



2<sup>nd</sup> Wednesday monthly at 1 pm EST

**November 13<sup>th</sup>** – HIPAA  
Security

[Click here to join!](#)

## Shore-Up Medicare Reporting

### CMS PLANS RANDOM EMPLOYER SAMPLING

The Inflation Reduction Act not only removed the doughnut hole by reducing the OOP max from \$8,000 to \$2,000 starting January 1, 2025, it also strengthened reporting requirements for Medicare-related data reporting by certain employers, imposing new guidelines. CMS will calculate & impose civil monetary penalties if Responsible Reporting Entities (RREs) fail in reporting obligations. *CMS plans to randomly sample 1,000 records per year to ensure that RREs are reporting all of the required data.* Read full article at [Keenan.com](https://www.keenan.com).

## Compliance Reminders

- ✓ **December 29** – Last day for employers to distribute MRL rebate (if applicable)
- ✓ **December 31** – Gag Clause Attestation due via CMS
- ✓ **2024 Reproductive Privacy Rule Updates by 12/31/24:**
  - Train workforce
  - Update HIPAA Policies
  - Update breach response templates
  - Update BAAs

Reach out to your Arrow Benefits advisor to access the Compliance Checklist.

## The Rundown

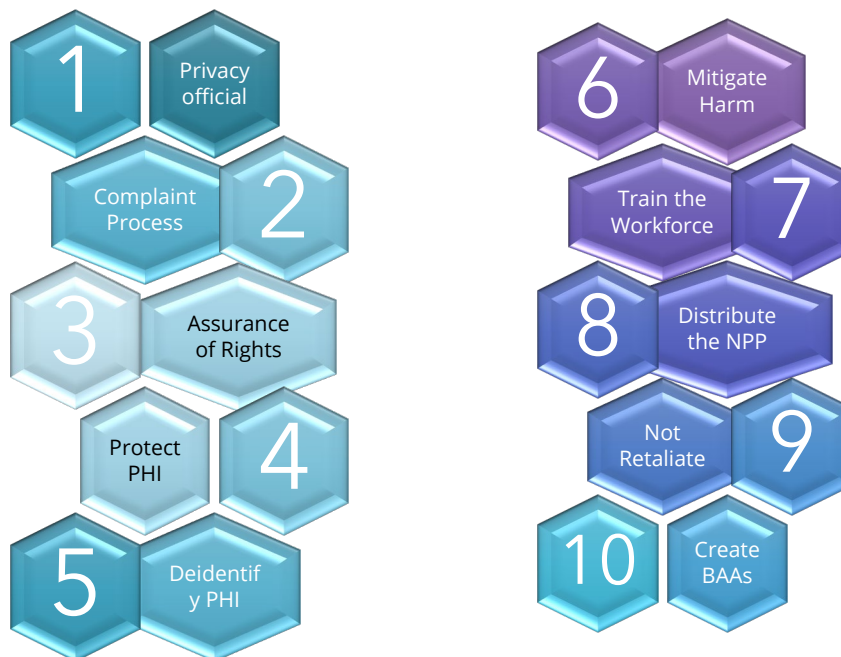
- ✓ Federal Register: [HHS Updates Annual Civil Monetary Penalties for Inflation](#)
- ✓ CMS: [2026 Draft Letter to Issuers in the Federally-facilitated Exchanges](#)
- ✓ CMS: [Premium Adjustment Percentage, Maximum Annual Limitation on Cost Sharing, Reduced Maximum Annual Limitation on Cost Sharing, and Required Contribution Percentage for the 2026 Benefit Year](#)
- ✓ IRS: [Revenue Procedure 2024-35 - Required Contribution: 9.02% in 2025](#)
- ✓ Fact Sheet: [FAQs for the Premium Tax Credit](#)
- ✓ Blog: [ACA Affordability Myths: Common Pitfalls for Employers](#)
- ✓ Blog: [New Wave of ERISA Lawsuits Attack Self-Funded Health Care and Wellness Plans on Tobacco Surcharges](#)
- ✓ Blog: [Employer-Provided Health Coverage During Employee Leaves of Absence](#)
- ✓ Blog: [FTC Noncompete Rule Is Set Aside, But Appeal Is Expected and States May Act](#)
- ✓ Blog: [Interaction between COBRA and Medicare in C-Suite Executive Severance and Retirement Arrangements | Employee Benefits & Executive Compensation](#)
- ✓ Blog: [DOL Confirms Cybersecurity Guidance Covers All Employee Benefit Plans](#)
- ✓ Blog: [Medicare Part D Creditable Coverage Changes in 2025](#)
- ✓ Resource: [Reminder: Updated Language Requirements for SBC Templates](#)
- ✓ Resource: [2024 Instructions for Forms 1094-C and 1095-C](#)
  - [B Form Instructions](#) & [1094-B](#) & [1094-C](#)
  - [C Form Instructions](#) & [1095-B](#) & [1095-C](#)

