

Looming Deadline for Pharmacy Reporting

JANUARY 13, 2023

The Consolidated Appropriations Act-21 (CAA) included a provision that requires group health plans (plans) and health insurance companies (issuers) to report prescription drug benefits, drug costs, and healthcare spending. Under the CAA, plans and issuers are required to submit to the United States Departments of Labor, Health and Human Services, and Treasury (the Departments) a broad array of information, such as a list of frequently dispensed prescription drugs paid under the plan, the costliest prescription drugs covered by the plan, and prescription drugs with the greatest increase in plan expenditures over the preceding plan year. Additionally, plans and issuers must also report to the Departments total spending and costs for various services and items and total premiums broken down by participant and employer payments, among other data. Although the submissions were due on December 27, 2022, the Departments issued guidance that they will not take enforcement action with respect to any plan or issuer that uses a good faith, reasonable interpretation of the regulations and reporting instructions in making its submission. The Department's guidance also provided a submission grace period through January 31, 2023, under which the Departments will not consider a plan or issuer to be out of compliance if a good faith submission is made on or before January 31, 2023.

Some additional helpful clarifications and flexibilities were also included in the Department's guidance. These focused on the required reporting for the 2020 and 2021 data, and included the following:

- allowing for multiple submissions by the same reporting entity;
- allowing for more than one reporting entity to submit the same data file type on behalf of the same plan or issuer;
- providing increased flexibility regarding the aggregation of reported data;
- allowing for email submissions (versus required use of the HIOS RxDC module) by group health plans that are submitting certain limited data sets. For example, if a group health plan or its reporting entity is submitting only the plan list, premium and life-years data, and narrative response and is not submitting any other data, it may submit the file by email to RxDCsubmissions@cms.hhs.gov instead of submitting such information in HIOS. The emailed submission must include the plan list file, premium and life-years data (data file D1), and a narrative response. The

submission may include optional supplemental documents. The name of each file should include the reference year of the submission, the plan list or data file type (e.g. P2, D1), and the name of the group health plan sponsor; and

- making optional the requirement to report a value for amounts not applied to the deductible or out-of-pocket maximum and information about vaccines.

The Departments have issued a series of [FAQs](#) as well as instructions on how to [submit this information](#).

Winston Takeaway - Plan sponsors should contact their service providers to confirm their assistance in reporting this information to the Departments. CMS FAQs indicate that plan sponsors can delegate CAA reporting to their vendors, and reporting does not need to be consolidated with one entity. Note that self-funded plans will still retain liability for reporting, but in the case of fully insured plans, liability can be delegated to issuers in writing. Also, if you changed service providers since 2020, you will need to contact your prior service providers and solicit their assistance. Please contact your Winston & Strawn attorneys for more information.

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