



Developing a Holistic Approach to Employee Benefit Administration

A FORUM FOR EB INNOVATORS

February 22, 2024



Disclaimer

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A close-up photograph of two men in business suits shaking hands. The man on the left is wearing a blue suit jacket and a silver watch. The man on the right is wearing a dark suit jacket and a black watch. The background is blurred, showing an indoor setting with warm lighting.

Agency Introductions

ATTENDEES/PROFILES/AGENCY ORGANIZATION

Meet the Experts

Michael Bracken
President, Medcom
Benefit Solutions



Derek Ashton, CEBS
Strategic Client
Relationship Consultant



Michelle Barki, RN, JD
Senior Legal Counsel,
Health and Welfare
Compliance Director



Meagan Hendrix
Managing Senior
Advisor, Health and
Welfare Compliance

Daniel Vanek
Regional Sales Rep

Evelee Lloyd
Business Development
Specialist

Joseph Ramsey
Senior Account
Executive, CDHP

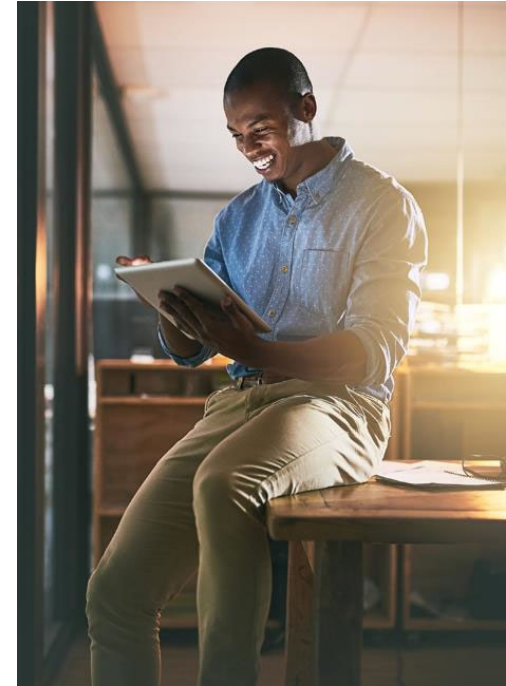
Tom Neal
ACA Sales Specialist



Bobby Randolph
Chief Technology Officer

Missy Brown
COBRA Director

Meet the Team



Special Guests:

Ellen Kelbert
Career & Talent
Development
Consultant

Pascale Head
Photographer/
Videographer



Crystal Kirk
ACA Director

Christy Crow
CDHP Director

Skylar Ozanne
Senior Project Manager





Break

Day 1 Agenda

1. ACA & Increasing IRS Activity
2. Compliance Communication That Inspires Client Action
3. Bridging the Compliance Gap
4. Medcom Technology Roadmap
5. Dealing with the ACA Back-Filing Challenge
6. Johnson & Johnson Class Action Complaint: What Brokers Need to Know
7. EB Agency Operations - Best Practices Discussion



