Benefit Comply
Employee Benefit Compliance Support

November 2024

Intersure Member Monthly Compliance Update

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Agenda – Regulatory Remix

- Employer Compliance Webinar Content
- 2025 Health FSA & Transportation Limits
- HSAs & Preventive Coverage
- ACA & Preventive Coverage
- WHCRA
- Wellness Programs
- Gag Clause Attestations
- ACA Employer Reporting

Intersure Employer Compliance Webinars

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Employer Compliance Webinar Series

- Monthly webinars cover important compliance issues for employers
- Webinars scheduled 3 months at a time – Dates and descriptions provided in advance
- You can invite an unlimited number of clients and prospects

Annual Limits for HSAs, Health FSAs & DCAPs

Nov 19 | 3:00 Eastern 2:00 Central, 1:00 Mt., Noon Pacific

The IRS provides several options for tax-favored reimbursement of different expenses, but the rules vary significantly between benefit options. Some accounts are subject to contribution limits, while others are subject to reimbursement limits. And then to complicate things further, some limits apply on a calendar year basis, while others are tied to the employer's plan year. This webinar will clarify the 2025 annual limits, and how they apply to each type of benefit, including when there is a change in plan year or short plan year, or when employees join mid-year.

End of the Year Benefits Wrap-Up

Dec 17 | 3:00 Eastern 2:00 Central, 1:00 Mt., Noon Pacific

As 2024 is coming to an end, we'd like to highlight some of the important employee benefits compliance issues and changes that have taken place during the year and then look forward to developments expected in 2025 that may impact your benefit plans.

Employer Compliance Webinar Series

- Following each webinar, you will receive a report of registrants and attendees as well as a link to the recording and any handouts provided during the live session

- Ways to increase your client participation in these webinars
  - Create an “Education Page” on your website with links to the registration
  - Have account managers and producers send an email to key clients and prospects
  - Include webinar announcement in other client communications (newsletters, etc.)

2025 FSA & Transportation Limits

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Health Flexible Spending Arrangements (FSAs)

- **Annual Salary Reduction Contribution Limit**
  - Applies to employee pre-tax contributions and employer flex credits that can be used toward the health FSA or toward cash or other taxable benefits
  - Limits do NOT apply to employer contributions

2024 Contribution Limit	$3,200 ($640 carryover)
2025 Contribution Limit	$3,300 ($660 carryover)

Tips for Employee Health FSA Contributions

- Don’t consider carryover amounts
- Mid-year elections not prorated, but short plan year must be prorated
- Limit applies per employee and per employer

Health Flexible Spending Arrangements (FSAs)

ACA Excepted Benefit Status

- Availability Condition
  - Health FSA may only be offered to those who are also eligible for the employer's group medical plan
- Maximum Benefit Condition
  - Employer contribution cannot exceed the greater of: (i) a match of the participant's salary reduction election; or (ii) $500

Employer Contribution Limits

Qualified Transportation Benefits

- Monthly Reimbursement Limits
  - 2024 - $315
  - 2025 - $325
- Available separately for (i) qualified parking; and (ii) combination of commuter highway vehicles and transit passes
- State and local laws may require employers to offer commuter benefits in addition to what is set forth in §132
  - E.g., CA, D.C., IL, NJ, NYC, Philadelphia

