



# EMPLOYEE BENEFITS NEWSLETTER

January 2023

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## Creditable Coverage Disclosure to CMS due March 1, 2023

Each year, group health plan sponsors that provide prescription drug coverage to individuals eligible for Medicare Part D must electronically disclose to the Centers for Medicare & Medicaid Services (CMS) whether that coverage is "creditable" or "non-creditable." The disclosure obligation applies to all plan sponsors that provide prescription drug coverage, even those that offer prescription drug coverage only to active employees and not to retirees. The Online Disclosure to CMS form on an annual basis. The Disclosure to CMS is due no later than 60 days after the beginning date of the plan year (contract year, renewal year, etc.) and upon change of the plan's creditable coverage status. Calendar-year plans must submit this year's disclosure to CMS by March 1, 2023.

<https://www.cms.gov/Medicare/Prescription-Drug-Coverage/CreditableCoverage/CCDisclosureForm>

To prepare, plan sponsors should estimate the total number of Part D-eligible individuals expected to have coverage under the plan at the start of the plan year.

This includes:

- Part D-eligible active employees
- Retirees and disabled individuals and any of their Part D-eligible dependents
- Any COBRA participants who are Part D-eligible

New Hires, after the start of the plan year should not be included in the count for that year. However, they must be provided a notice of creditable or noncreditable coverage prior to their initial enrollment period for Part D.

## Compliance

### NYS and Federal Postings Available Electronically

On December 16, 2022, Governor Hochul signed a bill which amends Section 201 of the New York Labor Law (NYLL) and requires employers to make mandatory workplace postings available to potential employees as well as current employees electronically.

The amendment requires that in addition to posting physical notices, digital versions of applicable federal and state notices must also be made available through the employer's website or by email.

Below are links with more information.

[Workplace Posters | U.S. Department of Labor \(dol.gov\)](#)

[Posting Requirements | Department of Labor \(ny.gov\)](#)

### New York Minimum Wage Update for 2023

On December 21, 2022, Governor Hochul announced that New York State will continue with the \$15.00 minimum hourly wage phase-in for upstate counties on December 31, 2022. Workers outside of New York City, Long Island, and Westchester County will see an increase of \$1.00 per hour, from \$13.20 to \$14.20. Additionally, the minimum wage for home care aides, which took effect on October 1, 2022, will also increase by \$1.00 to \$16.20 per hour in counties in upstate New York.

### Additional Reminder:

As a reminder, if you offer group health insurance, you are required to have an ERISA Wrap/SPD in place. The Wrap SPD requirement applies to all employer sponsored group health insurance offerings. This is one of the first documents the DOL will ask for in an audit and can result in hefty fines if one cannot be produced.

It may be time to update your Wrap Document or have an SMM (Summary of Material Modification) completed for 2023 plan year changes. Please reach out to Cheryl Clary or Kristin Clark if you have questions.

## 2023 Telemedicine & HSA Relief

The 2023 Consolidated Appropriations Act (CAA 2023) includes verbiage that extends temporary relief permitting telemedicine plans to be offered in combination with Health Savings Accounts (HSA) without including a deductible or charging a *fair market value* (FMV) fee. The bill has now been signed into law by President Biden with the telemedicine/HSA relief language intact.

Calendar year plans can take advantage of the relief right away without disruption. Employees with Health Savings Accounts can participate in a telemedicine plan with no cost-sharing and remain HSA eligible for both the 2023 and 2024 plan years. Unfortunately, the CAA 2023 creates a gap in the relief for non-calendar year plans.

The old telemedicine/HSA relief ends as of December 31, 2022, but the new relief in CAA 2023 does not begin until the start of the 2023 plan year. For a non-calendar year HSA plan, from January 1, 2023 until the start of the next plan year employees with an HSA must either

1. be excluded from the telemedicine plan; or
2. pay a FMV fee each time they use the telemedicine service until they have incurred medical expenses at least equal to the minimum required HDHP deductible.

Failure to do so could result in a portion of those employees' 2023 HSA contributions being subject to income taxes and penalties.

Currently, employers with non-calendar year plans should assume they will have to charge FMV fees on their telemedicine programs for the end portion of the 2022 plan year if they don't want to jeopardize their employees' HSA contributions.

## Pay Disclosure

On December 21, 2022, Governor Hochul approved the Pay Disclosure Law NY S9427A requiring businesses to disclose salary ranges for advertised jobs and promotions. Covered employers will be required to maintain records, including the history of pay ranges for each job, promotion and transfer opportunity and the associated job descriptions.