

HCP MANAGEMENT CONFERENCE & EXHIBITION 2025

Confidence in Care: Resilience, Readiness, and Results

WELCOME

TITLE

*Big Bill, High Stakes: Navigating Benefit Risk and
Regulatory Whiplash in Home Care*

SPEAKERS

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ACA COMPLIANCE CHALLENGES FOR VARIABLE-HOUR EMPLOYEES

REQUIREMENTS OF ACA



The Affordable Care Act (ACA) requires that “**Applicable Large Employers**” offer “**Full-Time Employees**” (FTEs), and their dependents, the opportunity to enroll in Minimum Essential Coverage, that is **affordable** and provides **minimum value**.



An **Applicable Large Employer** is any employer that, within a calendar year, employed an average of at least 50 full-time employees.



An FTE is an employee who works at least **30 hours per week or 130 hours per month**.

PENALTIES UNDER THE ACA

“Applicable Large Employers” can incur penalties as follows:

- “No Coverage Penalty” or the “A Penalty” - Employer fails to offer to substantially (95%) all full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage
 - Section a penalty = (full-time employee count – 30) X §4980H(a) Penalty
 - §4980H(a) monthly penalty for 2025 is \$241.66 (\$2,900 annually)
 - §4980H(a) monthly penalty for 2026 is \$278.33 (\$3,340 annually)
 - Penalty applies regardless of the value and affordability of the coverage offered
- “Unaffordable Plan Penalty” or the “B Penalty” - Employer offers an eligible medical plan to substantially all full-time employees (and their dependents), but the plan is not affordable or does not provide minimum value
 - Monthly penalty will be incurred by the employer for each full-time employee who receives an exchange subsidy
 - §4980H(b) monthly penalty for 2025 is \$362.50 (\$4,350 annually)
 - §4980H(b) monthly penalty for 2026 is \$417.50 (\$5,010 annually)
 - This penalty cannot exceed the No Coverage Penalty that would be assessed if the employer did not offer coverage to substantially all full-time employees (and dependents)
- Reporting Penalties. In addition to penalties incurred for not offering coverage or failing to offer affordable coverage, employers may be subject to penalties for reporting including failure to report and failure to file correct information returns. Reporting penalty fees vary based on how far removed from the deadline an employer files; the most severe penalties for willful failure to file.

WHAT IS A MEC?

MEC – Minimum Essential Coverage – provides only preventive care. **No** coverage for illness or injury.

Common Medical Event	Services You May Need	Network Provider (You will pay the least)	Out-of-Network Provider (You will pay the most)
If you visit a health care provider's office or clinic	Primary care visit to treat an injury or illness	Not covered	Not covered
	Specialist visit	Not covered	Not covered
	Preventive care/screening/immunization	\$0	Not covered

If you have outpatient surgery	Facility fee (e.g., ambulatory surgery center)	Not covered	Not covered
	Physician/surgeon fees	Not covered	Not covered
If you need immediate medical attention	Emergency room care	Not covered	Not covered
	Emergency medical transportation	Not covered	Not covered
	Urgent care	Not covered	Not covered
If you have a hospital stay	Facility fee (e.g., hospital room)	Not covered	Not covered
	Physician/surgeon fees	Not covered	Not covered
If you need mental health, behavioral health, or substance	Outpatient services	Not covered	Not covered
	Inpatient services	Not covered	Not covered

LOOKBACK MEASUREMENT FOR VARIABLE-HOUR EMPLOYEES

Methods to measure whether an employee is considered full-time for purposes of the ACA (averages at least 30 hours per week or 130 hours in a month) include:

(1) the **Monthly Measurement Method** (counting hours for each month); or

(2) the **Look-Back Measurement Method** (measuring hours over a period to determine status for a future period).

Under the **Look-Back Measurement Method**, an employer may determine the status of an employee as a full-time employee during what is referred to as the “Stability Period,” based upon the hours of service of the employee in the preceding period, which is referred to as the “measurement period.”

