



September Compliance Webinar

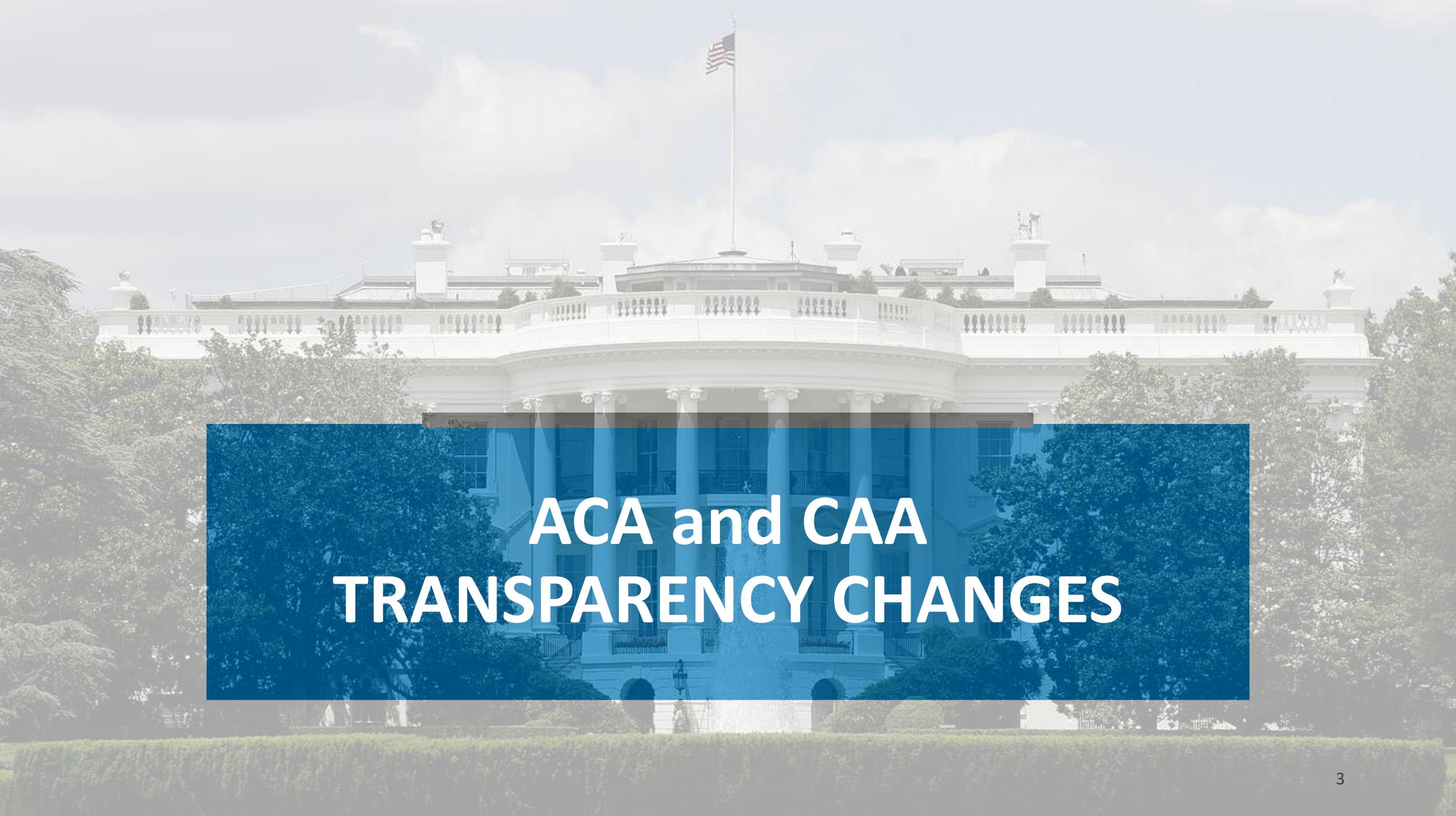
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You should seek the advice of your attorney or tax advisor for specific information pertaining to any business.

A photograph of the White House in Washington, D.C., featuring the iconic portico with columns and a large American flag on a tall pole in the center. The building is surrounded by green trees and a well-manicured lawn. A semi-transparent blue rectangular box is overlaid on the lower half of the image, containing white text.

ACA and CAA TRANSPARENCY CHANGES

ACA and CAA Transparency Changes

TiC requires non-grandfathered group health plans and health insurance issuers offering non-grandfathered coverage in the group and individual markets to disclose on a public website information regarding:

- In-network provider rates for covered items and services
- Out-of-network allowed amounts
- Billed charges for covered items and services
- Negotiated rates and historical net prices for covered prescription drugs in three separate machine-readable files.