HSAs & Preventive Coverage

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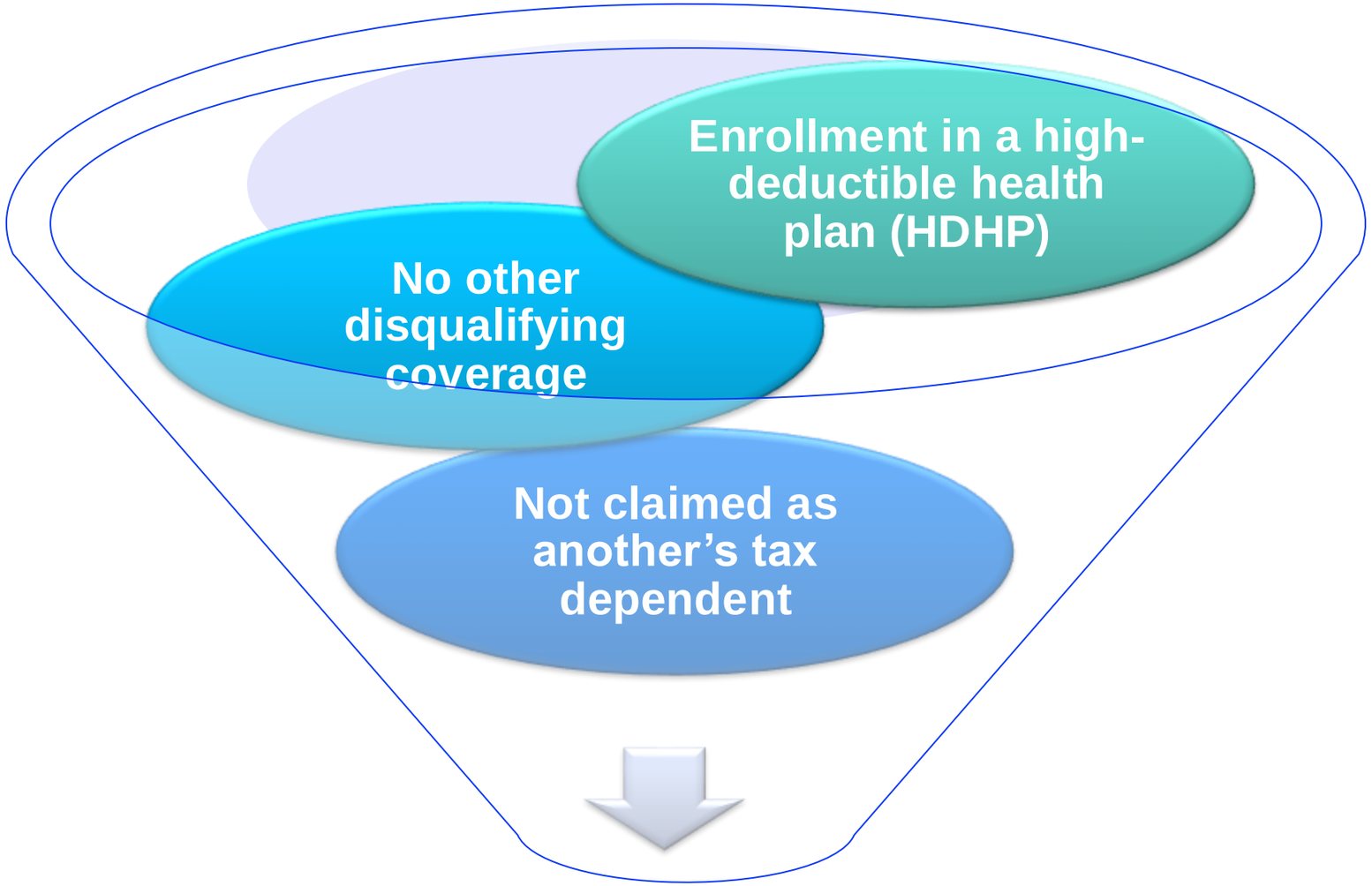
HSA-Eligibility