ACA & Increasing IRS Activity

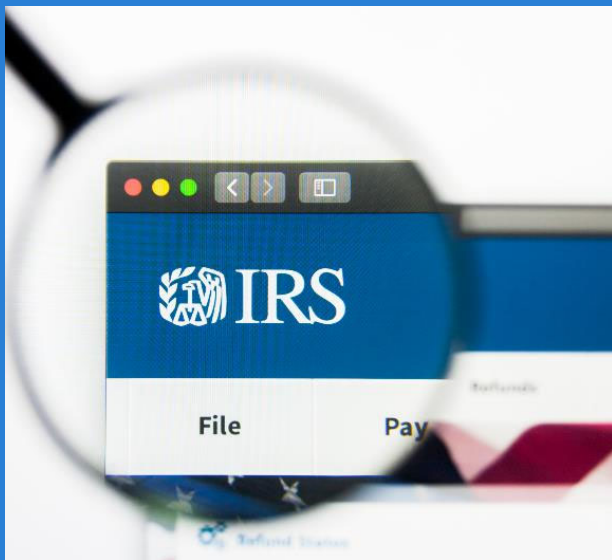
Presented by: Michelle Barki & Tom Neal



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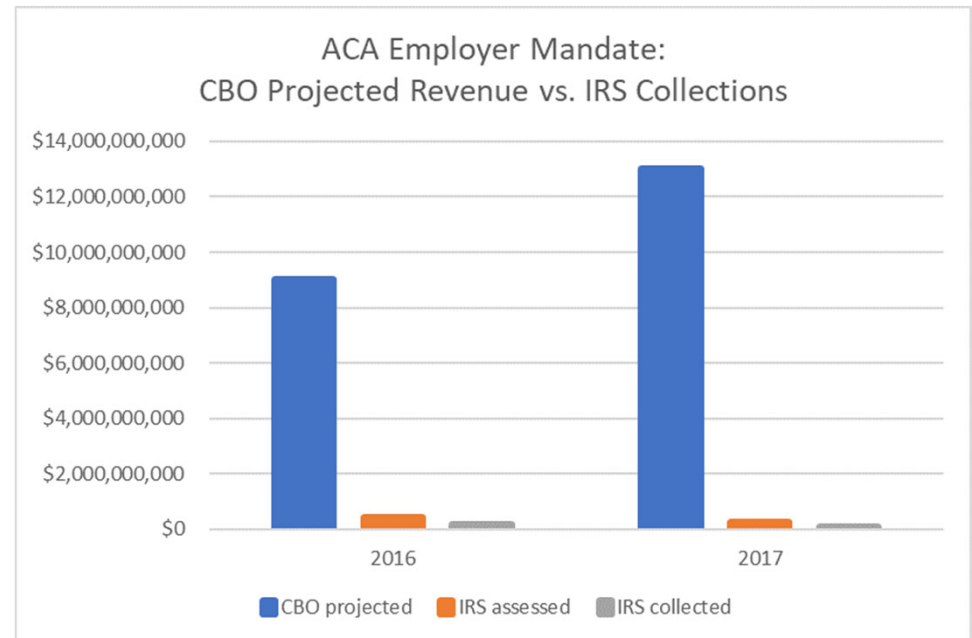
IRS Mission Statement



Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Original Plan For ACA: Pay for Itself

- The CBO originally stated that for tax years 2015 and 2016, they would collect \$17 BILLION in ESRP penalties
- They estimated an additional \$167 billion over the next ten years
- IRS was confident they could collect this money
- 5699 and 226J Letters were mailed
- Right from the start, the money was not rolling in
- A report from the White House in 2021 showed that only 1% of the projected income has been recovered



Treasury Inspector General For Tax Administrator



- All IRS shortcomings, when it came to collections, we're reported to Congress on June 10, 2020
- Believed that under current assessment rate, they would collect only 8 billion of the 167 billion forecasted
- Resulted in tougher procedures and more attempts by IRS to collect money
- No more good faith since 2021
- No more mail-in filings that IRS could not input into systems
 - So as of 2023, filings of 10+ forms must be filed electronically including Form 1095-B for small level-funded plans
- Since start of this year, IRS has pushed on both 226Js and 5699 letters

Current and Expected Trends for 2024

What We Have Seen

- Since tax year 2021, there has been an increase in 226J letters for employer-shared responsibility penalties
 - Remember there is no Statute of Limitations
- Upswing in Letters 5699 for failure to file and furnish

Looking into 2024

- Tax year 2021 is no longer a “good faith year, so expect to see penalty letters when we correct coding for ESRP letters
 - Will require a reasonable cause determination
- Expect penalties for failure to file forms electronically, especially when employer did not timely complete Form 8508
 - Easier in first year, but in second year must prove hardship
 - Think of your smaller level-funded groups

Recommended Steps



1

Confer with client.

2

Consult with professionals.

3

Respond to IRS.

4

Implement remedies.

5

Create a plan for avoiding future challenges.

Leveraging for Prospecting & Client Retention

Educate



Offer a webinar about current state of affairs with IRS enforcement of ACA.

Inform



Notify clients about increased enforcement.

Ask tough questions



Ask all new prospects about challenges or fears.

Be a resource



Demonstrate your capabilities in helping employers mitigate ACA reporting risk.



Questions?

Compliance Communication That Inspires Client Action

Presented by: Derek Ashton & Meagan Hendrix



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Compliance Change Communication



Our goal is to help you effectively provide clear and concise messaging on a timely basis to inform your clients of important and ever-changing compliance concerns, so they are inspired to take action.

When you hear the words “compliance change,” what comes to mind?

