

November 2023

ACA Employer Reporting & Gag Clause Attestations

Presented by Benefit Comply

Assurex Global Partners

- Bolton & Company
- C3 Risk & Insurance Services
- CCIG
- Christensen Group Insurance
- Cottingham & Butler
- Cragin & Pike, Inc.
- The Daniel & Henry Co.
- Dean & Draper Insurance Agency
- Henderson Brothers, Inc.
- The Horton Group
- Houchens Insurance Group
- The IMA Financial Group
- INSURICA
- Kapnick Insurance Group
- Lyons Companies
- The Mahoney Group
- MJ Insurance
- Oswald Companies
- Parker, Smith & Feek, Inc.
- The Partners Group
- R&R Insurance
- RHSB
- RCM&D
- The Rowley Agency
- Starkweather & Shepley
- Sterling Seacrest Pritchard
- WA Group
- Watkins Insurance Group
- Woodruff Sawyer
- York International

Agenda

- **ACA Employer Reporting**

- Who & When?
- Applicable Large Employers (ALEs)
- Self-Funded Group Health Plans
- IRS Enforcement

- **Gag Clause Attestation**

- What Is It?
- Who Is Responsible For It?
- What Do Employers Need to Do?
- Common Questions

ACA Employer Reporting

**Who?
When?**

1094 / 1095 Reporting

- Employers Subject to Reporting

Applicable Large Employers
(50 or more FTES)



Required to report offer of coverage information for all full-time employees, including:

- Employment status
- Whether offer was made
- Whether offer met minimum value requirements
- Whether offer met affordability requirements
- Whether employees enrolled or waived



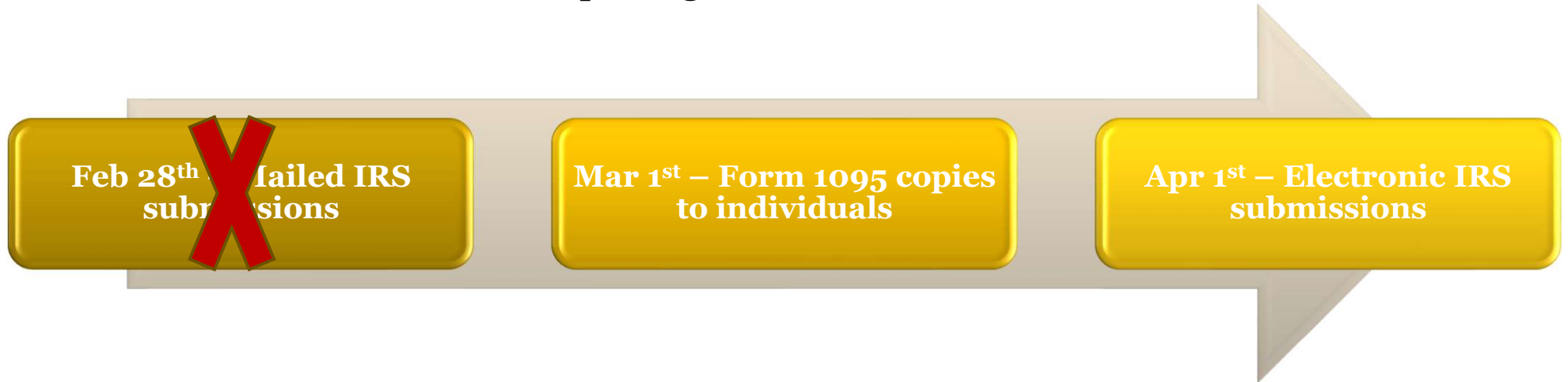
Employers Offering
Self-Funded
Minimum Essential Coverage



Required to report coverage information for all individuals enrolled in the self-funded plan

1094 / 1095 Reporting

- 2024 Due Dates (for 2023 Reporting)