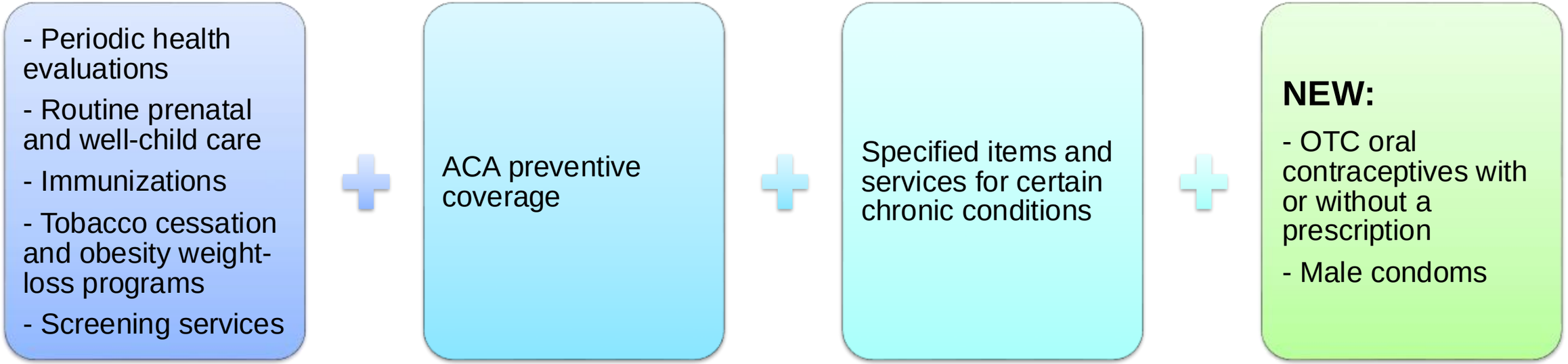
Eligible to Contribute to an HSA

HSA-Eligibility

- Impermissible Coverage:
  - Non-HDHPs (PPOs)
  - General-purpose health FSAs
  - General-purpose HRAs
  - Excepted benefit HRAs
  - Medicare, Medicaid & TRICARE
  - Other

- Permissible Coverage
  - Specified disease or illness policies
  - Fixed indemnity policies
  - Dental or vision coverage
  - Limited-purpose health FSA
  - Limited-purpose or post-deductible HRA
  - Telehealth?
  - Preventive coverage

HSAs & Preventive Coverage



- Clarifications
  - Breast cancer screenings include mammograms, MRIs and ultrasounds
  - Continuous glucose monitors are preventive
  - Any dosage form of insulin and devices to deliver insulin are preventive

ACA & Preventive Coverage

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ACA Preventive Coverage

- Non-grandfathered group health plans must provide coverage with no cost-sharing for in-network preventive coverage

Evidenced-based items or services that have in effect a rating of “A” or “B” in the current recommendations of the United States Preventive Services Task Force (USPSTF) with respect to the individual involved

Immunizations for routine use in children, adolescents, and adults that have in effect a recommendation from the Advisory Committee on Immunization Practices (ACIP) of the Centers for Disease Control and Prevention (CDC)

With respect to infants, children, and adolescents, evidence-informed preventive care and screenings provided for in the comprehensive guidelines supported by the Health Resources and Services Administration (HRSA)

Evidence-informed preventive care and screening provided for in comprehensive guidelines supported by HRSA for women

ACA Preventive Coverage

- Preventive Coverage Updates
  - Lists of items and services considered preventive continues to be updated based on newly available medical treatments and best practices
  - Newly recommended items and services must be covered as preventive (with no cost-sharing) beginning with the first plan year after the date the recommendation is made

- New Coverage Requirements – FAQs, Part 68
  - Coverage of three FDA-approved pre-exposure prophylaxis (PrEP) formularies for sexually active individuals weighing at least 77lbs. who do not have HIV, but are at risk

ACA Preventive Coverage

- Coding Guidance – FAQs, Part 68
  - Must cover items and services with no cost-sharing when coded as preventive unless plan has individualized information suggesting otherwise
    - Must confirm with individual and/or provider before denying or imposing cost-sharing
  - Code more accurately to avoid confusion between which items and services need to be covered with no cost-sharing
    - Agencies expect plan sponsors to regularly review the latest preventive care recommendations and published industry standards and follow them accordingly
    - Employers need to rely heavily on their carriers and TPAs to assist with this and with ensuring network providers are coding appropriately

ACA Preventive Coverage – Proposed Rules

- Expanded Coverage for 2026
  - Coverage with no cost-sharing for OTC contraceptives, even when there is no prescription
  - Certain recommended contraceptive items that are drugs and drug-led combination products unless at least one therapeutic equivalent is covered with no cost-sharing
  - Price comparison tools would have to include a disclosure indicating coverage is available for OTC contraceptive items without requiring a prescription along with contact details for more information

