Federal Departments Shed Light on Upcoming Health Plan Disclosure Requirements

Insights
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A collection of federal agencies recently released guidance to assist group plan health sponsors navigate upcoming disclosure obligations. On November 17, the Internal Revenue Service, the U.S. Department of Labor, and the U.S. Department of Health and Human Services, along with the Office of Personnel Management, issued interim final rules (IFR) to help group health plan sponsors understand and prepare for new disclosure and reporting obligations regarding health plan costs and spending under the Consolidated Appropriations Act, 2021 (CAA). The CAA technically requires group health plans to file the first round of required information by December 27, 2021. Thankfully, the IFR reaffirms guidance from August 2021 that delays initial filing for another year until December 27, 2022. What else do group health plan sponsors need to know?

Background

Congress enacted the CAA in late 2020 as part of a broad effort backed by the Biden administration to eliminate surprise medical billing and require transparency relating to overall health plan costs and expenditures. The CAA addressed, among other things, provider directory accuracy, insurance card information, and requirements to ensure continuity of patient care when a provider switches from in-network to out-of-network during a course of treatment. The CAA also contained sweeping provisions that focus on plans and carriers disclosing in-depth plan pricing and cost information particularly regarding prescription drug costs. Specifically, group health plans will have to provide an annual report to the Departments beginning in 2022.

Reporting Entities

Virtually all group health plans – insured and self-funded alike – must file reports under the IFR. Employment-based plans covered by ERISA, non-federal governmental plans (e.g., plans sponsored by states and local governments), and church plans subject to the Code will have to report even if they still maintain grandfathered status under the Affordable Care Act (ACA). Health reimbursement arrangements (HRA), including individual coverage HRAs, and other account-based plans will not need to report.

The IFR states that a group health plan can require in its agreements with a service provider or carrier to require a third party to file its annual reports. The Departments caution, however, that the group health plans will remain liable for any reporting failure even if a group health plan transfers

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its reporting responsibility to a carrier, pharmacy benefit manager (PBM), or third-party administrator (TPA).

Disclosure Contents

The IFR describes the type of information that the Departments will require to be reported and provides several specific definitions to help plan sponsors know what type of information they need to prepare to collect and report. Comments received through a January 22, 2022 deadline could impact the final rule regarding specific disclosures, but here is what the Departments would require under the IFR:

- plan year start and end dates;
- number of participants, beneficiaries, or enrollees;
- each state in which the plan is offered;
- the 50 most frequently dispensed brand name prescription drugs, and the total number of paid claims for each;
- the 50 most costly prescription drugs by total annual spending;
- the annual amount spent by the plan for each such drug;
- the 50 prescription drugs with the greatest increase in plan expenditures from the plan year preceding the reported plan year, and, for each such drug, the change in amounts expended by the plan in each such plan year;
- total spending on health care services by the plan broken down by the type of costs, including:
    - hospital costs;
    - health care provider and clinical service costs, for primary care and specialty care separately;
    - costs for prescription drugs; and
    - other medical costs, including wellness services;
- spending on prescription drugs by the plan and by participants, beneficiaries, and enrollees;
- the average monthly premiums paid by participants, beneficiaries, and enrollees and paid by employers on behalf of participants, beneficiaries, and enrollees;
- any impact on premiums by rebates, fees, and any other remuneration paid by drug manufacturers to the plan 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 amounts of rebates and other remuneration under the plan from drug manufacturers during the plan year; and
- any reduction in premiums and out-of-pocket costs associated with these rebates, fees, or other remuneration.

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The IFR provides an expansive definition of what must be includes in reporting on drug manufacturer payments to group health plans. The IFR includes in such payments all prescription drug rebates, fees, and other remuneration received with respect to prescription drugs prescribed to participants, beneficiaries, or enrollees in the plan, from all sources (e.g., pharmaceutical manufacturer, wholesaler, retail pharmacy, or vendor). The IFR further defines payments to include other items such as discounts, chargebacks or rebates, cash discounts, and coupons. This is an area that will be of keen interest to most plan sponsors, and we expect further specifics in future guidance as the Departments hone the final rules and provide other reporting materials.

Due Dates

All plans will report information for the previous calendar year even if a plan has a non-calendar plan year. The CAA requires plans to report calendar year 2020 information by December 27, 2021, calendar year 2021 information by June 1, 2022, and subsequent calendar years by each June 1 thereafter. But, as noted above, the Departments have announced that they will not start enforcing the reporting requirements until December 27, 2022. The Departments also admonish plan sponsors to start to plan now to be sure they can meet that delayed deadline.

Conclusion

The IFR provides insight into many aspects of the new group health plan reporting requirements, but there many logistical items that remain to be addressed. Chiefly, the Departments are working on the vehicles by which plan sponsors will report required information. The IFR states that the Departments plan to issue a form with instructions that will give more details for these new requirements. Further, the Departments have announced that they will be developing an internet portal for electronic reporting.

We will monitor developments and provide actionable updates as the Departments issue further guidance, so make sure that you are subscribed to Fisher Phillips' Insights to get the most up-to-date information direct to your inbox. If you have further questions, contact your Fisher Phillips attorney, the author of this Insight, or any attorney in our Employee Benefits and Tax Practice Group.

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