Mercer, ERIC comment on CAA prescription drug reporting rules

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In this article

In written comments on new prescription drug reporting requirements, Mercer and the ERISA Industry Committee (ERIC) suggest ways to streamline the reporting process using a consistent framework that conforms to standard industry practices. The July 23 letter also requests a delay of the initial implementation deadline. Submitted to the departments of Treasury, Labor, and Health and Human Services, the comments respond to the agencies' request for information under the 2021 Consolidated Appropriations Act (CAA) (Pub. L. No. 116-260).

Prescription drug transparency provision focuses on employer plans

Starting Dec. 27, 2021, the CAA requires group health plans and health insurance issuers to provide extensive information about their plans' prescription drug coverage. This information, which is deidentified and not available to the public, must include 10 content elements:

- Plan year
- Number of enrollees
- Each state where coverage is provided
- Top 50 brand drugs dispensed by pharmacies for claims paid and total number of claims paid for each drug
- 50 most expensive drugs and the amount spent on each drug
- 50 drugs with the greatest cost increase over the prior plan year and the change in amounts for each drug
- Total spending by plan on health care services by:
  - Cost type (e.g. hospital costs, healthcare provider, clinical service costs, drug costs, other medical costs)

  - Spending on drugs by the plan and enrollees
- Average monthly premium by the employer and employee
- Impact of rebates, fees and other remuneration paid by drug manufacturers on plan premiums
- Any reduction in plan premiums and out-of-pocket costs associated with rebates, fees, or other remuneration paid by drug manufacturers

For self-funded medical plans, the reporting obligation rests with the employer sponsoring the plan, not the third-party administrator (TPA) or pharmacy benefit manager (PBM) that pays Rx claims. The initial reporting deadline is Dec. 27, 2021; thereafter, the annual deadline is June 1.

The departments must use this data to publish a report a report on drug reimbursements, pricing trends, and the role of drug costs in contributing to plan premium increases or decreases. The report can include only disaggregated data, so plan-specific information will not become public. The first report is due within 18 months after plan reporting begins and biannually thereafter.

Mercer/ERIC response emphasizes clarity, plan administration realities

The RFI included more than 40 questions and solicited feedback on 7 major areas:

- General implementation concerns
- Definitions of key terms
- Entities that must report
- Information to report
- Coordination with other reporting requirements
- Public report and privacy considerations
- Regulatory impact

Administrative challenges for employers. Mercer's and ERIC's response highlights the complexities of this new requirement, emphasizing the administrative burden on employers. While the law targets group health plans, very few employers have meaningful access to the data, which is typically held by a third party that administers claims, such as a medical insurance carrier, PBM and/or TPA. The task is especially burdensome for self-funded employers, which may need to aggregate data from multiple sources. Mercer and ERIC advocate good-faith compliance relief for employers that will rely on insurance carriers, PBMs and TPAs to provide this data.

Exemption sought for account-based plans. The comment letter also recommends fully exempting account-based plans like health reimbursement arrangements, health FSAs and health savings accounts from reporting. These types of plans typically do not track prescription drug data at the level contemplated under the law.

Coordination of CAA terms and classifications with industry norms. Other comments from Mercer's Managed Pharmacy Practice suggest how to define several CAA terms in accordance with industry norms. Examples include:

- Healthcare services
- Pharmacy
- Prescription drug
- Rebates, fees and any other remuneration
- Therapeutic class

The letter also suggests regulators rely on a commonly used drug classification system to avoid the need for building a new classification system.

Deadline relief sought. Mercer and ERIC point out that most plans will have difficulty meeting the Dec. 27 initial deadline, especially given other transparency and surprise-billing requirements that take effect in 2022. A delay would enable the departments to review all requirements and work to avoid duplication. A July 13 interim final rule indicates that regulations on this reporting requirement likely will not be finalized until sometime in 2022. In the meantime, "good faith compliance" will be sufficient. Guidance in the near future may explain what good-faith compliance means for this reporting mandate.

Related resources

Non-Mercer resources

- Interim final rule, Requirements related to surprise billing; Part I (Federal Register, July 13, 2021)
- Request for information regarding reporting on pharmacy benefits and prescription drug costs (Federal Register, June 23, 2021)
- Section 204, Title II, Division BB of the 2021 Consolidated Appropriations Act (Congress, Dec. 27, 2020)

Mercer Law & Policy resources

- Tracking federal COVID-19 laws affecting employee benefits, jobs (March 30, 2021)

Other Mercer resources

- Comment letter on prescription drug reporting RFI (Mercer and ERIC, July 23, 2021)

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