- Reasonable Medical Management Techniques
  - Formalizes previous guidance indicating that when reasonable medical management techniques are imposed, plans must provide an easily accessible, transparent and expedient exceptions process to gain access to coverage in accordance with recommendations made by the individual's provider

WHCRA

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Women's Health & Cancer Rights Act (WHCRA)

- Applicable to group health plans that provide coverage for mastectomies
  - Must provide coverage for all stages of reconstruction of the breast on which the mastectomy was performed, surgery and reconstruction of the other breast to produce a symmetrical appearance, prostheses, and treatment of physical complications of the mastectomy, including lymphedema
  - FAQs, Part 68 clarify plans must also provide coverage for chest wall reconstruction with aesthetic flat closure, if elected by the patient in consultation with the attending physician in connection with a mastectomy

NOTE: These coverage requirements are not preventive and do not have to be provided with no cost-sharing, but should be covered subject to applicable plan cost-sharing (e.g., deductible and co-insurance)

Wellness Programs

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Wellness Lawsuits

- Several recent lawsuits filed alleging employer wellness incentive plans violate HIPAA wellness plan rules
- Many allege similar violations centered around reasonable alternative standard (RAS) requirements
- While most relate to tobacco incentives, similar issues can arise with other outcome-based incentives

Two Sets of Wellness Plan Rules

HIPAA

- Apply to any wellness incentive plan that is part of, or is itself, a group health plan

ADA / GINA

- Applies to any wellness incentives that requires a medical exam or disability related questions

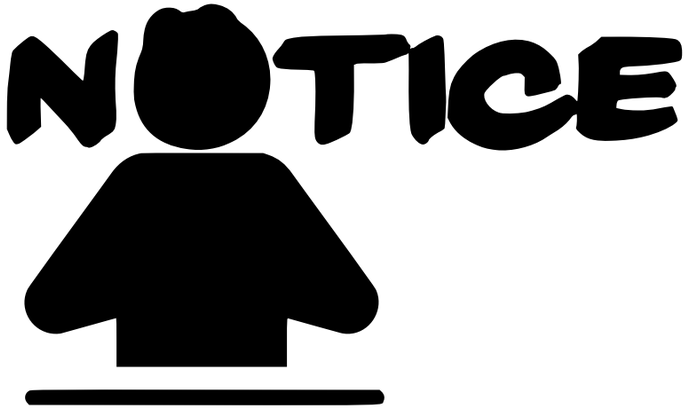
HIPAA Wellness Plan Rules

	Participatory *(e.g., annual physical or biometric screening)*	**Activity Only** *(e.g., exercise or diet program)*	**Outcome Based** *(e.g., tobacco surcharge or results-based)*
Available to similarly situated participants	✓	✓	✓
Annual Qualification		✓	✓
Reward Limits		✓	✓
Reasonable Alternative Standards (RAS)		✓	✓
Notice Requirements		✓	✓
Reasonably Designed		✓	✓

Common (Alleged) Failures in Wellness Plans

- Employer offers a tobacco incentive without offering an RAS
  - RAS = alternative means by which an employee can earn full incentive
  - E.g., tobacco cessation class or tobacco cessation products

- Availability of RAS not disclosed
  - Written materials describing wellness program must include a notice that participant can earn the incentive by completing RAS