New Electronic Reporting Requirements for 2023

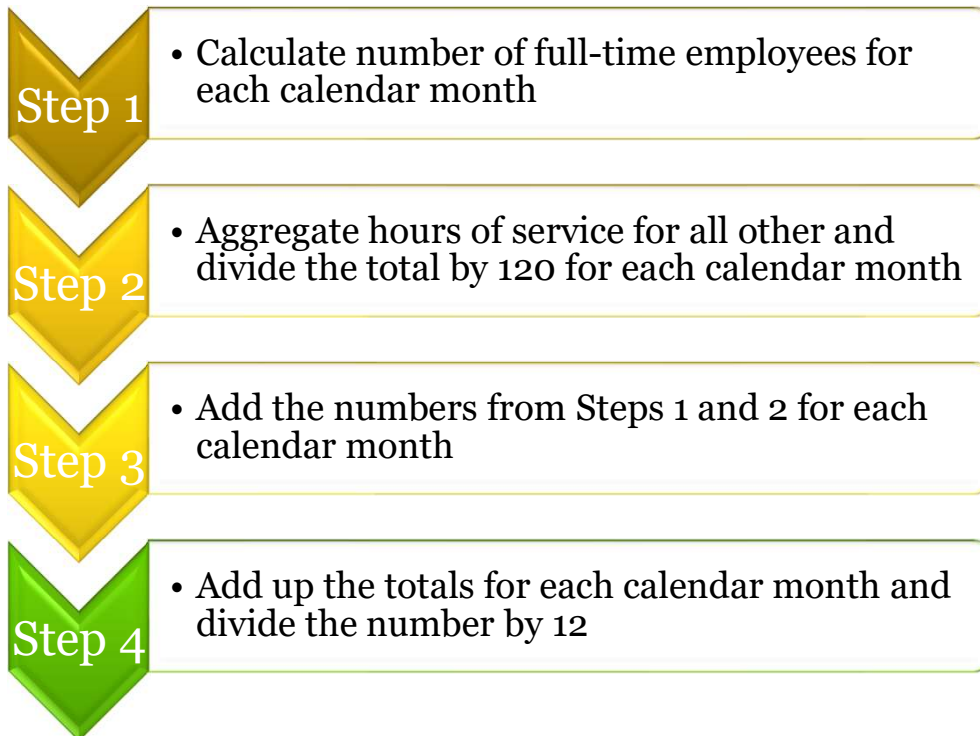
Employers filing 10 or more forms required to submit reporting electronically

ACA Employer Reporting

Applicable
Large
Employers
(ALEs)

Applicable Large Employers (ALEs)

- 50 or more full-time equivalents (FTEs) **in the previous calendar year**



Tips for Determining ALE Status

- ✓ Count all employees (including seasonal and union employees)
- ✓ Count all hours of service for any employee employed for at least one day during the month
- ✓ Hours of service = hours paid or payable with U.S.-source income
- ✓ Aggregate FTEs for entities in the same controlled group or affiliated service group
- ✓ Special considerations for mergers/acquisitions

§4980H (Employer Mandate) Requirements

§4980H(a)

- ALEs must offer minimum essential coverage to 95% (or all but 5, if greater) of full-time employees and their dependent children

§4980H(b)

- ALEs must offer coverage that provides minimum value AND is affordable to all full-time employees

■ **Full-Time Status**

- 30 or more hours of service/week (130/month)
- Monthly measurement method or look-back measurement method

■ **MEC versus Minimum Value**

- Minimum value = 60% or better actuarial value

■ **Affordability**

- Employee contribution for single minimum value coverage \leq ____% of employee's household income (or one of the affordability safe harbors)

Form 1094-C

- Required Information
 - Employer information
 - # Form 1095-Cs being filed
 - Whether employer is part of an aggregated ALE group
 - Certification of eligibility (simplified reporting options)
 - Whether MEC was offered to 95% or more
 - Full-time employee counts by month
 - Total employee counts by month
 - Name(s) and EIN(s) of other members of the same aggregated ALE group

Form 1094-C

MEC Offer Indicator

Did employer offer MEC to at least 95% of full-time employees each month of 2023???