Two Types of Compliance Change

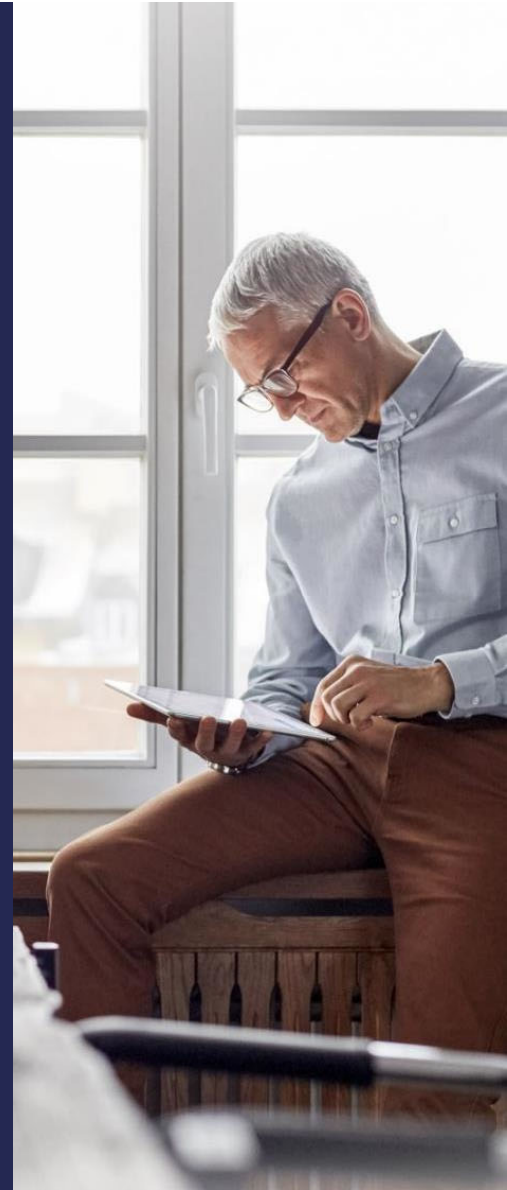
Regulatory Changes

- What changed?
- How does it affect you? the client?
- When is it effective?
- Are there options?
- What is the best way to handle compliance?

Client-Specific Changes

- What has changed/will change?
- What compliance rules apply in light of the changes?
- What is the best timing?
- Are there options/alternatives?
- What is the best way to handle compliance?

What types of communication channels do you currently use to communicate compliance changes to your clients?



How Can This Be Accomplished...

Effectively, so that clients are:

- Informed
- Inspired

AND

Efficiently, so you are:

- Maximizing time
- Maximizing value to your firm and clients



Types of Communication

Generalized

- Broadcast
- Saves time and effort

Customized

- Shows higher level of care & expertise
- More time-consuming

Compliance Change Communication Checklist



Level of detail



Simplicity of understanding



Tone



Call to action

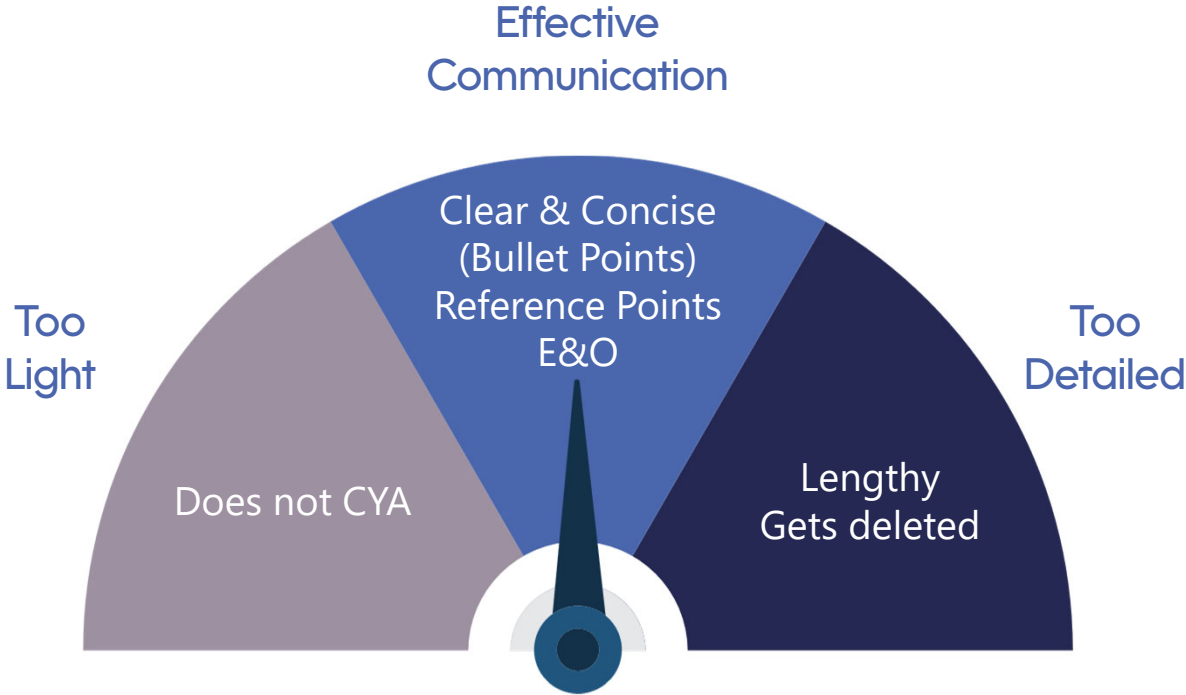


Timing & follow Up

Compliance Change Communication Checklist



Level of detail



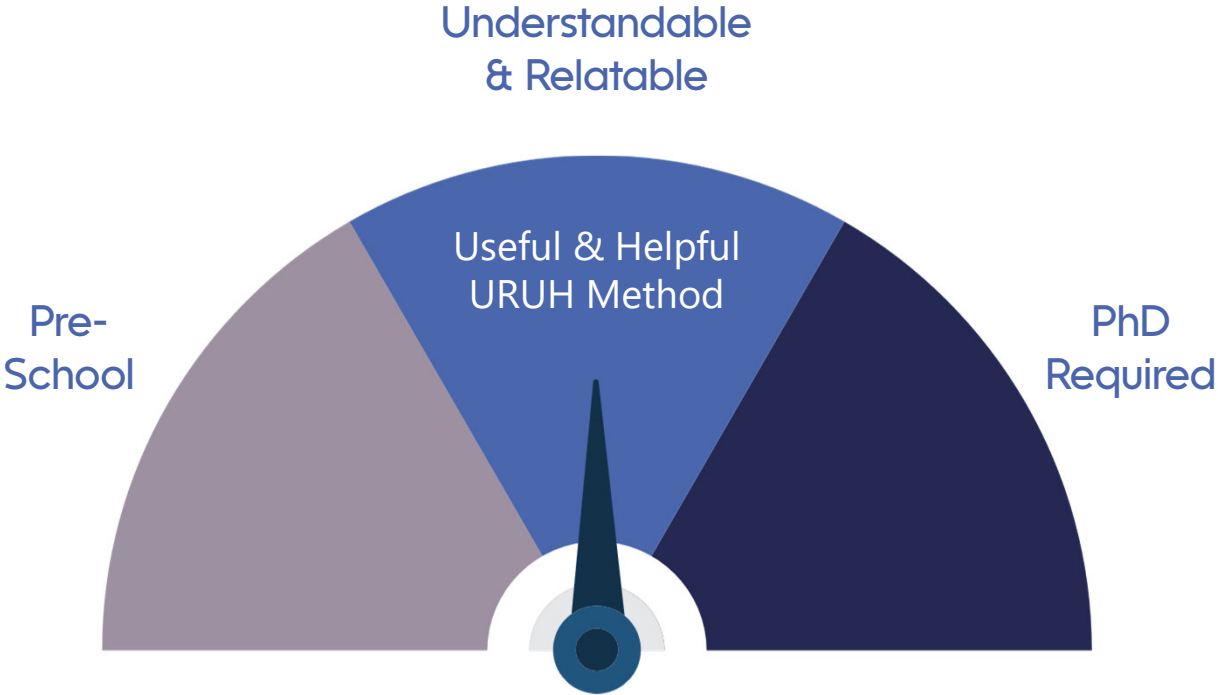
Compliance Change Communication Checklist



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Compliance Change Communication Checklist



Level of detail



Simplicity of understanding



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Compliance Change Communication Checklist