Gag Clause Attestations

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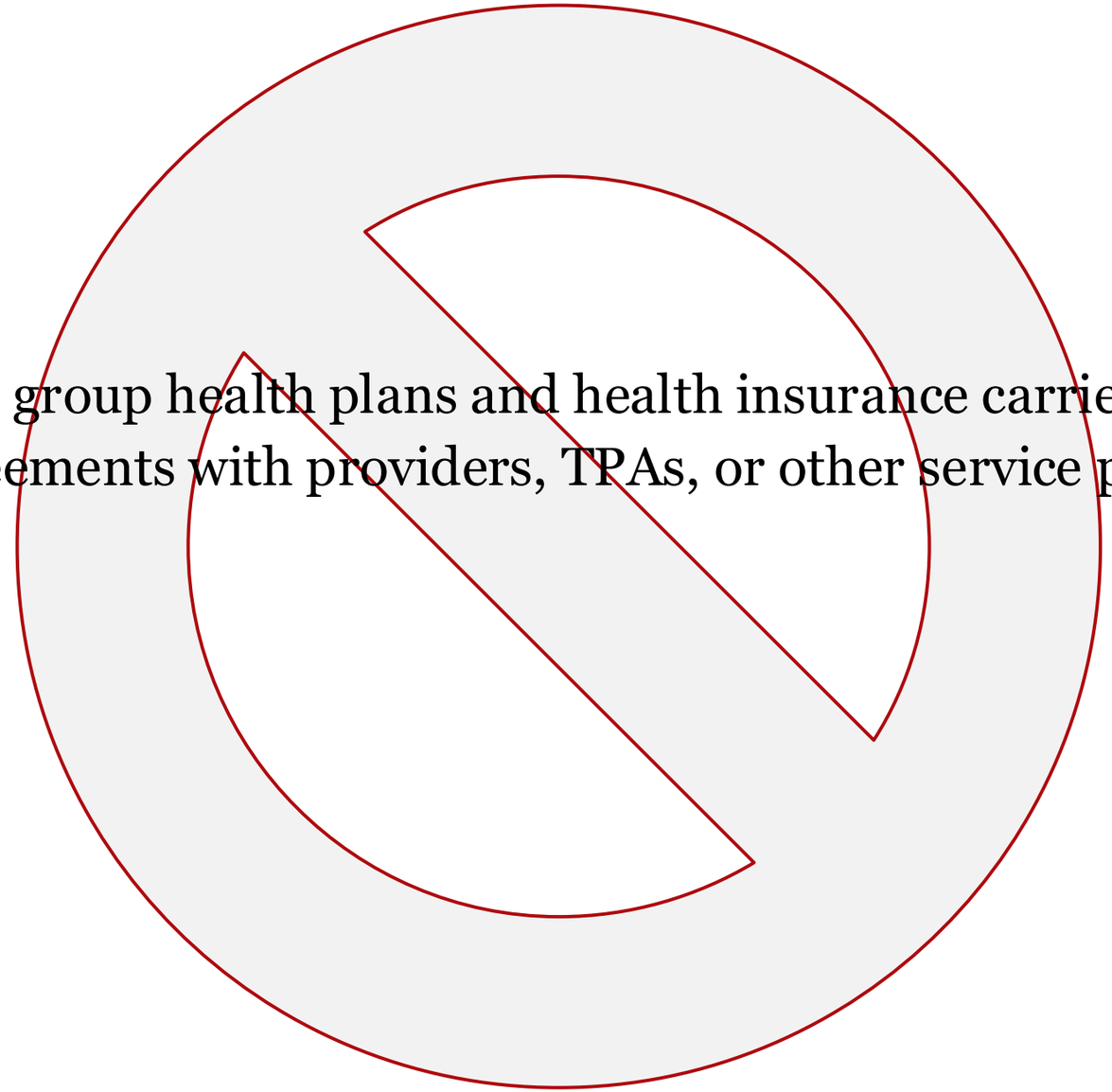
Gag Clause Prohibition



Effective in 2020, group health plans and health insurance carriers prohibited from entering into agreements with providers, TPAs, or other service providers containing gag clauses

Gag Clause Attestations

- Applies to plans of all sizes, fully-insured and self-funded, grandmothered and grandfathered

- Examples:
  - Group medical plans
  - Rx carve-outs (PBMs)
  - Behavioral health networks
  - Telemedicine
  - Direct primary care arrangements
  - Other specialty arrangements (e.g., surgical centers)

- Does NOT apply to:
  - Excepted benefits (e.g., dental, vision, health FSA, EAP)
  - Retiree-only group health plans
  - Account-based plans (e.g., HRAs)