		(a) Minimum Essential Coverage Offer Indicator		(b) Section 4980H Full-Time Employee Count for ALE Member	(c) Total Employee Count for ALE Member	(d) Aggregated Group Indicator	(e) Reserved
		Yes	No				
23	All 12 Months	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
24	Jan	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
25	Feb	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
26	Mar	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
27	Apr	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
28	May	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
29	June	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
30	July	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
31	Aug	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
32	Sept	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
33	Oct	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
34	Nov	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
35	Dec	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	

Form 1095-C

- Required Information
 - Part I – Employer and employee summary information
 - Part II – Offer of coverage information
 - Part III – Coverage information for a self-funded (or level-funded) plan

Form 1095-C

- Line 14 should always have an offer code (offered coverage or not for the month)
- Line 15 should reflect the lowest cost single minimum value coverage offered
- Line 16 should provide additional information (not employed, part-time, enrolled, waiting period, affordability safe harbor)
- Line 17 only used for ICHRA offerings

Part II	Employee Offer of Coverage				Employee's Age on January 1				Plan Start Month (enter 2-digit number):				
	All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
14 Offer of Coverage (enter required code)													
15 Employee Required Contribution (see instructions)	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
16 Section 4980H Safe Harbor and Other Relief (enter code, if applicable)													
17 ZIP Code													

If blank, suggests §4980H(b) penalty

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 60705M

Form **1095-C** (2023)



Offer of Coverage Reporting Tips

Employee NOT offered coverage for the month

Code 1H on **Line 14**

Leave **Line 15** blank

Indicate why coverage was not offered on **Line 16**
2A (not employed), 2B (part-time) or 2D (waiting period)
Leave it blank if there is no reason

Offer of Coverage Reporting Tips

Employee offered coverage for the month

Applicable offer code on **Line 14** (e.g., 1A or 1E)

Monthly employee contribution on **Line 15**

Indicate enrollment or affordability on **Line 16**
2C if enrolled
2F (Form W-2), 2G (FPL) or 2H (rate of pay) if waived and affordable
Leave it blank if waived and unaffordable

Affordability Safe Harbors

FPL

- Monthly cost cannot exceed % of FPL

Rate of Pay

- Monthly cost cannot exceed % of hourly rate x 130 or monthly salary

Form W-2

- Annual cost does not exceed % of Box 1 W-2 wages

FPL Safe Harbor

- Calendar year plans:
 - 2023= \$103.28/month or less ($\$13,590 \times 9.12\% / 12$)
 - 2024 = \$101.93/month or less ($\$14,580 \times 8.39\% / 12$)
- Non-calendar year plans:
 - 2023 - \$110.80/month or less ($\$14,580 \times 9.12\% / 12$)
 - 2024 – TBD (2024 FPL as not been released yet)

****Guidance indicates employers should use FPL amounts in effect within six months before the first day of the plan year. HHS updates the FPL amounts in late January*

Rate of Pay Safe Harbor

- Hourly Employee
 - Hourly rate x 130 x affordability %
 - Use hourly rate as of the first day of the coverage period, unless pay is reduced during the year; if pay is reduced, use the lower amount

- Salaried Employee
 - Monthly salary x affordability %
 - Use monthly salary as of first day of the coverage period; if pay is reduced, safe harbor is not available

Employee Wages	2023 Rate of Pay	2024 Rate of Pay
	<i>Amount that is affordable</i>	
HOURLY		
\$8	\$94.85	\$87.26
\$10	\$118.56	\$109.07
\$12	\$142.27	\$130.88
\$14	\$165.98	\$152.70
\$16	\$189.70	\$174.51
\$18	\$213.41	\$196.33
\$20	\$237.12	\$218.14
SALARIED		
\$1,500	\$136.80	\$125.85
\$2,000	\$182.40	\$167.80
\$2,500	\$228.00	\$209.75

