MARCH 1

HIPAA BREACH EMPLOYEE NOTIFICATION & FORM M-1 FILING DEADLINE

- The **HIPAA Breach Notification** rule requires HIPAA-covered entities and their business associates to provide notification after a breach of unsecured protected health information. Notifications must be submitted to the Secretary
- **Form M-1:** Report information regarding a multiple employer welfare arrangement (MEWA) and any entity claiming exception (ECE).

MARCH 2

CREDITABLE COVERAGE DISCLOSURE TO CMS (FOR CALENDAR YEAR PLANS)

Entities that provide prescription drug coverage for self-administered drugs to Medicare Part D eligible individuals must report to CMS whether the coverage is "creditable prescription drug coverage." The disclosure is required regardless of whether the entity's coverage is primary or secondary to Medicare.

All Forms 1099-MISC (for reporting miscellaneous income other than non-employee compensation) must be filed with the IRS electronically by this date. Ensure that all relevant income, such as rent or payments to attorneys, is reported accurately.

MARCH 31

DEADLINE TO FILE ACA FORMS 1094-C, 1095-C ELECTRONICALLY

Employers must electronically file Forms 1094-C and 1095-C to report health insurance coverage offered to employees (if applicable under ACA).

CONSUMER DRIVEN HEALTH PLANS

ACA EMPLOYER REPORTING

HIPAA PRIVACY & SECURITY

COBRA PREMIUM BILLING ADMINISTRATION

GOVERNMENT HEALTHCARE PROGRAMS

HEALTH & WELFARE COMPLIANCE

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