Level of detail



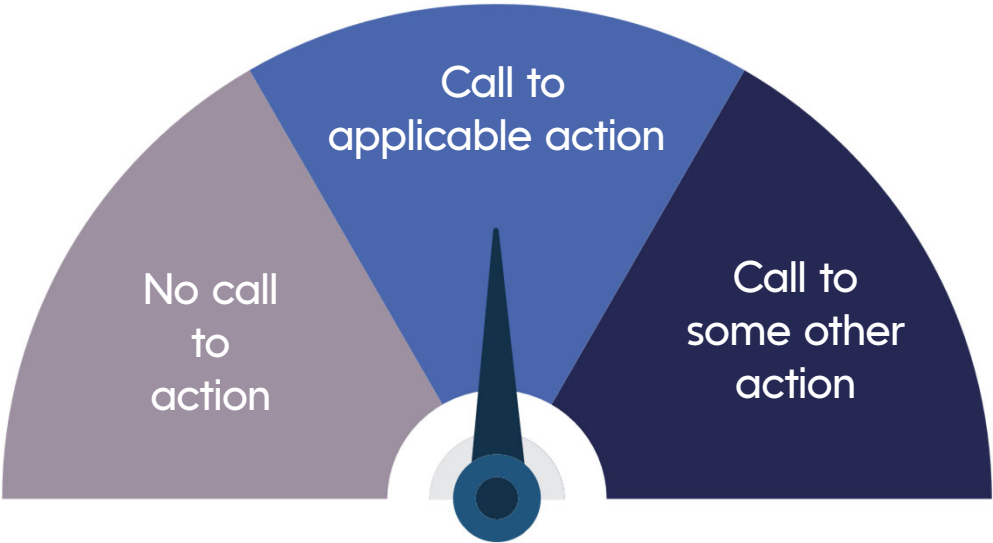
Simplicity of understanding



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Call to action



Compliance Change Communication Checklist



Level of detail



Simplicity of understanding



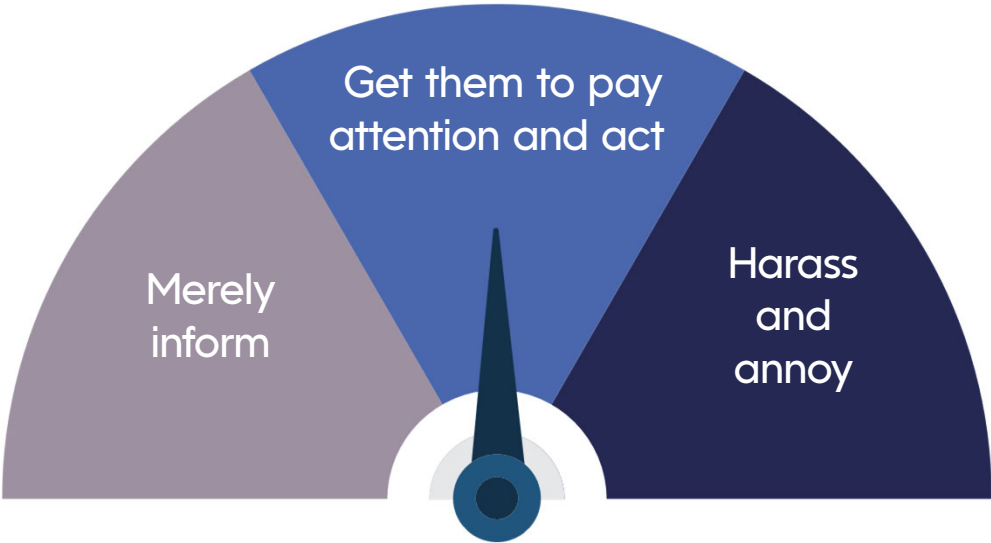
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Call to action



Timing & follow Up



When one client needs multiple things, is it better to combine communications or separate them?



Bridging the Compliance Gap

Presented by: Meagan Hendrix, Derek Ashton, &
Evelee Lloyd

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Evelee Lloyd

Business Development
Specialist & Bridge Leader
at your service!





Each attendee of this forum will receive a 25% discount on two compliance orders placed in the Bridge by 3/31/24!



Medcom



BRIDGE



"I like the Medcom Bridge because it is a one-stop shop technological platform offering multiple services to Medcom's clients. The services provided within the Bridge are limitless. It is very user-friendly and easy to navigate throughout."

– Sue Lake, The Horton Group





Questions?



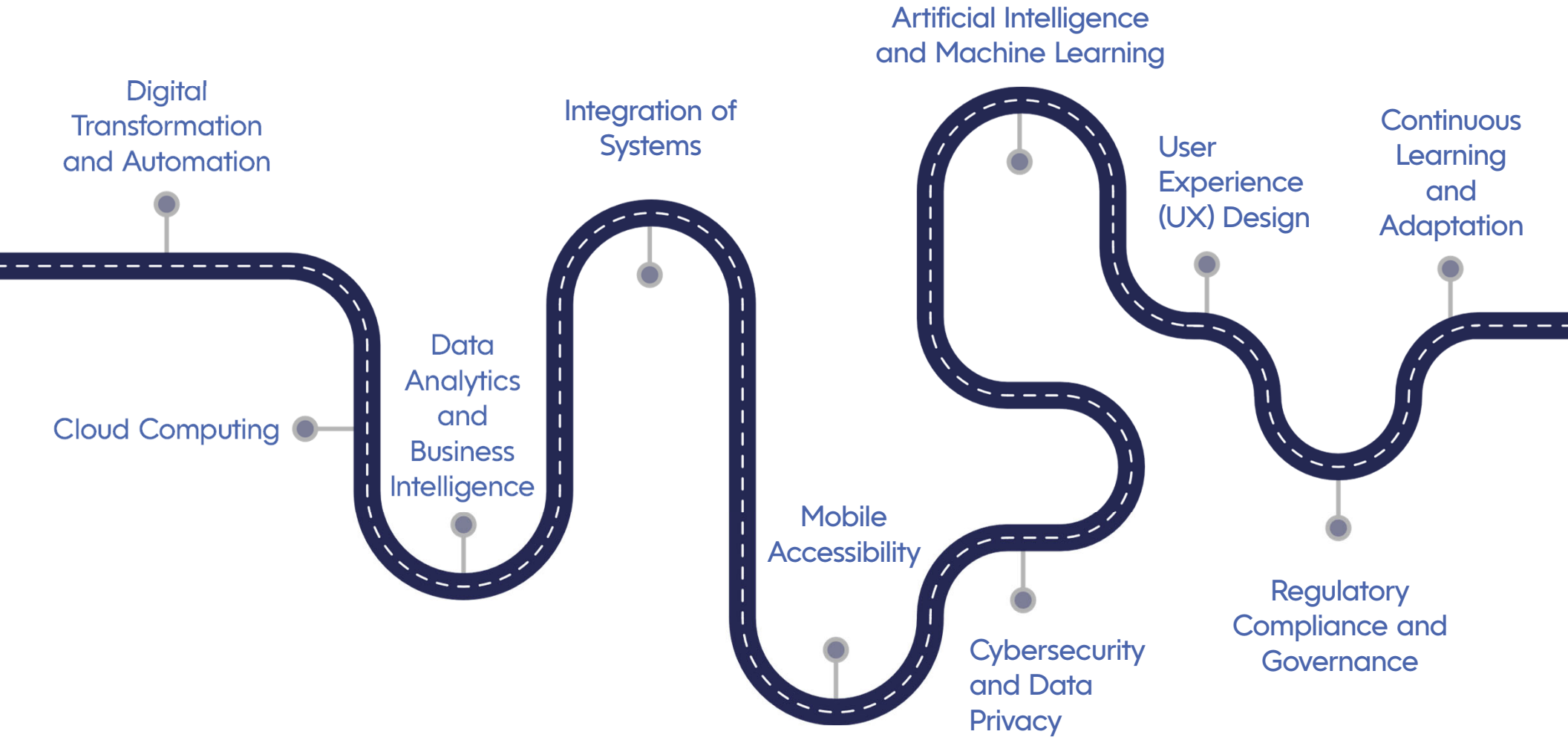
Lunch

Medcom Technology Roadmap

Presented by: Bobby Randolph



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Dealing with the ACA Back-Filing Challenge