# Benefits Watch Webinar



## November 13<sup>th</sup>, 2024 - HIPAA Security Rule @ 1 PM EST

The HIPAA Security Rule is technical – VERY technical, and this may overwhelm most group health plan sponsors. What is a risk assessment? What kinds of risks do you assess? How do you track your results? What's the Security Rule say, & what is essential for employers to implement within their business to appropriately protect health data? Join Patriot's Benefits Compliance Counsel, Olivia Ash, for the final Benefits Watch Webinar of 2024. In this one-hour webinar, Liv will offer 10 Tips for Plan Sponsors to establish HIPAA Security Rule P&Ps. *1.0 hr. SHRM credit available for attendees.*



## Updated: Mental Health Parity & Addiction Equity Act Nonquantitative Treatment Limitations (NQTLs) & Comparative Analysis Requirements

The Departments of Labor, Treasury, & HHS (Departments) released final rules under the Mental Health Parity & Addiction Equity Act (MHPAEA). **The final rules are effective January 1, 2025**, yet many elements will not apply until 1/1/2026. Employer-sponsored Group Health Plans (Plans) must review requirements now (or work with third-party analysis providers) to prepare for enhanced reporting. **A summary of Plan responsibilities under the final rules is below. Resources follow.**

- ✓ **Meaningful Benefits Requirement.** Plans that provide any benefits for a mental health (MH) condition or substance use disorder (SUD) must provide “meaningful benefits” for that condition or disorder in every benefit classification in which meaningful medical/surgical benefits are provided.
- ✓ **Definitions.** New definitions & examples for the following terms used in evaluating the design and application of NQTLs:
  - *Evidentiary Standards.* Any evidence, sources or standards used in designing or applying a factor with respect to an NQTL.
  - *Factors.* Information, including processes & strategies (but not evidentiary standards), used to design an NQTL or determine whether or how it applies to plan benefits.
  - *Processes.* Actions, steps, or procedures used to apply an NQTL.
  - *Strategies.* Practices, methods, or internal metrics used to design an NQTL.
- ✓ **Requirements for NQTLs.** Plans may not impose NQTLs with respect to MH/SUD benefits in any classification that are more restrictive, as written or in operation, than the predominant NQTL that applies to most medical/surgical benefits in the same classification.
  - *Design and Application.* The plan must examine the processes, strategies, evidentiary standards, and other factors used in designing and applying an NQTL to MH/SUD benefits in the classification to ensure they are comparable to, and applied no more stringently than, those used in designing and applying the limitation with respect to medical/surgical benefits in the same classification.

- *Relevant Data Evaluation.* Plans must collect and evaluate relevant data designed to assess and consider the impact of the NQTL on relevant outcomes related to access to MH/SUD benefits and medical/surgical benefits.
- ✓ **Comparative Analysis Requirement.** Plans must perform and document NQTL comparative analyses and submit them to a requesting agency within ten business days of the request. Plans must also prepare and make available to the agencies, upon request, a written list of all NQTLs imposed under the plan. The analysis must:
  - (1) describe the NQTL; (2) identify & define the factors & evidentiary standards used to design/apply the NQTL;
  - (3) describe how factors are used in the design or application of the NQTL;
  - (4) evaluate whether processes, strategies, evidentiary standards, or other factors are comparable to, and applied no more stringently than, those with respect to medical/surgical benefits, as written and as applied; and
  - (5) address findings and conclusions regarding comparability and relative stringency.
- ✓ **Fiduciary Certification.** For plans subject to ERISA, one or more named fiduciaries must review and understand any NQTL comparative analysis prepared by or on behalf of the plan. The Plan must certify that the fiduciary *prudently selected qualified service providers to perform & document the analysis* and that *the fiduciaries have satisfied their duty to monitor those service providers.*
- ✓ **Final Rules Resources:**
  - [Final Rule & Fact Sheet](#)
  - [White House Press Release](#)
  - [DOL: What the New MHPAEA Rules Mean for Employers - PDF](#)
- ✓ **Third-Party Articles:**
  - [MHPAEA Final Rule: Requirements for Employers Starting 2025](#)
  - [The Mental Health Parity Employer Certification Requirement](#)
- ✓ **Articles by Law Firms (a few with charts):**
  - [MHPAEA 2024 Final Rule Requires Action by Plan Sponsors](#)
  - [Navigating Key Changes in the Final MHPAEA Rules](#)
  - [Final MHPAEA Regulations - Chart of Plan Sponsor Requirements](#)
  - [Final Mental Health Parity Rules – Five Changes to the Status Quo](#)

