

Consolidated Appropriations Act (CAA) of 2021 Which Employers/Plans Need to Comply?

IMPORTANT NOTE: Each employer needs to review the law in detail and determine the specific CAA item to see if it applies to them.

We have broken down the components at a high level as to which types of plans are required to address the component, and what federal agency has authority over that component. **The CAA makes is very clear that the employer is responsible for compliance with the law.**

Below are the high-level components of the CAA that pertain to employer healthcare coverage or plans. There are subcomponents of each item below that may or may not apply to your organization's health plan(s). This list is not exhaustive but is an overview.

1) Surprise Medical Billing and Transparency Provisions

a) Generally, the No Surprises protections apply to individuals enrolled in a healthcare plan, through an employer (whether self-funded or insured, including coverage offered by federal, state, or local governments, or a multiemployer plan), or through the federal Marketplaces, state-based Marketplaces, or directly through an individual market health insurance issuer.

i) SOURCE: <https://www.cms.gov/files/document/faq-providers-no-surprises-rules-april-2022.pdf>

b) Jurisdiction:

- i) Most Americans under age 65 are covered by private employer-sponsored health plans, with nearly 2/3 of covered workers in self-insured plans that states are preempted from regulating. Enforcement authority over private self-insured employer-sponsored group plans rests with the U.S. Department of Labor (DOL) and Department of Treasury. Fully insured group plans will be regulated by states*
- ii) For self-insured plans sponsored by non-federal public employers, the U.S. Department of Health and Human Services (HHS) has primary enforcement authority.*

iii) SOURCE: <https://www.kff.org/health-reform/issue-brief/no-surprises-act-implementation-what-to-expect-in-2022/>

2) Prescription Drugs Data Collection (RxDC)

a) *Who is required to submit the RxDC report?*

i) *Health insurance issuers offering group coverage*

ii) *Fully insured and self-funded group health plans, including:*

(1) *Non-federal governmental plans, such as plans sponsored by state and local government*

(2) *Church plans that are subject to the Internal Revenue Code*

(3) *FEHB (Federal Employee Health Benefits) plans*

iii) *These requirements apply regardless of whether a plan is considered a grandfathered or grandmothers health plan.*

b) *Can a vendor submit data on my behalf?*

i) *Plans, issuers, and FEHB carriers (carriers) can contract with issuers, Third-Party Administrators (TPAs), Pharmacy Benefit Managers (PBMs), or other third-party vendors to submit data on their behalf. An entity that submits some or all of the required information is called a reporting entity. In these instructions, “you” generally refers to the reporting entity.*

ii) *What is a reporting entity?*

iii) *An entity that submits some or all of the required information is called a reporting entity. In these instructions, “you” generally refers to the reporting entity*

c) SOURCE: <https://regtap.cms.gov/uploads/library/RxDC-Reporting-Instructions-12-16-2021.pdf>

d) *What are grandmothers health plans?*

i) *If your current health insurance policy is not grandfathered but was in effect prior to 2014, your plan is considered a transitional, or “grandmothers” policy (these plans are also referred to as “non-enforcement policies” as most ACA rules are not enforced for them). These plans are not fully ACA-compliant and were purchased between March 23, 2010 – when the ACA was signed into law – and October 1, 2013 (in some states, policies purchased through December 31, 2013, are considered grandmothers).*

ii) SOURCE: <https://www.healthinsurance.org/glossary/grandmothers-health-plan/>

- e) Jurisdiction: Department of Labor, Department of Health and Human Services, and the Department of the Treasury
- 3) Parity in Behavioral Health and Substance Use Disorder Benefits
 - a) *Mental Health Parity and Addiction Equity Act (MHPAEA) applies to plans sponsored by private and public sector employers with more than 50 employees, including self-insured as well as fully insured arrangements. MHPAEA also applies to health insurance issuers who sell coverage to employers with more than 50 employees.*
 - i) SOURCE: <https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/fact-sheets/mhpaea.pdf>
 - b) *Are there plans that are exempt from MHPAEA?*
 - i) *Yes. MHPAEA applies to most employment-based group health coverage, but there are a few exceptions. MHPAEA contains an exemption for a group health plan of a small employer.⁴ Nevertheless, under HHS final rules governing the Affordable Care Act requirement to provide essential health benefits (EHBs), non-grandfathered health insurance coverage in the individual and small group markets must provide all categories of EHBs, including mental health and substance use disorder benefits. The final EHB rules require that such benefits be provided in compliance with the requirements of the MHPAEA rules.⁵*
 - ii) *MHPAEA also contains an increased cost exemption available to plans that meet the requirements for the exemption. The final rules establish standards and procedures for claiming an increased cost exemption under MHPAEA. Additionally, plans for State and local government employees that are self-insured may opt-out of MHPAEA's requirements if certain administrative steps are taken.⁶ Finally, MHPAEA does not apply to retiree-only plans.*
 - iii) SOURCE: <https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-xvii.pdf>
 - c) Jurisdiction: *The DOL and the IRS generally have enforcement authority over private sector employment-based plans that are subject to ERISA. HHS has direct enforcement authority with respect to self-funded non-Federal governmental plans. While State insurance commissioners have primary authority over issuers in the large group market, HHS has secondary enforcement authority.*
 - i) SOURCE: <https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/fact-sheets/mhpaea.pdf>