



2nd Wednesday monthly at 1 pm EST

- September 18** - Cafeteria Plans & Nondiscrimination Testing
- October 9** – HIPAA Privacy Rule
- November 13** – HIPAA Security Rule

[Click here to join!](#)

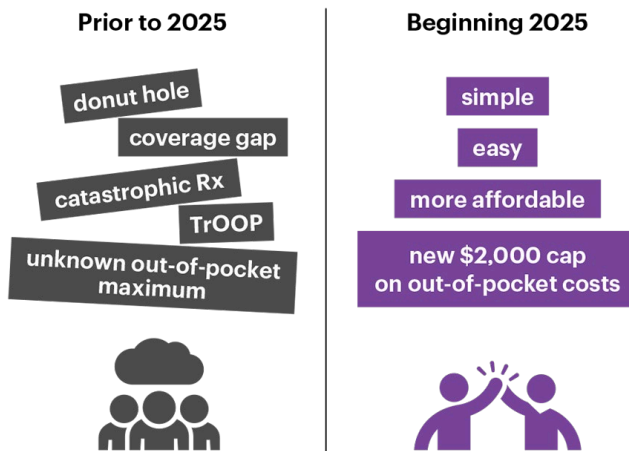
Compliance Reminders

- ✓ **September** – Fully insured plans may receive Medical Loss Ratio (MLR) Rebates. Use within 3 months.
- ✓ **September 30** – Summary Annual Report (SAR) due to participants for 1/1 plans
- ✓ **October 15** - Medicare Part D Notices due.
- ✓ **December 31** – Gag Clause Attestation due via CMS

To access the 2024 Benefits Compliance Checklist, reach out to your Arrow Benefits contact.

Don't Worry!

2025 MEDICARE PART D CHANGES



Details & Resources on page 4. Image courtesy of [WTW](#)

The Rundown

- Federal Register: [HHS Updates Annual Civil Monetary Penalties for Inflation](#)
- HHS: [HIPAA Security Rule Facility Access Controls – What are they and how do you implement?](#)
- CMS: [FFE Enrollment Manual 2024 \(cms.gov\)](#)
- IRS: [DRAFT of 2024 Form 1095-C](#)
- Blog: [Employer-Provided Health Coverage During Employee Leaves of Absence](#)
- Blog: [FMLA Leave Administration Tuneup](#)
- Blog: [Changes to the HIPAA Privacy Rules for Self-Insured Group Health Plans](#)
- Resource: [2024 US Pharmacy Benefits Trend Report](#)
- Blog: [Medicare Part D Creditable Coverage Changes in 2025](#)

Benefits Watch Webinar



September 18th – Cafeteria Plans & Nondiscrimination Testing (NDT) @ 1 PM EST

A compliance “must” when *testing* cafeteria plans is to test both the cafeteria plan as well as each component benefit plan. Learn more about a plan’s annually required NDT. Join Patriot’s Benefits Compliance Counsel, Olivia Ash, to answer five questions:

1. What is a cafeteria plan & NDT?
2. Which plans must complete NDT?
3. When must a plan test?
4. What does a plan *do* with test results?
5. What happens if a plan fails NDT?

2024 Privacy Rule – Reproductive Healthcare Employer & Business Associate – Required Actions

The Final Rule **requires** that **health plans & Business Associates (BAs)**:

- **Prohibit the use or disclosure of PHI when it is sought to investigate or impose liability on individuals**, health care providers, or others **who seek, obtain, provide, or facilitate reproductive health care that is lawful** under the circumstances in which such health care is provided, or to identify persons for such activities.
- **Require health plans or their BAs to obtain a signed attestation** that certain requests for **PHI potentially related to reproductive health care are not for these prohibited purposes.**
- **Require health plans to modify their Notice of Privacy Practices** to support reproductive health care privacy.

What *plan* actions does the Final Rule require of plan sponsors?

