



May 1, 2023

The Honorable Chiquita Brooks-LaSure
Administrator, Centers for Medicare and Medicaid Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Ms. Brooks-LaSure

I am writing on behalf of the membership of the National Association of Benefit and Insurance Professionals (NABIP), which was previously known as the National Association of Health Underwriters (NAHU). The membership of our association includes over 100,000 licensed health insurance agents, brokers, general agents, consultants and employee benefits specialists.

Over the past few months, our members have been assisting employer group clients with the new prescription drug collection (RxDC) reporting requirements administered by CMS for the Departments of Health and Human Services, Labor and Treasury (the Departments). The role NABIP members play includes verifying that health insurance carriers, third-party administrators (TPAs) and pharmacy benefit managers (PBMs) will complete the D2-D8 filings on behalf of each employer group client, and ensuring that each employer's D1 filings are completed either by the group directly or, more commonly, by a health insurance carrier, TPA or compliance vendor. Based on the experience of our membership with RxDC reporting to date, I would like to share the following suggestions.

Reporting Directions and Guidance

NABIP members and their clients appreciate the release of the updated RxDC reporting instructions on March 3, 2023, as well as additional resources from the administration, including training webinars and technical calls. Moving forward, our association members and their clients would greatly appreciate an earlier release of the annual reporting instructions. In addition, a great deal of information is revealed during the RxDC training webinars and technical calls. Timely consolidation of such information in the form of FAQ-style guidance would be very helpful. There is a listing of FAQs on the CMS RxDC website but it was last updated in December of 2022, and contains none of the information about 2022 calendar year reporting that has been released on calls and webinars this spring.

Good-Faith Compliance Relief

For 2020 and 2021 calendar year data reporting, which was due by January 31, 2023, the Departments extended good-faith compliance relief for all data submissions. So far, the Departments have not extended similar relief for 2022 calendar year data reporting, which is due on or before June 1, 2023. While technically this current reporting cycle represents the third year of data collection, really this is still a very new compliance requirement. Furthermore, employers were not required to provide



D1 reporting files when they submitted their 2020 and 2021 data this winter, nor were all entities required to submit data solely through the Health Insurance Oversight System (HIOS) portal. The 2022 reporting cycle will be the first time employer group plan sponsors will need to meet both of those specifications. Providing the plan sponsors that make a concerted attempt at completing their reporting correctly and on time with certainty that they will not be penalized for unintended reporting errors or technical mistakes would be a welcome and appropriate form of relief.

Multiple Submissions by Reporting Entity

In the March 3, 2023, reporting instructions, the Departments clarify that a reporting entity submitting RxDC files on behalf of multiple plans may make more than one bulk file submission by EIN provided they take care to avoid duplicate plan-level file submissions. NABIP members greatly appreciate this stance, as it allows reporting entities to be able to submit data files on an as-completed basis, and it allows employers and others more time to ensure complete and accurate filing. We strongly urge you to maintain this position for all reporting in future years.

Enforcement and Penalty Clarification

NABIP members are routinely asked by group clients what the consequences of non-compliance or RxDC compliance errors might be, how the Departments intend on enforcing the data-collection requirement in the future, and when enforcement might begin. In addition, employers are concerned about their liability when it comes to the accuracy of the data submitted about their plans, especially when that data is compiled and submitted by another entity on their behalf, such as their health insurance carrier, TPA or PBM. Further, while most health insurance carriers, TPAs and PBMs are submitting D2-D8 files on behalf of their clients, some of our members and their clients report waiting for information from their vendors to submit themselves. There have been concerns reported about both the accuracy and timeliness of such data. Especially in the absence of good-faith compliance relief, our nation's employers deserve clarity on these important matters as soon as possible.

We appreciate your attention to this important matter. If you have any questions about our comments or need more information, please do not hesitate to contact me at (202) 595-0639 or jtrautwein@nabip.org.

Sincerely,

Janet Stokes Trautwein
Executive Vice President and CEO
National Association of Benefits and Insurance Professionals