## In a Nutshell: STLDI Notice Requirements & Yes, Plans Must Implement Cybersecurity Guidance

In April of 2024, the Departments issued [final rules](#) regarding **new notice requirements for employers & plan sponsors who offer fixed indemnity excepted benefits coverage**, like hospital indemnity insurance. This notice requirement applies to coverage periods **beginning on or after January 1, 2025**, and **applies to both new & existing coverage**.

- ✓ Review types of Fixed Indemnity Coverage with [this Whitepaper](#).
- ✓ Blog: [Notice Requirement for Employers Offering Fixed Indemnity Coverage](#)
- ✓ Blog: [Federal Agencies Issue Final Rule on STLDI & Hospital Indemnity](#)

**New Requirement:** A notice on the first page (in either paper or electronic form, including on a website) of the policy, certificate, or contract of insurance, & in any marketing, application, & enrollment materials (including re-enrollment materials) provided to individuals at or before the time an individual has the opportunity to enroll (or re-enroll) in the coverage, in at least 14-point font.

The DOL's Employee Benefits Security Administration (EBSA) confirms in a [news release](#) that **cybersecurity guidance** issued by EBSA in April 2021 **applies to all employee benefit plans, including health & welfare plans**. Read the guidance update at the link below & access employer resources.

- ✓ **Compliance Assistance Release No. 2024-01 | U.S. Department of Labor**
  - [Tips for Hiring a Service Provider](#): Helps plan sponsors and fiduciaries prudently select a service provider with strong cybersecurity practices and monitor their activities, as ERISA requires.
  - [Cybersecurity Program Best Practices](#): Assists plan fiduciaries and record-keepers in their responsibilities to manage cybersecurity risks.
  - [Online Security Tips](#): Offers plan participants and beneficiaries who check their retirement accounts or other employee benefit plan information online basic rules to reduce the risk of fraud and loss.
- ✓ **Blogs**
  - [DOL Confirms Cybersecurity Guidance Covers All Employee Benefit Plans](#)
  - [Cybersecurity Guidance for ERISA Plans](#)
  - [DOL Clarifies Scope of Cybersecurity Guidance](#)
  - [DOL Updates and Confirms Cybersecurity Guidance Applies to All ERISA Plans](#)



# Fiduciary Corner

## Plan Sponsor Question of the Week:

What should employers be doing to meet their fiduciary obligations? Review image below.

- Audit Plans - Which are subject to ERISA?
- Create Teams - Are decision-makers involved?
- Review Providers - Services, Fees, & BAAs
- Distribute Docs. - SPD, Notices, & Requests
- Follow Checklist - Who will submit attestations?
- Create Policies & Procedures - the Distribute & Maintain

Contact your Arrow/Patriot/Advisor for information on our Fiduciary Best Practices document with Fiduciary Checkup Questions.

### Fiduciary Issues:

[The HIPAA Authorization Requirements](#)

[Latest Healthcare Fiduciary Lawsuit Filed Against Wells Fargo](#)

[Reminder: Distribute Medical Loss Ratio \(MLR\) Rebates This Year](#)

[Do I Need a Wrap Document for My Health & Welfare Plans?](#)



## 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's<sup>1</sup> 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.

**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).

<sup>1</sup>Employee Retirement Income Security Act of 1974

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## 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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