Previous implementation date: plan years beginning on or after January 1, 2022

Updated enforcement date: July 1, 2022 for disclosing in-network provider rates for:

- Covered items and services
- Out-of-network allowed amounts
- Billed charges for covered items and services.

The date to disclose prices for prescription drugs is delayed until further rulemaking is issued.

ACA and CAA Transparency Changes

The CAA includes certain reporting requirements for plans and issuers. These reporting requirements primarily relate to prescription drug expenditures, requiring that plans and issuers submit relevant information to the Departments.

This includes general information regarding the plan or coverage, such as the beginning and end dates of the plan year, the number of participants, beneficiaries or enrollees, as applicable, and each state in which the plan or coverage is offered.

Plans and issuers must also report the:

- ❑ 50 most frequently dispensed brand prescription drugs, and the total number of paid claims for each such drug
- ❑ 50 most costly prescription drugs by total annual spending, and the annual amount spent by the plan or coverage for each such drug
- ❑ 50 prescription drugs with the greatest increase in plan expenditures over the plan year preceding the plan year that is the subject of the report and, for each such drug, the change in amounts expended by the plan or coverage in each such plan year.

ACA and CAA Transparency Changes

The previous implementation date(s):

- The specified information by the first deadline for reporting on December 27, 2021
- The second deadline for reporting on June 1, 2022, depending on plan year.

The updated enforcement:

The Departments intend to issue regulations that will address the pharmacy-benefit and drug-cost-reporting requirements. Until regulations or further guidance is issued, the Departments strongly encourage plans and issuers to start working to ensure that they are in a position to be able to begin reporting the required information with respect to 2020 and 2021 data by December 27, 2022.





President Biden's Six Point Plan

President Biden's Six Point Plan

Last Thursday, President Biden announced his six point plan to combat the spread of COVID and get back to economic recovery. Among the items in the plan included the following:

- ❑ All federal employees who work for Executive Branch agencies (including military) must be vaccinated by November 22 or face personnel action
- ❑ Most employees working for federal contractors and subcontractors must be vaccinated, especially those working on federal property or buildings
- ❑ CMS has ordered health care facilities who receive Medicare or Medicaid funding to have their employees vaccinated (date TBD)
- ❑ OSHA to issue Emergency Temporary Standard requiring employers with 100 or more employees to have their employees vaccinated or tested weekly



President Biden's Six Point Plan

There is additional support for small businesses.

- The Economic Injury Disaster Loan (EIDL) program will be streamlined to allow more businesses to get loans, and the Small Business Administration (SBA) will increase the maximum amount of funding a small business can borrow through this program from \$500,000 to \$2 million.

The Paycheck Protection Program (PPP) loan forgiveness process will be streamlined.

- The new process will have the SBA sending completed forgiveness application forms to the borrower who can then review, sign, and return to SBA, which then works with the lender to complete the forgiveness process.



100+ Employee/ Employer Mandate

100+ Employee/Employer Mandate

The President has directed OSHA to adopt an Emergency Temporary Standard (ETS) that would require all employers with 100 or more employees to ensure their workforce is:

- Either fully vaccinated, OR
- Require any workers who remain unvaccinated to produce a negative test result on at least a weekly basis before coming to work.



Penalty for failure to comply?

OSHA has authority to fine noncomplying employers up to \$14,000 per violation under current ETS rules.

This could change under a temporary rule.

100+ Employee/Employer Mandate

This will not take effect until the ETS is issued by OSHA. There is no expected timeframe for its publication or when it will take effect.

Congressional Research Service:

The nine times OSHA has issued an ETS before COVID-19, the courts have fully vacated or stayed the ETS in four cases and partially vacated the ETS in one case

Can this mandate be challenged in court?

Yes, but it is not clear what businesses will do or states will do.

Important note: This mandate does not set aside union contracts

What Should You Be Telling Employers To Do Now?



- Check to verify whether you are an OSHA defined 100 employee employer. Look at the rules and your payroll records over last twelve months
- Adopt Procedures for Determining Employees' Vaccination Status. Need a system in place to determine vaccination status (it's ok to ask) and to maintain confidential records (proof of vaccination).
- Do not need other additional medical or family history.
- Determine if you will allow weekly testing as an alternative. Remember the mandate is either vaccination or weekly testing, but an employer can mandate that their employee be vaccinated.

