

## Publications

### Guidance in the Eleventh Hour: Tri-Agencies Provide Some Flexibility to Group Health Plans in Connection with Inaugural Prescription Drug Data Collection Reporting

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Just in time for December 27, the Departments of Labor, Treasury, and Health and Human Services (the Tri-Agencies) provided some relief to group health plans in connection with the first-ever prescription drug data collection reporting deadline. As background, the Consolidated Appropriations Act, 2021 (CAA) added a new provision that requires group health plans to report to the Tri-Agencies specific information related to prescription drug and related health care expenditures. After several extensions, the first deadline to report the required information for the 2020 and 2021 reference years was December 27, 2022. However, on December 23, the Tri-Agencies issued [Frequently Asked Questions \(FAQs\)](#) that provide additional flexibility to group health plans in connection with this reporting.

The Tri-Agencies previously issued interim final rules on prescription drug data collection reporting on November 23, 2021. Additionally, the Centers for Medicare and Medicaid Services published (and updated) Prescription Drug Data Collection (RxDC) Reporting Instructions. Despite this guidance, employers and their service providers still had questions about the reporting (including who should submit the data; what data should be submitted; etc.). In response to these concerns, the Tri-Agencies issued the FAQs. According to the FAQs, for the 2020 and 2021 reference year data submissions, the Tri-Agencies will not take enforcement action against a group health plan as long as the group health plan uses a reasonable, good faith effort to comply with the reporting requirements. Additionally, the FAQs provide for an additional reporting “grace period” until January 31, 2023. Therefore, if a group health plan missed the December 27 deadline, it now has until January 31 to file the required data for the 2020 and 2021 reference years.

The FAQs also provide some additional helpful flexibility to plan sponsors:

- **Submissions by multiple reporting entities allowed.** The RxDC Reporting Instructions stated that only one data file could be submitted for each group health plan. This meant that if multiple

service providers had relevant information (such as the claims administrator and pharmacy benefits manager), the service providers were supposed to work together to compile all of the plan's information into one data file. Some employers had trouble getting their service providers to work together to create the singular data file. The FAQs remove the single data file requirement – multiple data files can be submitted for one group health plan.

- **Certain data can be submitted by e-mail.** Group health plans were required to submit all information electronically through the Health Insurance Oversight System (HIOS) RxDC module. In order to submit data through the module, the submitter must create an HIOS account. Thus, if an employer was submitting any information itself, even minimal information, the employer had to create an HIOS account. The FAQs state that if an employer is submitting only the plan list, premium and life years data, and narrative response, then the submission may be sent by e-mail to [RxDCsubmissions@cms.hhs.gov](mailto:RxDCsubmissions@cms.hhs.gov) instead of through the HIOS module.

## Employer Action Items

If an employer has not submitted its prescription drug data collection reports for 2020 and 2021, then it has until January 31, 2023 to submit. Some employers worked with their service providers to put a plan in place for this inaugural reporting requirement. These employers should breathe a little easier knowing that the Tri-Agencies added this additional flexibility.

The next reporting deadline is June 1, 2023 for reference year 2022 data. The FAQs explicitly state that this relief is only for the 2020 and 2021 data submissions. The Tri-Agencies state that they will monitor this first round of reporting to determine if the relief is required going forward. Thus, employers should continue to monitor any developments to see if similar flexibility will be provided for the next round of reporting in June.