Gag Clause Prohibition

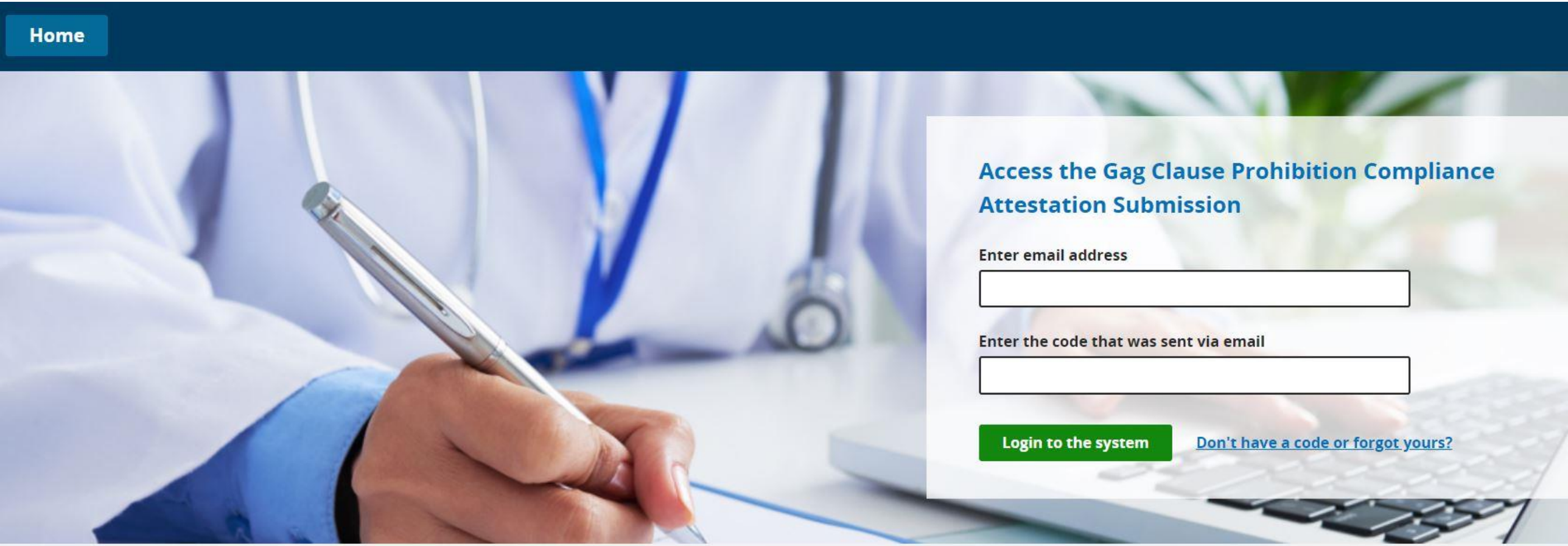
Required to attest to compliance annually by Dec. 31 of each year

- First attestation was required for 2021 – 2023 by Dec. 31, 2023
- Annually thereafter, the “attestation period” is from the date of the previous attestation up through the current attestation date

Example: Employer last attested Dec. 14, 2023. Employer is now attesting Nov. 2, 2024.

Attestation Period = Dec. 15, 2023 – Nov. 2, 2024

Gag Clause Attestation



https://www.cms.gov/cciio/programs-and-initiatives/other-insurance-protections/gag-clause-prohibition-compliance

Gag Clause Attestation

- **Responsibility for Attestation**
  - **Fully-Insured Group Health Plans**
    - Carriers likely to attest on behalf of the plan
  - **Self-Funded Group Health Plans & Other Group Health Plan Arrangements**
    - TPAs and PBMs may be willing to attest on behalf of the plan, but otherwise the employer must handle the attestation

- **Employer Steps**
  - If service provider will attest, it is recommended to have this promise in writing
  - If service provide will NOT attest, ask for a certification of compliance for applicable contracts and save it in files for purposes of attesting

ACA Employer Reporting

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1094 / 1095 Reporting - IRS Enforcement

