CORPORATE SYNERGIES®
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COMPLIANCE **ALERT**

Deadline Approaching for Prescription Drug Reporting Required Under the CAA

September 15, 2022

Action Required:

- Prepare to submit prescription drug data by December 27, 2022.
- **Fully insured:** contract with insurance carrier to handle these new reporting requirements.
- **Self-insured:** work with TPA/vendor to ensure it will assist with reporting submission.

Sponsors of self-insured group health plans and fully insured plans (via insurers) must report detailed annual data on prescription drug utilization and costs by **December 27, 2022**.

These reports must be filed with HHS through the Health Insurance and Oversight System (HIOS) in the Centers for Medicare and Medicaid Services (CMS) Enterprise Portal.

This reporting is required under the Consolidated Appropriations Act, 2021 (CAA) and applicable interim final rules issued last year to make prescription drug costs more transparent to both plan sponsors and participants.

What Prescription Drug Information must be included in these Reports?

These reports must include, among other information, descriptions of the plan's spending on prescription drugs, a description of which prescription drugs account for the most spending by the plan, a listing of which drugs are prescribed most frequently, information regarding prescription drug rebates from drug manufacturers, and detailed premium and cost-sharing amounts paid by plan participants.

What Should Employers and Plan Sponsors Do Next?

Plan sponsors with fully insured plans should ensure that they contract with their insurance carrier to handle these new reporting requirements, and they should retain the written agreement with their carrier where the carrier has promised to complete this reporting.

Self-insured plan sponsors should work with their TPAs and other vendors to ensure, in writing, that the TPA/vendor will assist with the submission of the pharmacy reporting on their behalf (similar to fully insured plans working with their carriers). For any sponsors of self-insured plans who may need to file their reports on their own, they should begin that process now, and should register on the CMS Enterprise Portal.

The account management team at Corporate Synergies can assist with these reporting requirements. ■

↓ Full Explanation Follows ↓

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Deadline Approaching for Prescription Drug Reporting Required Under the CAA

Beginning December 27, 2022, sponsors of self-insured group health plans and insurers (on behalf of fully insured plans) must report detailed annual data on prescription drug utilization and costs (including rebates and other information) to the Department of Health and Human Services (HHS), Department of Labor (DOL) and Treasury (collectively, the "Agencies"). This reporting is required under the Consolidated Appropriations Act, 2021 (CAA) and applicable **interim final rules** ("Final Rules") issued last year—rules designed to make prescription drug costs more transparent to both plan sponsors and participants. In June of this year, the Agencies issued **submission instructions** ("Instructions") explaining the mechanics of the reporting process.

What Prescription Drug Information Must Be included in These Reports?

These reports must include, among other information, descriptions of the plan's spending on prescription drugs, a description of which prescription drugs account for the most spending by the plan, a listing of which drugs are prescribed most frequently, information regarding prescription drug rebates from drug manufacturers, and detailed premium and cost-sharing amounts paid by plan participants.

How Are Sponsors of Self-Insured Plans Supposed to Get This Detailed Prescription Drug Information?

The information that must be included in these reports includes data that very few group health plan sponsors would normally have access to (regardless of whether sponsoring a fully insured or self-insured plan).

Unfortunately, while the Agencies recognize that plan sponsors rarely have access to much of this information, they do not shift the reporting responsibility (and the potential liability for noncompliance) from the sponsors of these self-insured plans to their plans' third party administrators (TPAs) and other vendors. Accordingly, self-insured plans (and particularly those with complicated plan designs and multiple vendors) will have to proceed carefully to ensure that all of the required data is submitted correctly. Some sponsors of self-insured plans may even want to self-report some of this data.

When Are the Deadlines for Filing These Reports?

The first reports must be filed by December 27, 2022 for calendar years (called "reference years") 2020 and 2021. The reporting for the 2022 reference year will be due by June 1, 2023 and then by each June 1 of the year following the reference year.

These reports must be filed with HHS through the Health Insurance and Oversight System (HIOS), which is an application in the Centers for Medicare and Medicaid Services (CMS) **Enterprise Portal**.

What Actions Are Required for Sponsors of Fully insured Plans?

The Final Rules explain that for fully insured plans, the plan may satisfy these reporting requirements if there is a written agreement requiring the insurer/carrier to file the required reporting. If the insurer fails to report the required information, then the insurer, not the plan sponsor, violates the reporting requirements.

What Actions Are Required for Sponsors of Self-Insured Plans?

Sponsors of self-insured plans should work with their TPAs to ensure, in writing, that the TPA will assist with the submission of the pharmacy data reporting on their behalf. However, the responsibility for reporting is ultimately on the self-insured plan sponsor.

There are additional challenges for self-insured plans:

- Given that some data is required to be submitted based on a particular market and/or employer size, there may be more difficulty with providing that information to TPAs who will submit data on behalf of those plans. According to the Final Rules, reasonable approximations for employer size determinations will be permitted, and the Instructions provide examples of acceptable approximation methods.
- Also, there may be a need to combine data from multiple vendors. If there are multiple carve-out vendors separate from the primary medical TPA for any portion of the required data, for example, a pharmacy benefit manager (or PBM), the plan sponsor should work with that vendor or PBM to ensure submission of that data. The primary medical TPA and the other vendor or PBM may submit separate reports on information that they have access to on behalf of the plan sponsor.

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- In some cases, sponsors of self-insured plans may need to submit reporting themselves or verify that the reporting has been completed. It should be noted that there is no notification system in the CMS Enterprise Portal which will notify plan sponsors that reporting has been submitted by a particular vendor or if errors have occurred.
- It is important for sponsors of self-insured plans to recognize that they must coordinate all of the information reporting by their TPAs and other vendors, since they (the plan sponsors) remain liable for reporting failures, even if they do not have access to the vendor-reported data.

Additionally, it should be noted that for both fully insured and self-insured groups who have multiple vendors, the data collection system will allow multiple reporting entities to submit different subsets of the required information with respect to the same plan or issuer.

Is There Any "Good Faith" Exception or Other Reporting Enforcement Relief Available for Employers and Plan Sponsors?

There is no "good faith" or other enforcement relief available for employers sponsoring group health plans. Specifically, for the initial reporting deadline, the Agencies will only refrain from enforcement actions *against insurers and TPAs (not plan sponsors)* where there have been difficulties reporting on average monthly premiums paid by employers and employees due to the difficulties associated with gathering this information.

What Should Employers and Plan Sponsors Do Next?

As the December 27 deadline is right around the corner, sponsors of both fully insured and self-insured plans should take steps now to ensure that the required prescription drug reporting will be handled correctly.

Plan sponsors with fully insured plans should ensure that they contract with their insurance carrier and should retain the written agreement where the carrier has promised to complete this reporting.

Self-insured plan sponsors should work with their TPAs and other vendors to ensure, in writing, that the TPA/vendor will assist with the submission of the pharmacy reporting on their behalf. For any sponsors of self-insured plans who may need to file their reports on their own, they should begin that process now, and should register on the CMS Enterprise Portal.

The account management team at Corporate Synergies can assist with these reporting requirements. ■

If you have any additional questions, please call your Corporate Synergies Account Manager or 866.CSG.1719.

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