Presented by: Crystal Kirk, Michelle Barki, & Tom Neal



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Steps for Dealing with Letter 5699 and Form 5005

1

In Form Letter 5005, IRS is asking whether the client was an ALE and whether they filed (best scenario).

2

Letter 5699 is proposed penalties (based on the number of W2 forms).

3

Determine whether client needed to file for that year. ALE status is based on prior year employee count. If not an ALE, show proof. DO THE CALCULATIONS.

4

If client qualified as ALE, did they file, either electronically or by mail (and do they have a return receipt?) Were they under 250 forms? Did they file a waiver with Form 8508?

5

They were an ALE and did not file, now what?

Three-Prong Approach



Complete Back Filings

Medcom handles back filings and provides letter indicating engagement to forward to IRS (good if you get inquiring letter 5005)
Payroll companies are not always equipped to do back filings



Assess Reasonable Cause Determination

This is used if you get form letter 5699.

Medcom will write a reasonable cause determination based on facts and circumstance (included in back filing pricing).

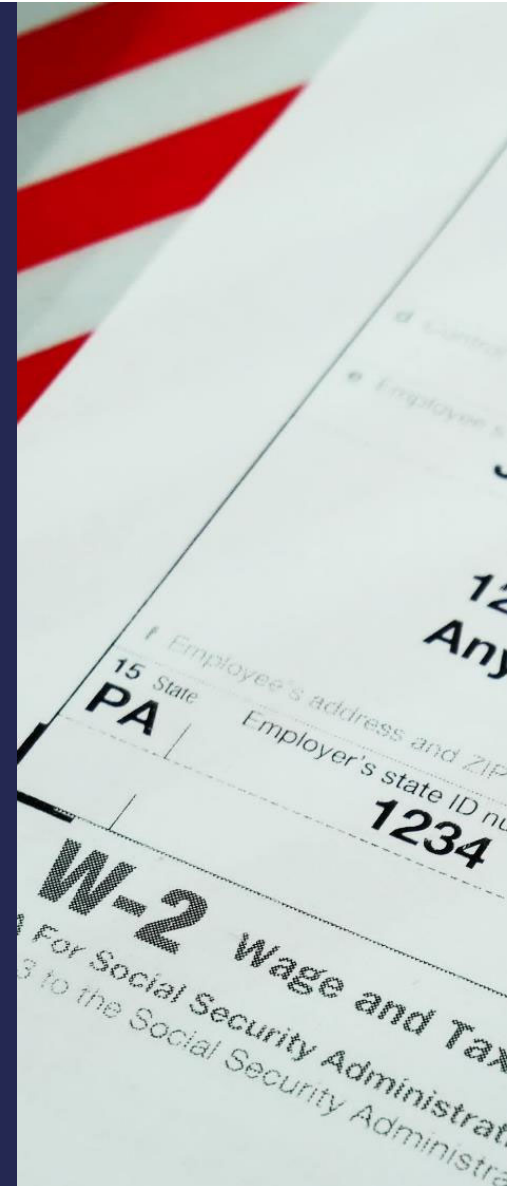


Determine Actual Penalties

If all else fails, determine actual penalties. This can be done by back filing and penalties can be substantially reduced since now based on actual forms and full-time employee count, not on total W-2 employees.

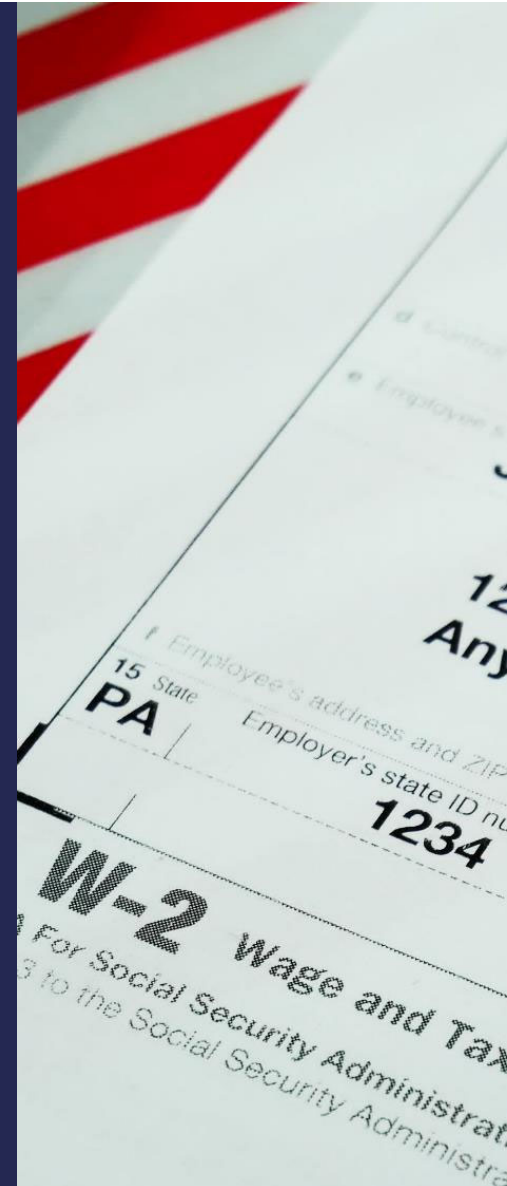
What is Reasonable Cause and Section 6724?