Allowing weekly testing will mean that employer must pay for the testing, and if directing the when/how/where, hourly employees must be paid for that time

What Should You Be Telling Employers To Do Now?

- Develop a robust and clear reasonable accommodation policy to address religious and disability exemption requests.
- Communicate and administer the accommodation process thoughtfully, emphasizing individualized, confidential consideration of each request.
- What if the employee doesn't want to be tested weekly? This is a separate request/process and could be harder to justify
- Prepare for OSHA complaints and inspections.

Remember this ETS will not do away with current compliance duties related to COVID-19 prevention. Whatever safety steps you may already be required to take under existing OSHA and CDC guidance, or state or local public health orders, remain in effect.

Who Pays for the Testing?

This will be a major issue since the mandate to pay for testing under CARES Act requires health plans to pay when “medically necessary.”

Most carriers are now denying payment for “surveillance” testing, which is how most of the non-vaccinated testing will be treated.

So... who pays?

Under the initial guidance, the cost of testing under the expected OSHA must be borne by the employer, not the employee.





Broker Compensation Transparency

Broker Compensation Transparency

Effective December 27, 2021, brokers and consultants of ERISA covered group health plans, regardless of size, will be required to execute a written contract with a responsible plan fiduciary which includes the following information:

- A description of the services to be provided
- If applicable, a statement that the broker/consultant plans to offer fiduciary services to the plan
- A description of all direct compensation the broker expects to receive (in the aggregate or by service)



Broker Compensation Transparency

- ❑ A description of all expected indirect compensation, including:
 - Vendor incentive payments
 - A description of the arrangement under which the compensation is paid
 - The payer of the compensation
 - Any services for which the compensation will be received.

- ❑ Any transaction-based compensation (e.g., commissions or finder's fees) for services and the payers and recipients of the compensation

- ❑ A description of any compensation the broker/ consultant expects to receive in connection with the contract's termination (and how any prepaid amounts will be calculated and refunded upon termination)

Broker Compensation Transparency

- ❑ These new rules apply when the broker or consultant expects to receive at least \$1,000 in direct or indirect compensation (whether paid to the broker, an affiliate, or subcontractor).

- ❑ The disclosure should occur reasonably in advance of each contract date and renewal date.

- ❑ The definition of a broker or consultant for this purpose is broad and includes parties who are not considered traditional brokers/consultants (e.g., pharmacy benefit managers, wellness vendors, and third-party administrators).
 - Plan fiduciaries must report brokers/consultants to the DOL if they do not comply with these requirements.

Broker Compensation Transparency

Last week, HHS filed a proposed rule addressing broker compensation transparency in the individual market and Under the proposed rule, to ensure transparency of agent and broker compensation when purchasing individual health insurance coverage or short-term limited-duration insurance, issuers must disclose to a potential or existing policyholder the amount of direct and indirect compensation provided to an agent or broker associated with enrolling the policyholder in individual health insurance coverage or short-term, limited-duration insurance.

This disclosure would be required to include the commission schedule used to determine the compensation owed to an agent or broker as part of the appointment contract between the agent or broker and the health insurance issuer as well as the structure for compensation not captured on the commission schedule.





**“Build Back Better”
\$3.5 Trillion Reconciliation Bill**

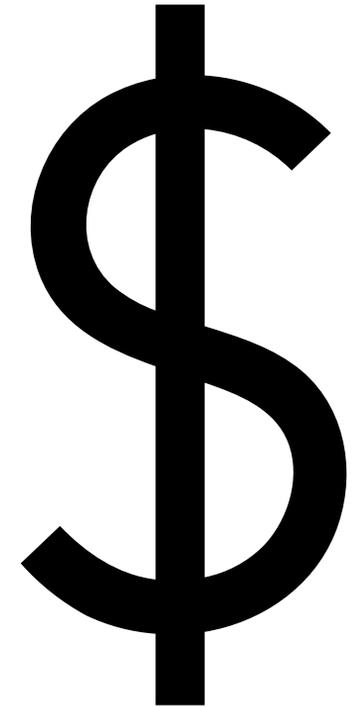
“Build Back Better” - \$3.5 Trillion Reconciliation Bill

This past week, two House committees started the mark-up of the reconciliation bill. Among the many items looking to be included in the bill are:

- 12 weeks of mandatory paid family and medical leave
- Permanent expansion of the ACA subsidies
- Expanding Medicare to include dental, vision and hearing coverage

Vision and hearing to be effective in 2022 and 2023 with dental becoming effective in 2028. All would be covered under Part B.