Employer compliance with privacy standards include updates to the following:

- the plan's Notice of Privacy Practices (this deadline is February 16, 2026);
- the health plan's HIPAA privacy policies & procedures;
- any template risk assessments used for breach responses; and
- applicable Business Associate Agreements.

Employers must comply with these updates & train the health plan's workforce on the new use & disclosure restrictions & when an attestation is required *by December 23, 2024.*

Find Final Rule resources below:

- [Press Release](#)
- [Fact Sheet \(en español\)](#)
- [Director's message on YouTube \(en español\)](#)
- [Guidance](#) for Covered Entities & Business Associates
- Social Media Toolkit: [HIPAA Privacy Rule to Support Reproductive Health Care Privacy - PDF](#)
- [June 20, 2024, Presentation on Final Rule \(Slides\) - PDF](#)
- For HIPAA Covered Entities or Business Associates:
 - [Model Attestation for a Requested Use or Disclosure of PHI Potentially Related to Reproductive Health Care - PDF](#)

In a Nutshell: 2025 Medicare Part D changes are confusing. What must a Plan do?

Medicare Part D Creditable Coverage Changes due to the Inflation Reduction Act (IRA)

- ✓ Plans must offer Rx coverage that is at least as rich as Medicare – this means it is “creditable.” The employer plan is expected to pay on average as much as the standard Medicare prescription drug plan. Plans are not required to offer creditable coverage.
 - *If the employer coverage is creditable, the employees and their spouses with that coverage can delay enrollment in a Part D Medicare drug plan until retirement.*
 - *Continuing with employer drug coverage that is not considered creditable for 63 days or longer can lead to a penalty.*
- ✓ Annually, plans must complete an online [disclosure form via CMS](#) within 60 days of the start of the plan year and tell the government if coverage is creditable.
 - If creditability changes, they must complete it within 30 days of the change.
- ✓ Many HDHPs may no longer meet creditability due to the **reduced OOP Max effective 1/1/2025**.
- ✓ **Medicare Part D notices to eligible persons are due Oct. 15th.**
- ✓ From Oct. 15 – Dec. 31, persons may elect or defer Medicare, including Part D.
- ✓ **Employers should confirm whether their health plans’ prescription drug coverage for 2025 is creditable or non-creditable as soon as possible** in preparation for sending Medicare Part D notices.
- ✓ CMS said plans may still use the [simplified method](#) for determining creditability through 2025.
- ✓ An employer may use the actuarial or simplified determination method to determine credibility.
 - Employers with insured Rx plans should ask carriers if plan coverage is creditable.
 - For self-funded plans, or where the insured carrier hasn’t decided, employers may use the simplified or actuarial determination method.
 - Key is that employers communicate any creditability status change to eligible employees so they can make decisions on whether to elect Part D or delay and accept any penalties.
- ✓ **Any change in creditable coverage status should be disclosed to members.**
- ✓ CMS publishes model disclosure communication templates that can be [accessed here](#).
- ✓ **Calendar year plans (2025 – 2026) should be tested against the 2025 Medicare Part D parameters.**
 - If the plan design subsequently changes prior to 1/1/2025, the plan should be re-tested to determine if there is a change in creditable coverage status.
- ✓ **Off-calendar year (2024-2025) plans** should consider testing plans now to assist persons who may want to enroll in Medicare Rx coverage.
 - If the plan design changes for the 2025-2026 renewal/coverage period, the plan should test against the **2025** Medicare Part D parameters.
- ✓ **Third party resources about the upcoming change:**
 - [What To Do If The \\$2,000 Cap Jeopardizes Your Employer Drug Coverage](#)
 - [Medicare Part D: What Group Health Plan Sponsors Need to Know](#)
 - [IRA Updates on Part D](#)
 - [Mastering Medicare Creditability](#)

Fiduciary Corner

Plan Sponsor Question of the Week:

We received a Medical Loss Ratio (MLR) rebate. Do we need to distribute it to former employees?