- Reasonable Cause determination is the same as for employers who need to file and furnish W-2s and other tax forms timely - no specific provision for ACA
- Section 6724: “No penalty shall be imposed under this part with respect to any failure if it is shown that such failure is due to reasonable cause and not to willful neglect”
- Reasonable cause determined by:
 - Significant mitigating factors including unfamiliarity with the forms and prior history of compliance
 - Events beyond a filer’s control including unavailability of business records, actions based upon actions of agents, failure on payroll company-end, etc.
 - Employer must show that they used reasonable business judgment in contracting with the agent (payroll company and provided the necessary information), yet there was still a failure



What is Reasonable Cause and Section 6724?

- Employer must have acted in a responsible manner and show that they exercised due care
- IRS also evaluates the employer's actions once failure is discovered (this is the importance behind back-filing) - IRS IS LOOKING FOR VOLUNTARY COMPLIANCE
- Remember COVID and use that if employers lost staff or faced other challenges that affected operations - must be careful if they received an Employee Retention Credit
- Reasonable cause and acting in Good Faith should never be presumed
- In the worst-case scenario, penalties can often be substantially reduced based on number of actual forms and not W-2s
- Form 8508





Back Filings

1

Ensure all back filings are done to show IRS that you want to voluntarily comply.

2

Challenge may be multiple payroll companies or previous broker.

3

Start with the year where you got form letter 5005 or 5699.

4

Make sure current year has also been filed.

5

Ensure filing is done correctly including coding and employee counts.

6

Respond quickly - time is of the essence.

What to Do



Check reporting status for all new clients and prospects. Any issues caught beforehand should be dealt with.



If failed to file and furnish and did not offer benefits, penalties could increase if IRS believes it is willful neglect.



Discuss the Importance of "Voluntary Compliance."



Implement remedies.



Create plan for avoiding future challenges.



Questions?



Break

Johnson & Johnson Class Action Complaint: What Brokers Need to Know

Presented by: Michelle Barki

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Class Action Complaint

A [Class Action Complaint](#) was filed on February 5, 2024, in the United States District Court for New Jersey against Johnson & Johnson and their handling of their Welfare Plan.



Breach of Fiduciary Duty

- Complaint alleges a breach of their fiduciary duty of prudence when it comes to managing their pharmacy benefit
- Duty of prudence requires fiduciaries of group health plans to act with “care, skill, prudence, and diligence under circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims” (29 u.S.C. §1104(a) (1)(B))
- Complaint states purport that J&J failed when monitoring their PBM, Express Scripts, owned by Cigna Corp since 2018



Traditional Pharmacy Benefit Managers (PBMs)

The complaint alleges that
Transitional PBMs makes its money
in four ways...



Negotiated rates paid to the pharmacy when a prescription drug is filled, which is the price the pharmacy pays plus amount that PBM will make for their administration services (verifying eligibility and copayments)



Amount PBM then contracts with the group health plan for the amount the group health plan will pay for the medication (also known as the "spread")



Dispensing the medication themselves through their owned and operated prescription order services



Receiving rebates from the drug manufacturer to put their medication on their formulary

Allegation

- This case appeared similar to many COBRA class actions, with a Qualifying Beneficiary going to an attorney for HR issue such as termination due to discrimination not specific to an individual who was on FMLA and issue with reasonable accommodation, and lawyer now claiming she is a “whistleblower” in this class action
- This case involved a generic medication she was taking for multiple sclerosis, Teriflunomide (brand name Aubagio)
- Without insurance, it is Walgreens for \$40.55, at ShopRite for \$41.05, and at Walmart for \$76.41
- Contract between the PBM and Johnson & Johnson indicated the Plan would reimburse Express Scripts \$10,239.69
- The complaint listed pages of like samples of the Spread in the Johnson & Johnson/Express Scripts Contract



Other Allegations

1. Filling of prescriptions through their own mail-order pharmacy, which is more expensive than potentially filling at a pharmacy, but participant is deceived because the co-payments are different.
 - a. Typically, this is the process for “specialty drugs” on the formulary, but PBM decides what the specialty drugs are and often, they are the generics so they can mark up the prices more.
2. Rebates PBM gets from the drug manufacturer which are typically not shared with the group health plan.