Letter 5699

- IRS is reaching out to employers who appear to be applicable large employers (based on Form W-2s filed) and did not report
- Currently sending out letters for the 2022 tax year

Letter 226J

- IRS proposes assessments based on self-reporting of §4980H compliance and subsidized Marketplace enrollment
- §4980H(a) penalty if coverage is not offered to 95% (or all but 5, if greater) of full-time employees; §4980H(b) penalty if coverage is not minimum value or affordable

Letter 972CG

- IRS is enforcing penalties for late or missed filings
- Penalty is $330/form for 2024 reporting

1094 / 1095 Reporting

- Employers Subject to Reporting

Applicable large employers

Required to report offer of coverage information for all employees who were full-time for at least one month

Use Form 1094-C and Form 1095-C (Parts I & II)

All employers offering self-funded (or level-funded) group medical plans

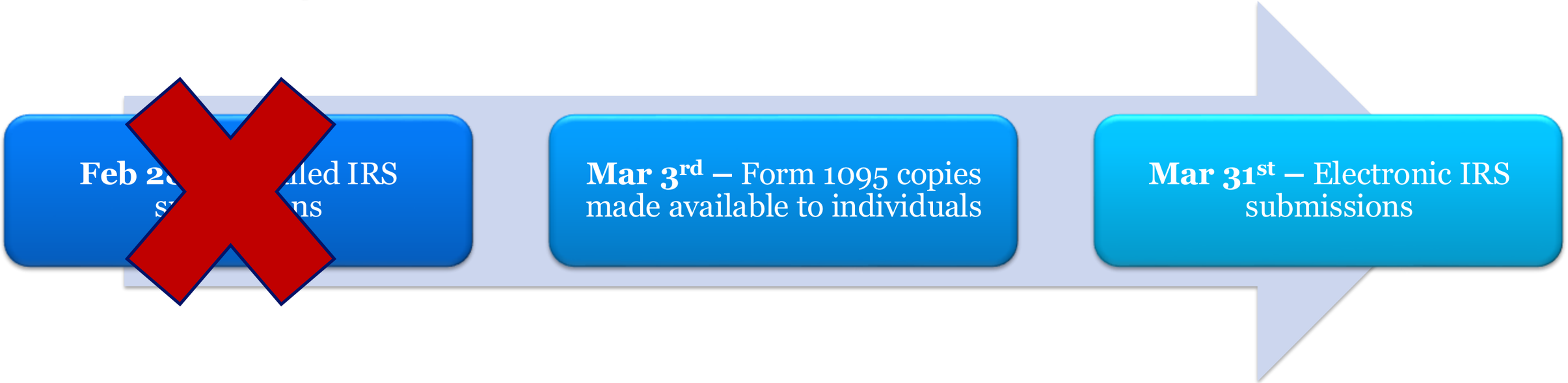
Required to report coverage information for all individuals enrolled in the group medical plan

Small employers use Form 1094-B and Form 1095-Bs

Applicable large employers use Form 1095-C (Part III)

1094 / 1095 Reporting

- Federal 2025 Due Dates



Electronic Reporting Requirements

Employers filing 10 or more forms required to submit reporting electronically

State Individual Mandate Reporting

- State Individual Mandates
  - California, Massachusetts, New Jersey, Rhode Island, Washington D.C.

	Required Forms	Reporting Deadlines
California	Form 1094 and Form 1095s	• Statements to covered individuals due January 31st • Filing with FTB due May 31st
Massachusetts	Form 1099-HC	• Statements to covered individuals due January 31st • Filing with DOR due March 31st
New Jersey	Form 1094 and Form 1095s	• Statements to covered individuals due March 3rd • Filing with DORES due March 31st
Rhode Island	Form 1094 and Form 1095s	• Statements to covered individuals due March 3rd • Filing with DOT due March 31st
Washington D.C.	Form 1094 and Form 1095s	• Statements to covered individuals due March 3rd • Filing with OTB due 30 days after federal reporting

Questions?

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