Answer: “Employers that receive MLR rebates have compliance obligations regarding the use of the rebates, including requirements to distribute to eligible plan participants (potentially including former participants) within three months of receipt for any portion of the rebate that constitutes a plan asset.”

“MLR rebates do not apply to self-insured plans. However, any form of insurer rebates should follow the MLR rebate or similar rules to distribute the employees’ share of rebates.”

Bottom line: Review plan document language and this [DOL Guidance](#).

~ Source: [MLR Rebate: Do We Need to Distribute to Former Employees?](#)

Blogs on Fiduciary Issues:

- ✓ [Gavel to Gavel: Fiduciary committees offer shield against welfare plan litigation](#)
- ✓ [Plan Sponsor: What Not To Do](#)



FIDUCIARY BEST PRACTICES

KNOW 'EM. PRACTICE 'EM.

What is a fiduciary?

The word “fiduciary” means to hold something in trust, confidence, or reliance. A fiduciary is a trusted individual or entity, responsible for proper management of a plan, program, or funds. To understand this word in the context of benefit plans, we look to ERISA’s¹ definition:

Fiduciary → a person using discretion in administering & managing a plan or controlling the plan’s assets to the extent of that discretion or control.

Fiduciary status is based on the functions performed for the plan, not just a person’s title.

ERISA is the federal regulation that sets minimum standards of fiduciary behavior for both retirement and health & welfare plans in private industry, with the goal of protecting individuals in those plans. ERISA fiduciaries include plan sponsors & plan administrators, and persons who act with discretionary decision making regarding the plan. These are **functional fiduciaries**, even if unnamed or designated in a plan document.

DID YOU KNOW?

A fiduciary could be personally liable for plan failures.

¹ Employee Retirement Income Security Act of 1974
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What are ERISA’s fiduciary duties?

The **5 fiduciary responsibilities**:

1. **Perform** duties prudently;
2. **Follow** the plan documents;
3. **Hold** plan assets in trust;
4. **Pay** only reasonable plan expenses; and
5. **Act** solely in the interest of plan participants & their beneficiaries with the exclusive purpose of providing benefits to them;

What decisions are fiduciary in nature?

- **Overseeing** the creation, distribution, & maintenance of plan documents, including communicating updates to participants on plan changes (e.g., drafting, amending, & updating forms; & distributing open enrollment materials);
- **Following** the written terms of the plan document(s), including contributions, rebating, & claims provisions;
- **Deciding** who & why a person was chosen to act on the plan’s behalf;
- **Selecting** plan providers & negotiating contracts;
- **Evaluating** performance of plan providers (e.g., TPAs, PBMs, COBRA administrators, & consultants);
- **Maintaining** the financial health of the plan, including diversifying plan assets;
- **Making** discretionary administrative & claims decisions (especially for self-funded plans, who are named plan administrators & often handle protected participant information).



FIDUCIARY CHECKUP

QUESTIONS FOR PLAN SPONSORS

Plan Structure

- Can you identify which welfare plans are subject to ERISA?
- If plan assets are held in trust, do you have appropriate bonds in place?
- Can you list service providers for each plan?
- Do you have current agreements in place with plan providers?
- How often do you meet with plan providers to evaluate pricing & terms of services?

Plan Compliance

- How do you ensure your plans comply with federal & state regulations?
- How do you track plan compliance?
- Do you know which plans are subject to HIPAA? If so, are you complying with the Privacy & Security Rules?
- Do you have policies, procedures, & processes in place?
- Do plan participants know where to go for questions about their benefits?
- How well are you complying with transparency & mental health parity rules?

Plan Management & Training

- Do you have written plan documents?
- Can you list who creates, receives, & maintains plan documents?
- When were plan documents last updated?
- Can you list plan fiduciaries?
- Do you have a fiduciary committee?
- How well do you document plan decisions?
- Can you identify which plan decisions are fiduciary in nature?
- When did you last audit plan financials?
- How often do you review plan provider disclosures (e.g., required CAA disclosures)?
- Do you conduct training for plan fiduciaries?

Notes

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