

A Last-Minute Gift – Prescription Drug Reporting Grace Period and Good Faith Relief

by Christopher S. Lockman on December 27, 2022

In a move akin to last-minute gift-giving, the Departments of Labor, Health and Human Services, and the Treasury (the “Departments”) released [FAQ 56](#) on December 23, 2022, which provides relief regarding the Prescription Drug Data Collection (“RxDC”) reporting requirements under the Consolidated Appropriations Act, 2021. The relief arrives a mere four days prior to the original reporting deadline.

Insurance issuers, pharmacy benefit managers (“PBMs”), and plan sponsors have been scrambling for the past several months to report certain information regarding cost and dispensing data for the prescription drug benefits offered under their plans. PBMs and insurance issuers have been focused on marshalling and filing aggregate data concerning medical and prescription drug spending, most frequently prescribed and most expensive drugs, and prescription drug rebates (comprising the D2 through D8 data files). Meanwhile, group health plan sponsors have been struggling to determine whether and how to submit data regarding their group health plans (P2 files), average monthly premium and life-year information (D1 files), and narrative responses covering several data elements. FAQ 56 provides the following critical relief:

- Creates a “grace period” that effectively extends the RxDC reporting deadline for the 2020 and 2021 calendar years from December 27, 2022, until January 31, 2023.
- Establishes a “good faith” reporting requirement for RxDC reporting submitted for the 2020 and 2021 calendar years, whereby the Departments will not take enforcement action against a plan or issuer that completes the filings using a good faith, reasonable interpretation of the [RxDC reporting interim final regulations](#) published on November 23, 2021 and the [RxDC Reporting Instructions](#) issued by the Centers for Medicare and Medicaid Services (CMS).
- Provides additional clarification and flexibility regarding six aspects of the RxDC reporting requirements for the 2020 and 2021 calendar year reporting, the most significant of which for plan sponsors (in **bold** text below) allows certain group health plans to submit data files to a CMS email address rather than requiring submission through the Health Insurance Oversight System (“HIOS”):
 1. Allowing reporting entities submitting data on behalf of more than one plan or issuer for a single year to file more than one HIOS submission for that year.
 2. Allowing more than one reporting entity to submit the same data file type on behalf of a single plan or issuer, rather than requiring coordination of all data into a single data file.

3. Allowing reporting entities submitting data on behalf of one or more plans or issuers in a state and market segment to aggregate data at a less-granular level than the level used by the reporting entity submitting the total annual spending data.
4. **Allowing group health plans submitting plan list, premium and life-years, and narrative responses only to submit the information by email to RxDCsubmissions@cms.hhs.gov instead of requiring submission through the HIOS portal.** This relief is key for plan sponsors that had difficulty establishing a HIOS account. The emailed submission must include the plan list file (P2 for group health plans), premium and life-years data (data file D1), and a narrative response, and may include additional documents. To ensure the plan information can be linked in aggregated reporting, the name on each file should include the year for which the data is submitted, the plan list or data file type (for example, P2 or D1), and the name of the group health plan sponsor.
5. Reporting entities are not required to include National Drug Codes (“NDCs”) for vaccines.
6. Reporting entities are not required to report values for the “Amounts not applied to the deductible or out-of-pocket maximum” column in the D2 file and the “Rx Amounts not applied to the deductible or out-of-pocket maximum” column in the D6 file and may leave these columns blank in the reporting submission.

Though a last-minute gift, FAQ 56 provides welcome relief to those struggling with the RxDC reporting requirements. If you have questions regarding the relief, or the RxDC reporting requirements generally, please contact any member of [Verrill’s Employee Benefits & Executive Compensation Group](#).



Christopher S. Lockman

Partner

T (207) 253 4712

[email](#)