Compliance Recap | December 2022

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Jan. 5, 2023

US Department of Labor Releases Informational Copies of 2022 Form 5500 Series Annual Return and Report

Informational copies of the 2022 Form 5500, Form 5500-SF, and their related instructions were released by the U.S. Department of Labor's Employee Benefits Security Administration, the IRS, and the Pension Benefit Guaranty Corp. Informational copies of the IRS 2022 Form 5500-EZ and its instructions will be separately released on the IRS website after Jan. 1, 2023.

Employers use Form 5500 to report on financial condition, investments, and operations to ensure that regulators and employee benefit participants and beneficiaries have access to accurate information about plan operations.

Notable changes to this year's form 5500 series are related to:

- Multiple-employer plans
- Administrative penalties
- Schedule MB for multiemployer defined benefit plan and certain money purchase plan actuarial information
- Schedule R for retirement plan information
- Schedule SB for single employer defined benefit plan actuarial information

Informational copies cannot be used to file a 2022 Form 5500 Series Annual Return/Report. Official electronic versions will be available on the EFAST website at efast.dol.gov.

Prescription Drug Reporting Mandate Goes into Effect

December 27, 2022, marked the start of the prescription drug reporting mandate intended to make prescription drug pricing more transparent and to assist the Departments of Labor, Treasury, and Health and Human Services with preparing a biannual, publicly available report on prescription drug pricing.

Challenges include modifying contractual agreements to enable disclosure, transferring the required data between various entities, developing internal processes and procedures, and identifying, compiling, preparing, and validating the required data led to an extension of the original due date of December 27, 2021.

The mandate requires only that group health plans and health insurance issuers submit reports about prescription drugs and health care spending, including but not limited to:

- The 50 most frequently dispensed brand prescription drugs, and the total number of paid claims for each such drug
- The 50 most costly prescription drugs by total annual spending, and the annual amount spent by the plan or coverage for each such drug
- The 50 prescription drugs with the greatest increase in plan expenditures over the plan year preceding the plan year that is the subject of the report, and, for each such drug, the change in amounts expended by the plan or coverage in each such plan year.

The relevant departments have now issued interim final rules detailing the data to report and recently updated submission instructions describing the reporting process.

IRS Finalizes ACA Reporting Relief and Deadline Extensions

The Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) released final regulations that provide reporting relief for ACA reporting—Forms 1095-B and 1095-C (collectively, the Forms).

The deadline for reporting entities to furnish Forms to individuals has been extended from January 31 to March 2. If this date falls on a weekend day or legal holiday, the Forms are due on the next business day.

The final regulations are consistent with the November 2021 proposed regulations and include:

Relief for Applicable Large Employers
Final regulations allow employers and coverage providers to satisfy their obligation to "furnish" the Forms to part-time employees and non-employees enrolled in the employer's self-insured plan by posting a "clear and conspicuous notice," on its website stating that individuals may receive a copy of their Form upon request. The employer must furnish the Form to individuals within 30 days of a request.

Relief for Reporting Entities

A reporting entity is not required to send Form 1095-B to the "responsible individual" (i.e., a primary insured or employee) as long as the reporting entity posts a "clear and conspicuous notice" on its website stating that individuals may receive a copy of their Form upon request.

Continuing Appropriations Act, 2023 is Enacted

The health savings account (HSA) telehealth safe harbor that was set to expire on December 31, 2022, has been extended to provide that a high deductible health plan (HDHP) can temporarily cover telehealth and "other remote care services" pre-deductible, and an individual can have stand-alone coverage for telehealth and other remote care services pre-deductible without impacting their ability to contribute to an HSA. The Consolidated Appropriations Act, 2023 (CAA 2023) extends the safe harbor for plan years beginning after December 31, 2022, and before January 1, 2025.

2023 Qualifying Payment Amount factor

The IRS has issued Notice 2023-4, which provides the indexing factor to be used by group health plans and insurers to calculate the qualifying payment amount (QPA) under the No Surprises Act for items or services provided on or after January 1, 2023, and before January 1, 2024. The No Surprises Act was enacted as part of the Consolidated Appropriations Act, 2021, to shield individuals from surprise bills for certain out-of-network emergency and non-emergency services, including certain air ambulance services.

Question of the Month

Q: Will the Departments take enforcement action against any plan or issuer that makes a good faith effort to comply with the prescription drug and health care spending reporting requirements for 2020 and 2021 data?

A: The Departments of Labor, Health and Human Services, and the Treasury (collectively, the Departments) recognize the significant operational challenges that plans and issuers may have encountered in complying with these reporting requirements, including arranging and coordinating submission of a plan's or issuer's data across multiple reporting entities, and accurately classifying, compiling, and validating the required data. In particular, stakeholders have expressed concern that, given the novelty and complexity of the requirements, there may be errors or other issues with the first round of data submissions, despite good faith efforts by plans and issuers.

Accordingly, for the 2020 and 2021 data submissions that are due by December 27, 2022, the Departments will not take enforcement action with respect to any plan or issuer that uses a good faith, reasonable interpretation of the regulations and the Prescription Drug Data Collection (RxDC) Reporting Instructions in making its submission. The Departments are also providing a submission grace period through January 31, 2023, and will not consider a plan or issuer to be out of compliance with these requirements provided that a good faith submission of 2020 and 2021 data is made on or before that date.

In addition, to facilitate the submission process, the Departments are providing the following clarifications and flexibilities for 2020 and 2021 data:

- Multiple submissions by the same reporting entity are allowed.
- Submissions by multiple reporting entities are allowed.
- A reporting entity may aggregate state and market segment data at a less granular level than it uses for total annual spending data.
- Submission of premium and life-years data by email is available for certain group health plans
- Reporting on vaccines is optional.
- Reporting amounts not applied to the deductible or out-of-pocket maximum is optional.

Visit the Centers for Medicare & Medicaid Services website for the Prescription Drug Data Collection (RxDC) Reporting Instructions and the full text of the FAQ.