Pass-Through PBM

- Johnson & Johnson could have used a pass-through PBM, which charges cost of the prescription filled at a pharmacy and a service charge
- Other Fortune 500 companies, like Dupont, utilize this type of PBM that greatly reduces the cost to the plan



Brokers

- Brokers were also targeted in this lawsuit for receiving “kickbacks” from the PBM
- It was found brokers could get \$1.00 to \$5.00 per RX filled
 - Allegations say one broker took \$6.50 and had it sent to a P.O. box in a different state
- Complaint implied that brokers do not act in the best interest of their employer client, but in their own best interest
- AON was the broker mentioned



Documentation



Complaint reviewed several articles over the years dealing with traditional PBMs and how their practices inflated the costs



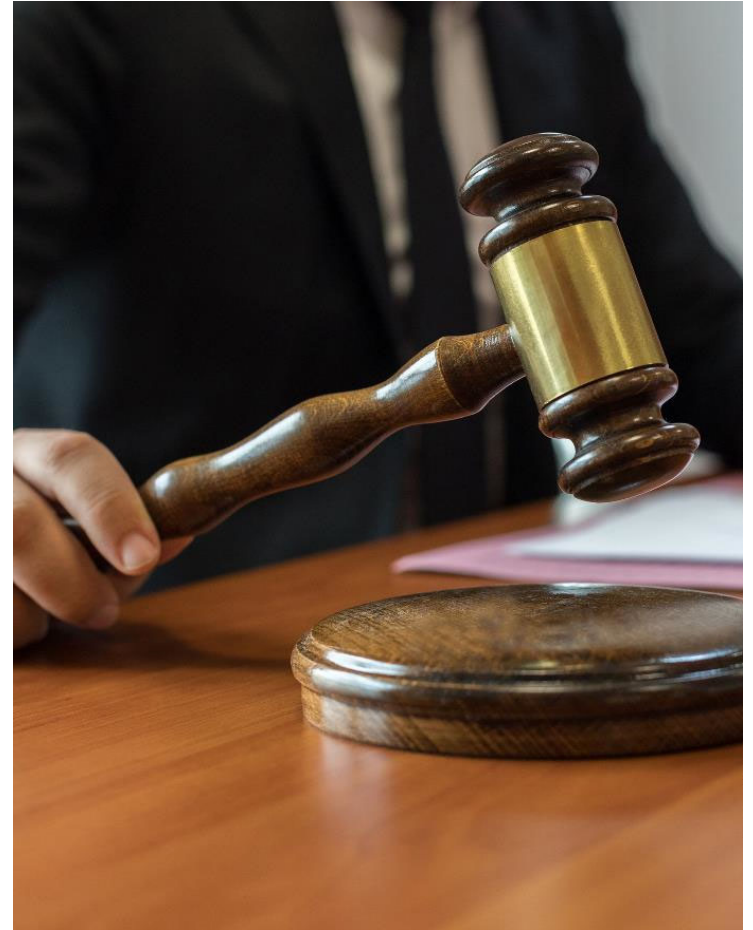
Documented that other plan administrators did due diligence and negotiated other contracts



Provided information on cost from the National Average Drug Acquisition Cost (NADAC) database, which is available to the public

What They Want

- Enjoin from further ERISA violations (also failed to provide plan documents upon request)
- Make good of all plan losses resulting from each breach of fiduciary duties
- Award actual damages
- Equitable relief to all plaintiffs, including premiums, claims payments, co-insurance, deductibles, and lost wages
- Statutory penalties
- Remove fiduciaries
- Other forms of monetary equitable relief
- Interest, pre-judgment, post-judgment, and statutory interest
- Attorney fees and costs



The Henkel of America Case

- Express Scripts was also implicated in a case potentially going to trial
- Henkel of America has a self-funded plan and the reinsurance carrier refused to pay \$50 million in drug claims related to a rare genetic disorder that was incurred by two of Henkel's employees
- Express Scripts was also supposed to review drug interactions, dosages, and potential drug interaction
- For one of the meds, the recommendation was 5 vials per week, and Express Script approved 66 vials per day
- The argument was that Express Scripts did not do any due diligence to approve the meds in such high dosages



Conclusion

- It will take the DOL, IRS, and HHS years to review the information captured in RXDC reporting and make recommendations
- Cases like Johnson & Johnson could garner a lot more attention to the practices, and the courts may be quicker to act



EB Agency Operations - Best Practices Discussion

Presented by: Michael Bracken & Christy Crow



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Attendees Discussion Sharing Time

EB AGENCY OPERATIONS



Day 1 Recap



ACA & Increasing IRS Activity

Compliance Communication That Inspires Client Action

Bridging the Compliance Gap

Medcom Technology Roadmap

Dealing with the ACA Back-Filing Challenge

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THANK YOU