Form W-2 Safe Harbor

Employee Wages	2023 Form W-2	2024 Form W-2
	<i>Amount that is affordable</i>	
Box 1 Wages		
\$20,000	\$152.00	\$139.83
\$30,000	\$228.00	\$209.75
\$40,000	\$304.00	\$279.67
\$50,000	\$380.00	\$349.58

- Form W-2, Box 1 Wages
 - Include all annual wages/salary, including bonuses, but reduced by pre-tax contributions toward benefits
 - Use Box 1 wages for the year coverage is offered (e.g., 2023 Box 1 wages for affordability of coverage during 2023)
 - Must use a guesstimate at the beginning of the year to set affordable contributions

ACA Employer Reporting

Self-Funded
Group
Health Plans

Self-Funded Coverage Reporting

- Federal Coverage Reporting
 - All self-funded (and level-funded) group health plans providing minimum essential coverage (MEC) must report on all covered individuals
 - Employees, non-employees (e.g., COBRA participants and retirees), and their spouses and dependents
 - Small employers <50 FTEs → Form 1094-B and Form 1095-Bs
 - Applicable large employers → Form 1094-C and Part III of Form 1095-Cs

Form 1095-C (2023) Page **3**

Part III Covered Individuals
 If Employer provided self-insured coverage, check the box and enter the information for each individual enrolled in coverage, including the employee.

	(a) Name of covered individual(s) First name, middle initial, last name	(b) SSN or other TIN	(c) DOB (if SSN or other TIN is not available)	(d) Covered all 12 months	(e) Months of coverage											
					Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
18				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

SSN/TIN Reporting

- SSN/TIN
 - Required for spouses and dependents only when reporting enrollment in a self-funded (or level-funded) group health plan
 - Generally required to make at least 3 attempts to obtain accurate information



If employer is unable to obtain SSN/TIN using this process, employer may use date of birth, but should document the 3-step process for audit purposes

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	<ul style="list-style-type: none">• Statements to covered individuals January 31st• Filing with FTB March 31st
Massachusetts	Form 1099-HC	<ul style="list-style-type: none">• Statements to covered individuals January 31st• Filing with DOR March 31st
New Jersey	Form 1094 and Form 1095s	<ul style="list-style-type: none">• Statements to covered individuals March 1st• Filing with DORES March 31st
Rhode Island	Form 1094 and Form 1095s	<ul style="list-style-type: none">• Statements to covered individuals March 1st• Filing with DOT March 31st
Washington D.C.	Form 1094 and Form 1095s	<ul style="list-style-type: none">• Statements to covered individuals March 1st• Filing with OTB due 30 days after federal reporting

ACA Employer Reporting:

IRS
Enforcement

1094 / 1095 Reporting - IRS Enforcement

Letter 5699

- IRS reaches out to employers who appear to be ALEs (based on Form W-2s filed) and who did not report

Letter 226J

- IRS proposes assessments based on self-reporting of §4980H compliance and subsidized Marketplace enrollment

Letter 972CG

- IRS imposes penalties for late or missed filings

Employer Reporting Penalties

- Failure to Timely or Accurately Report
 - 2023 Penalty (potentially \$620/form)
 - \$310/failure to the IRS
 - \$310/failure to send copies to employees and covered individuals

NO MORE GOOD FAITH RELIEF

Employers should be extra careful in reviewing and approving submissions to the IRS to make sure the reporting is as complete and accurate as possible

Review assistance - <https://benefitcomply.com/employerreporting/>

§4980H (Employer Mandate) Penalties

- Penalties based on self-reporting via Forms 1094-C and 1095-C and number of full-time employees who enrolled in subsidized Marketplace coverage

	2023	2024
§4980H(a)	\$2,880 (\$240/mo.)	\$2,970 (\$247.50/mo.)
§4980H(b)	\$4,320 (\$360/mo.)	\$4,460 (\$371.67/mo.)

