
COMPLIANCE ALERT



EMPLOYEE BENEFITS | January 4, 2023

Agencies Extend RxDC Reporting Deadline to January 31, 2023

On December 23, 2022, federal agencies released [ACA and CAA Implementation FAQ Part 56](#), which extends the December 27, 2022 deadline for Prescription Drug Data Collection Reporting (“RxDC Reporting”) through January 31, 2023, and provides relief for plans that use a good faith, reasonable interpretation of the regulations and RxDC Reporting Instructions when submitting their data for the 2020 and 2021 reference years. Further, as discussed below, the FAQ offers guidance and provides additional flexibility to assist group health plans and health insurance issuers in accomplishing the reporting.

Background

The Consolidated Appropriations Act, 2021 (“CAA, 2021”) included a provision that requires group health plans and health insurance issuers (collectively “plans and issuers”) to report certain specified data related to prescription drug and other health care spending, including, but not limited to: (1) general information regarding the plan or coverage; (2) the 50 most frequently dispensed brand prescription drugs; (3) the 50 most costly prescription drugs by total annual spending; (4) the 50 prescription drugs with the greatest increase in plan expenditures over the preceding plan year; (5) total spending by the plan or coverage broken down by the type of costs; (6) the average monthly premiums paid by participants, beneficiaries, and enrollees and paid by employers; and (7) the impact of premiums on rebates, fees, and other remuneration paid by drug manufacturers to the plan or coverage or its administrators or service providers, including the amount paid with respect to each therapeutic class of drugs and for each of

the 25 drugs that yielded the highest amount of rebates and other remuneration under the plan or coverage from drug manufacturers during the plan year.

Pursuant to the CAA, 2021, initial reporting for the 2020 reference year was to be reported on December 27, 2021, and then each June 1st thereafter for future reference years, making the 2021 reference year reporting due June 1, 2022. However, when the agencies released final rules on November 23, 2021, which they extended the statutory deadlines for plans and issuers to submit their 2020 and 2021 reference year reporting to December 27, 2022. Thereafter future reference year reporting will be due each June 1st.

FAQ #56

Recognizing the operational challenges for coordinating data among multiple reporting entities and submitting data that is accurately classified, compiled, and validated, the agencies provided the following guidance, flexibility, and/or relief related to RxDC Reporting for the 2020 and 2021 reference years:

- Plans and issuers have a grace period for submitting the required RxDC Reporting from December 27, 2022, through January 31, 2023, and plans and issuers will not be considered to be out of compliance if they make a good faith submission of the 2020 and 2021 reference year data on or before January 31, 2023.

- The departments will not take enforcement action against plans or issuers that use a good faith, reasonable interpretation of the regulations and the RxDC Reporting Instructions when submitting their reporting.
- Reporting entities that submit RxDC Reporting data on behalf of more than one plan or issuer for a reference year may create more than one submission in HIOS for that reference year (in lieu of one submission combining the data of all clients within a single set of plan lists and data files).
- For plans or issuers that have data required from more than one reporting entity for the same plan, the data from the multiple reporting entities is not required to be compiled into a single data file for each type of data. Instead, each reporting entity may submit the same data file type on behalf of the same plan or issuer.
- Data aggregation requirements for multiple reporting entities that submit required data on behalf of one or more plans or issuers in a state and market segment are relaxed in that a reporting entity can submit such required data aggregated at a level less granular than the level of aggregation that is used by the reporting entity that submits the total annual spending on health care services data.
- Plans and issuers that are **only** submitting the plan list, premium and life-years data, and narrative response (i.e., no other data than that listed here), are not required to submit this information in the HIOS RxDC Module. Instead, they can email the information to: RxDCsubmissions@cms.hhs.gov. The email **must** include the plan list file, premium and life years data (data file D1), and a narrative response, and the naming convention for these files **must** include the reference year, the plan list or data file type (e.g., P2, D1), and the name of the plan sponsor. Plans and issuers may also include any optional supplemental documents.
- Reporting National Drug Codes for vaccines, which were only recently included in the CMS drug name and therapeutic class crosswalk (“crosswalk”) when the crosswalk was updated on October 3, 2022, is optional for plans and issuers.
- Reporting entities are not required to report a value for “Amounts not applied to the deductible or out-of-pocket maximum” and the “Rx Amounts not applied to the deductible or out-of-pocket maximum.” The columns associated with this data should not be removed from the files; instead, the data fields in the columns can be left blank.

Conclusion

As set forth above, plans and issuers have until January 31, 2023 to submit the required RxDC Reporting and must use a good faith, reasonable interpretation of the regulation and RxDC Reporting Instructions when preparing their submissions. They should ensure any of their reporting entities are aware of the FAQs and are prepared to timely comply with all applicable regulations and guidance when completing their submissions. Plans and issuers that take advantage of alternative reporting (via email in lieu of the HIOS RxDC Module) must ensure they are **only** submitting data that is subject to the relief (P2, D1, and a narrative response) or optional supplemental documents, and that their data files comply with the required naming conventions. At this point, this relief is for the 2020 and 2021 reference years only. RxDC Reporting for the 2022 reference year is due on June 1, 2023, and all or part of this relief may not be available at that time.

This alert was prepared for Woodruff Sawyer by Marathas Barrow Weatherhead Lent LLP, a national law firm with recognized experts on ERISA-governed and non-ERISA-governed retirement and welfare plans, executive compensation, and employment law. Contact Stacy Barrow or Nicole Quinn-Gato at sbarrow@marbarlaw.com or nquinnгато@marbarlaw.com.

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