- **Measurement Period/ Initial Measurement Period** (3 to 12 mos) during which hours are tracked to determine whether they average at least 30 per wk/ 130 per mos;
- **Stability Period** (at least 6 mos) during which those employees who were determined to be full-time during the measurement period continue to be treated as full-time regardless of the number of hours worked during the stability period; and
- **Administrative Period** (max 90 days) between the measurement period and the stability period to facilitate enrollment and other administrative tasks.

COMMON MISTAKES IN VARIABLE HOUR TRACKING

Failing to accurately track all “hours of service.”

- An hour of service is:
 - Each hour for which an employee is paid, or entitled to payment, for the performance of duties for the employer, and
 - Each hour for which an employee is paid, or entitled to be paid, by the employer for a period of time during which no duties are performed due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence.
- Problems often arise around confusing payroll codes and failure to develop common equivalency for visits, compensation, and on call, etc.

Missing rehire windows

- Continuing Employees: Employees with a break in service of 13 weeks or less are considered continuing employees. Continuing employees retain their prior ACA status and may need immediate reinstatement of benefits if they were previously enrolled and are returning to full-time status. They are not required to repeat the waiting period for benefits. Measurement and stability periods continue as if the employee had never left.
- New Hires: Employee with a break in service of more than 13 weeks can be treated as a new hires. They may be subject to a new “reasonable” waiting periods for benefits.

2026 ESSENTIAL PLAN – COMPENSATION TESTING CHANGES

ESSENTIAL PLAN COVERAGE REDUCTION – 1/1/2026

- NYS is Terminating the §1332 Waiver to the ACA. This may force many previously subsidized employees onto employers' health insurance plans
- The compensation test for coverage will be reduced to 200% of the Federal Poverty Line, From 250% of the Federal Poverty Line...

Household Size	Federal Poverty Line	250%	200%
1 person	\$15,650	\$39,125	\$31,300
2 people	\$21,150	\$52,875	\$42,300
3 people	\$26,650	\$66,625	\$53,300
4 people	\$32,150	\$80,375	\$64,300
5 people	\$37,650	\$94,125	\$75,300
6 people	\$43,150	\$107,875	\$86,300
7 people	\$48,650	\$121,625	\$97,300
8 people	\$54,150	\$135,375	\$108,300

- The benefit is available to NYS residents who earn too much for Medicaid or cannot qualify because of immigration status.

2027 MEDICAID HEALTH INSURANCE ELIGIBILITY CHANGES

Household Size	2025 Federal Poverty Line	138%
1 person	\$15,650	\$21,597
2 people	\$21,150	\$29,187
3 people	\$26,650	\$36,777
4 people	\$32,150	\$44,367
5 people	\$37,650	\$51,957
6 people	\$43,150	\$59,547
7 people	\$48,650	\$67,137
8 people	\$54,150	\$74,727

Work Requirement – 80 hours per month

6-month requalification vs. annual requalification

Compensation limit 138% of the FPL

2026 Minimum Hourly Wage = \$22.19

$80 \text{ hours} \times \$22.19 \times 12 = \$21,302.40$

These changes will encourage employees to seek coverage under employer plans

EMPLOYEE BENEFIT CHANGES IN THE OBBS

EMPLOYEE BENEFIT RELATED CHANGES IN OBBB



1st Dollar Telehealth OK for HSA



Fixed Fee Direct Primary Care (DPC)
OK for HSA



HSA Eligibility for Bronze and
Catastrophic plans on Exchange



Dependent Care Allowance Increase
to \$7,500/\$3,750



Bicycle Commuting Expenses
removes from pre-tax transportation



\$5,250 qualified, pre-tax employee
student loan repayments from
employer



“Trump Accounts” – permits
employers to contribute up to
\$2,500 pre-tax to employees and
dependents under age 18, like an
IRA.

COMMON BENEFITS ISSUES AND STRATEGIES TO REDUCE RISKS

BENEFIT BALANCE CHALLENGES

How much is sitting on your benefit cards, MEC programs and other self-insured plans?

HYPOTHETICAL CASE STUDY...