§4980H(a) Penalty

- Penalty applies if employer fails to offer minimum essential coverage to 95% (or all but 5, if greater) AND any full-time employee enrolled in subsidized Marketplace coverage
- Penalty X (total full-time employees – 30)

§4980H(b) Penalty

- Penalty X each full-time employee not offered minimum value, affordable coverage that enrolled in subsidized Marketplace coverage

Gag Clause Attestation

Gag Clause Prohibition



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



Required to attest to compliance for 2021 – 2023 by Dec. 31, 2023

Annual attestation required each year by Dec. 31

What Is a Gag Clause?



- Might exist in agreements between the plan and:
 - a health care provider;
 - a network or association of providers;
 - a TPA; or
 - another service provider offering access to a network of providers

Gag Clause Attestation

- Which Plans Must Comply?
 - Applies to plans of all sizes, fully-insured and self-funded, and grandfathered
 - Examples - group medical plans, Rx carve-outs (PBMs), behavioral health networks, telemedicine, direct primary care arrangements

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 Attestation

- **Responsibility for Attestation**

- Fully-Insured Group Health Plans → Carriers likely to attest on behalf of the plan
- Self-Funded Group Health Plans → TPAs and PBMs may be willing to attest on behalf of the plan, but otherwise the employer must handle the attestation
- Other Group Health Plan Arrangements → Employer must attest for any service providers that will not (e.g., telemedicine, specialty provider networks)

Attestation Process

- **Step 1 – Identify All Service Providers & Attestation Responsibilities**
 - Determine which service providers will attest, and for those that will not, review contracts or request confirmation of compliance

- **Step 2 - Obtain Website Access**
 - Go to CMS' portal link, enter in an email address, and get a unique code to access

- **Step 3 - Complete Attestation Form**
 - Fill out information in 5 short sections of the form and then provide signature

- **Step 4 - Confirm Submission**
 - Download submission receipt and file it in case of future audit or questions

Attestation Process

Go to: <https://www.cms.gov/ccio/programs-and-initiatives/other-insurance-protections/gag-clause-prohibition-compliance>

The screenshot shows the CMS.gov website. The header includes the CMS.gov logo, the text 'Centers for Medicare & Medicaid Services', and links for 'About CMS', 'Newsroom', and 'Data & Research'. A search icon is also present. The main navigation menu includes 'Medicare', 'Medicaid/CHIP', 'Marketplace & Private Insurance' (which is underlined), 'Priorities', and 'Training & Education'. A breadcrumb trail below the navigation reads: 'Marketplace & Private Insurance > About the Marketplace > Marketplace oversight > Other Insurance Protections > Gag Clause Prohibition Compliance Attestation'. The main content area has a title 'Gag Clause Prohibition Compliance Attestation' and a description: 'A Gag Clause Prohibition Compliance Attestation (GCPCA) is an attestation of compliance with Internal Revenue Code (Code) section 9824, Employee Retirement Income Security Act (ERISA) section 724, and Public Health Service (PHS) Act section 2799A-9, as added by section 201 of Title II (Transparency) of Division BB of the CAA, as applicable.' Below the description, it states: 'These provisions prohibit group health plans and health insurance issuers offering group health insurance coverage from entering into an agreement with a health care provider, network or association of providers, third-party administrator (TPA), or other service provider offering access to a network of providers that would directly or indirectly restrict a plan or issuer from —'. A list of prohibited actions is partially visible, starting with '(1) providing provider-specific cost or quality of care information or data through a consumer engagement'.

Gag Clause Attestation

- **Common Questions**

- If the employer offers multiple medical plan options, how many “plans” is the employer attesting on behalf of?
- What if a plan changed service providers during the 2021 -2023 attestation period?
- What should an employer do with documentation from service providers verifying compliance with the gag clause prohibition?
- What should an employer do if some service providers are unwilling to cooperate?

November 2023

ACA Employer Reporting & Gag Clause Attestations

Presented by Benefit Comply