- Lowering the Medicare eligibility age to 60



“Build Back Better” - \$3.5 Trillion Reconciliation Bill

Granting the Secretary of HHS the ability to negotiate drug prices, requiring drug manufacturers that increase their prices faster than inflation to pay back that excess amount to the federal government, and capping out-of-pocket costs for Medicare Part D beneficiaries at \$2,000 each year. The plan includes much of what was originally contained in H.R. 3, first introduced in 2019.

It should be noted that this piece of the legislation was defeated in one of the committee's mark-up. It did pass in the other committee so some form of these provisions will still be in play.

A close-up photograph of a doctor in a white lab coat. The doctor is holding a spiral-bound notebook with both hands. The notebook is light-colored and has the words "OPEN ENROLLMENT" printed on the cover in a large, bold, serif font. A stethoscope is visible around the doctor's neck. The background is slightly blurred, showing what appears to be a medical office with shelves of binders.

Open Enrollment

CMS Extends Open Enrollment

The Centers for Medicare & Medicaid Services (CMS) made the decision to extend the open enrollment period for an additional 30 days.

**This year, Open Enrollment will run from
November 1, 2021 through January 15, 2022
on [HealthCare.gov](https://www.healthcare.gov).**

CMS is also expanding services provided by Federally-facilitated Marketplace (FFM) Navigators—experts who help consumers, especially those in underserved communities, understand their benefits and rights, review options, and enroll in Marketplace coverage.

The background of the slide features a blurred image of the United States Capitol building in Washington, D.C., with its iconic white dome and neoclassical architecture. To the right, a large American flag is visible, its stars and stripes slightly out of focus. A semi-transparent blue rectangular box is overlaid on the lower half of the image, containing the text.

ACA Updates

ACA Affordability Percentage Decreased For 2022

Beginning January 1, 2022, the new affordability percentage for employer-sponsored coverage will be reduced to 9.61% of the employee's household income. This is applied to self-only coverage for the lowest priced ACA compliant plan offered by the employer.

Applicable Large Employers (ALEs) should be made aware of this new affordability percentage in an effort to offer affordable, minimum value health coverage to their full-time employees. The decrease in the percentage means that employers may need to increase their portion of the premium contribution to comply with affordability requirements.

As we have seen in this past, the Internal Revenue Service (IRS) instituted three safe harbors for employers to utilize:

- The W-2 Safe Harbor
- The Rate of Pay Safe Harbor
- The Federal Poverty Level Safe Harbor

Employers should also be mindful of potential penalties if the employee contribution exceeds 9.61% and the employee purchases an individual plan on the exchange and receives a Premium Tax Credit (PTC)

ACA Employer Reporting Changes

As we head into the 7th year of employer reporting under the ACA, there are some new changes to be concerned about.

In previous years, the IRS has allowed good-faith relief for errors made by employers reporting the Forms 1094-C and 1095-C to the IRS. They have also extended the due date to furnish the Forms 1095-C to employees to at least March 2 (from January 31). That relief and extended deadline will not continue for 2021 reporting. Employers will have to be more vigilant that the information reported to the IRS on the Forms 1094-C and 1095-C is complete, meticulous and error free in order to avoid IRS penalties.

Employers should expect to furnish the Forms 1095-C to their employees by January 31, 2022.

ACA Employer Reporting Changes

The Department of Treasury recently released proposed regulations that would make electronic reporting for the Forms 1094-C and 1095-C mandatory for all applicable large employers beginning with the 2021 reporting season.

For returns filed in 2022, employers who are required to file 100 or more Forms 1095-C, Forms 1099, Forms W-2, and many other IRS Forms in the **aggregate** must file electronically.

In 2022 and beyond, the threshold is reduced from fewer than 100 to fewer than 10.



ACA Employer Reporting Changes

The penalty amounts under section 4980H(a) and (b) will continue to increase.

The Code explains that the original **\$2,000** amount associated with the section 4980H(a) penalty and the original **\$3,000** amount associated with the section 4980H(b) penalty would be adjusted for calendar years beginning after 2014.

For 2022, the section 4980H(a) penalty in 2022 will be **\$2,880** annually which equates to **\$240** per month. The section 4980H(b) penalty will be **\$4,320** annually which equates to **\$360** per month.

Questions?



BenefitMall's Compliance & Legislative Team

ACA Hotline



 Call **1.844.5.ACA.411***

 Email **ACA411@benefitmall.com**

 Visit **www.healthcareexchange.com**

 Tweet **@HCExchange**

*To access the ACA hotline, please visit www.benefitmall.com/ACA411 to accept the hotline terms and conditions. By accepting the terms and conditions, you will receive access to the toll free ACA hotline.

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