775 HHAs Average per month over a 31-month period

Total spend to purchase MEC coverage
\$2,382,814

Total claims paid
\$27,642

So, the agency spent \$2.4MM, only \$28K was used for claims

The remaining balance is \$2.37MM, less administrative expenses, and any additional claims and subrogation rights

BACK TO THE BIG QUESTION – WHAT HAPPENS TO UNUSED FUNDS IF EMPLOYEES DON'T USE THEIR BENEFITS?



Typically, LHCSAs with these programs pay a fixed monthly or hourly cost for eligible employees.



Often, administrator/brokers of the programs reserve the money for claims or funds are otherwise deposited for the benefit of employees.



But, if there are very few claims or funds are not otherwise used, what happens to the balance?



Have you asked for a utilization report showing contributions, claims, administrative costs and reserves?



Have you CHECKED your MEC?

BENEFIT BALANCE ISSUES

- What strategies can be used to minimize the accrual of surplus amounts?
 - Consider fully-insured products over self insured
 - Consider cash contributions over insured, e.g., 401(a)
 - Consider periodic re-allocation of accrued and unused employee benefits accruals
 - Act promptly to payout amounts owed to employees upon separation from employment
- Consider tax and wage/hour issues associated with balances
- Be cognizant of recent laws that prohibit certain reversionary policies

RISK MITIGATION STRATEGIES



Avoid Constructive Receipt Tax Issues

PTO cash-out Issues: unrestricted ability to convert the PTO to cash can trigger tax liability.

Choice of taxable and non-taxable benefits outside of a Section 125 plan. If the choice is offered outside of a compliant cafeteria plan, employees may be taxed on the value of the non-taxable benefit, even if they never did not elect the taxable option.

On-demand pay arrangements have been subject to IRS attention.



Carefully Consider Tax Issues upon Separation of Employment

Commuter Benefits- Transit and parking benefits are forfeited on the day of separation (employees placed on inactive status do not lose benefits).

HRAs- Accrued benefits cannot be cashed out or used to pay for other benefits, but can continue to be used post-separation until exhausted.

Cell Phone- Taxable cell phone funds can be forfeited, taxed and reported on the W-2, or converted to a non-taxable benefit such as an HRA at separation that can continue to be used post-separation.

Dependent Care- Employer can offer a Dependent Care Agreement that allows employees who have ceased participation in the agreement to be reimbursed from their remaining account balances incurred during the remainder of the plan year.

COMMON ISSUES AND INVESTIGATIONS IN THE HOME HEALTH CARE INDUSTRY

Wage and Hour.

- **Regular rate Issues.** See *Flores v. City of St. Gabriel* 824 F.3d 890 (9th Cir. App. 2016)- Finding that cash payments provided to employees in lieu of health benefits must be included in the regular rate of pay for calculating overtime.
- **Companionship Issues.**
 - Under a Notice of Proposed Rulemaking (NPRM) issued by the US DOL in July 2025, most home health aides and similar caregivers would no longer be entitled to minimum wage or overtime under federal law. The US DOL is currently considering comments on the NPRM. But in the interim, it has issued a Field Assistance Bulletin directing investigators to “not investigate or take enforcement action against third party employers, including home care agencies, that claim the exemption [for companionship or live-in domestic service workers]” pending the DOL’s finalization of the Proposed Rulemaking summarized in my email below.
 - If Rules consistent with the NPRM are adopted by the US DOL, it would bring the law back to where it was pre-2015. In New York State, this would mean that, among other things, home health aides and similar caregivers who are exempt under federal law would need to be paid only 1.5 times the NYS minimum wage rate (as opposed to 1.5 times their regular rate of pay) for hours they work in excess of 40 in a workweek.
- **Spread of Hours Issues.**
 - New York employees are entitled to an additional hour of pay at the minimum wage rate for any day in which the interval between the beginning and end of the employee’s workday exceeds 10 hours. The interval between the beginning and end of an employee’s workday includes time off for meals and intervals off duty . Total weekly wages paid be equal to or greater than the total due for all hours worked at the minimum wage and overtime rate (as applicable), plus one additional hour at the minimum wage for each day in which a “spread” occurs.

Government Investigations

- IRS Investigations
- US DOL AND NYS DOL Investigations and Audits
- Other Government Investigations

Thank You!

Session Survey



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