Mercer, ERIC provide more input on CAA prescription drug reporting

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In written comments on new prescription drug reporting requirements, Mercer and the ERISA Industry Committee (ERIC) are recommending several steps that regulators can take to streamline and make the annual reporting process more effective. Enacted by the No Surprises Act (NSA) portion of the 2021 Consolidated Appropriations Act (CAA) (Pub. L. No. 116-260), the reporting requirements for group health plans and health insurers will take effect Dec. 27.

The Jan. 24 comment letter responds to a request for information (RFI) issued with interim final rules last November by the departments of Labor, Health and Human Services, and Treasury. The letter follows joint comments that Mercer and ERIC submitted last July seeking to delay the original deadline of Dec. 27, 2021. In August, the departments issued FAQs Part 49, which recognized "the significant operational challenges that plans and issuers may encounter in complying … by the statutory deadlines" and postponed the deadline by one year.

The RFI provided additional relief, primarily in the form of aggregated reporting that will reduce the burden on plan sponsors. Mercer's and ERIC's latest comments focused on these areas:

- **Exempting more types of plans.** Excepted benefits are exempt from reporting, but other plan types provide insignificant prescription drug coverage. Excluding those plans will not materially affect data quality or integrity, whereas requiring them to report would impose burdens. These plans include:
  - Expatriate health plans
  - Stand-alone telehealth plans that are currently subject to COVID-19 relief
  - Benefits provided by point-solution vendors that have a limited prescription drug benefit

- **Addressing plan sponsor issues.** Plan sponsors are responsible for the reporting, but the needed data and reporting capabilities reside primarily with third parties. The comment letter made four major suggestions to address this issue:
  - Require pharmacy benefit managers (PBMs), third-party administrators (TPAs) and insurance carriers to provide reasonable cooperation with plan sponsors in fulfilling the requirement.
  - Provide good-faith compliance relief to plan sponsors that reasonably rely on vendors to report the data.
  - Modify existing guidance to confirm that the data reported is subject to the NSA's requirement for brokers and consultants to disclose information to employer-sponsored health plans.
  - Update the prescription drug data collection (RxDC) module in the Health Insurance Oversight System — the website for submitting reports — to create an automated confirmation notice to the plan sponsor when a PBM, TPA or insurance carrier successfully submits a report. These measures would especially help when a sponsor switches vendors but needs to rely on the prior vendor to fulfill the reporting.
- **Clarifying key definitions.** Current guidance is not entirely clear how to include cost-sharing and copay assistance in the reporting. Further clarity is warranted for important definitions like "prescription drug" and "health care services."

Additional guidance and detailed instructions on the reporting requirements are expected later this year.

Related resources

Non-Mercer resources

- Press release on RFI comment letter (ERIC, Jan. 25, 2022)
- Interim final rules and RFI on prescription drug reporting (Federal Register, Nov. 23, 2021)
- Section 204, Title II, Division BB of the 2021 CAA (Congress, Dec. 27, 2020)

Mercer Law & Policy resource

- Mercer, ERIC comment on CAA prescription drug reporting rules (July 23, 2021)

Other Mercer resource

- Comments on prescription drug reporting RFI (Mercer and ERIC, Jan. 24, 2022)

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