



Association of Federal Health Organizations

1101 Vermont Ave NW, Suite 1002, Washington DC 20005

— Established 1983 —

July 23, 2021

Office of Health Plan Standards and Compliance Assistance
Employee Benefits Security Administration
US Department of Labor
200 Constitution Avenue NW, Room N-5653
Washington, DC 20210

SUBMITTED VIA REGULATIONS.GOV

Attention: Request for Information Regarding Reporting on
Pharmacy Benefits and Prescription Drug Costs, RIN 3206-AO27

Dear Agency Representatives:

Thank you for the opportunity to comment on the reporting requirements created by Section 204 of Division BB of the Consolidated Appropriations Act of 2021 (“CAA”) as requested at 86 Fed. Reg. 32,813 (June 23, 2021) (hereafter the “RFI”). The Association of Federal Health Organizations is a trade association of Federal Employees Health Benefits plan carriers whose combined enrollment encompasses approximately 80% of the FEHB Program’s total enrollment. These comments therefore focus on the RFI’s discussion of the FEHB Program.

The RFI states that

Title I of Division BB also amended 5 U.S.C. 8902(p) to include specified provisions of the CAA into FEHB carrier contracts. Although section 204 is not enumerated as a specified provision in section 8902(p), FEHB carrier compliance with the Departments’ collection pursuant to this section helps accomplish the CAA’s intended purpose of achieving national health data transparency and lower costs. Therefore, references to “plans” for purposes of this request for information include FEHB health benefits plans.

86 Fed. Reg. at 32,814. We question the legal validity of this conclusion.

Because Congress chose not to apply Section 204 to the FEHB Program, OPM must point to another source of statutory authority in order to reach this conclusion. The only possible source is the Section 8910 of the FEHB Act, 5 U.S.C. § 8910, which reads in pertinent part as follows:

- (a) The Office of Personnel Management shall make a continuing study of the operation and administration of this chapter, including surveys and reports on health benefits plans available to employees and on the experience of the plans.
- (b) Each contract entered into under section 8902 of this title shall contain provisions requiring carriers to--
 - (1) furnish such reasonable reports as the Office determines to be necessary to enable it to carry out its functions under this chapter; and
 - (2) permit the Office and representatives of the Government Accountability Office to examine records of the carriers as may be necessary to carry out the purposes of this chapter.¹

¹ Section 8910 requires FEHB contracts to require carriers to comply with reasonable OPM reporting requests and to make their records available for examination by OPM and the GAO. Similarly, Federal procurement law, 41 U.S.C. § 4706(b) authorizes contracting agencies to “examine” certain contract records, not to possess them. In

Since 2019, OPM has utilized this provision to obtain aggregated pharmacy data from carriers in a format much more detailed than the format outlined in Section 204. OPM Carrier Letters No. 2020-17 (Attachment A hereto). Because the purpose of Section 204 is to achieve “national health data transparency and lower costs,” Section 204 reporting does not fall within the scope of Section 8910(a). Moreover, Section 204’s material duplication of existing OPM reporting requirements is inconsistent with the agencies’ expressed goal of “coordinating with other reporting requirements” (86 Fed. Reg. at 32,816) and Section 8910(b)(1)’s prerequisite that OPM reporting requests be “reasonable.”

Because OPM obtains a wide range of reporting from carriers pursuant to Section 8910,² we are confident that OPM is in a position to perform Section 204 reporting for the entire FEHB Program via its data warehouse. This approach would avoid imposing additional reporting on carriers with limited resources. Moreover, this approach would help fulfill the goal of Section 204 as recited in the RFI

[Section 204] requires the Departments to issue biannual public reports on prescription drug reimbursements under group health plans and individual health insurance coverage, prescription drug pricing trends, and the impact of prescription drug costs on premium rates, aggregated in such a way so that no drug or plan specific information will be made public.

86 Fed. Reg. at 32,814 (emphasis added). Thank you for considering these comments.

Sincerely,

Rocky Midgett

Rocky Midgett
Chairman

cc: AFHO Board of Directors
Laurie Bodenheimer, Associate Director, OPM
David Ermer

contrast, 41 U.S.C. § 4706(c) provides the Inspector General with subpoena power which allows the IG to obtain and hold contractor records.

² It is AFHO’s position that while Section 8910 permits OPM to make reasonable requests for reports of aggregated data, Section 8910 cannot be read to permit OPM to demand identified claims records for OPM’s health insurance claims data warehouse which is referenced in OPM’s Spring 2020 semi-annual regulatory agenda.

It is an elementary rule of construction that effect must be given, if possible, to every word clause, and sentence of a statute. A statute should be construed so that effect is given to all of its provisions, so that no part will be inoperative or superfluous, void or insignificant and so that one section will not destroy another unless the provision is the result of an obvious mistake or error. No clause, sentence or word shall be construed as superfluous, void, or insignificant if a construction can be found which will give force to and preserve all the words of a statute.

2A N. Singer & J. Shambie Singer’s 7th edition, § 46.6, at 230-47 (citing voluminous authorities).

As we have previously noted, OPM’s development of a detailed Master Enrollment Index renders HIPAA compliant de-identification of claims data infeasible.

ATTACHMENT A

FEHB Program Carrier Letter

All FEHB Carriers

U.S. Office of Personnel Management
Healthcare and Insurance

Letter No. 2020-17

Date: November 19, 2020

Fee-for-Service [14] Experience-rated HMO [14] Community-rated [15]

SUBJECT: Aggregate Healthcare Cost and Utilization Data Reporting Requirements

This Carrier Letter provides guidance to all Federal Employees Health Benefits (FEHB) Carriers on their obligation to supply aggregate healthcare cost and utilization data to the U.S. Office of Personnel Management (OPM).

Background

5 U.S.C § 8910 mandates that OPM make a continuing study of the operation and administration of the FEHB Program and requires carriers to furnish reasonable reports that OPM determines to be necessary to enable it to carry out its functions. This is further outlined in Section 1.7 of the Fee-For-Service, Experience Rated, and Community Rated contracts.

In 2019, FEHB Carriers reported 2018 aggregate pharmacy cost (including rebates) and utilization data to OPM. This data by FEHB enrollment code, product, distribution channel etc., gave OPM important insight into the operation and administration of the FEHB pharmacy benefit and is essential for effective FEHB Program oversight and evidence-based decision making. OPM will continue to collect pharmacy cost and utilization data on an ongoing basis. One of OPM's strategic goals is to provide affordable and high-quality health plans to FEHB enrollees and their families. This letter details changes in the 2019 and 2020 FEHB pharmacy data collection and submission process.

Aggregate Pharmacy Cost and Utilization Data Files

FEHB Carriers will be required to provide 2 pipe-delimited text data files for each year:

- Pharmacy Cost and Utilization File
- Rebates file

A template that outlines the standard file format for submission of cost (including rebates) and utilization data for pharmacy claims is included along with this paper as Attachment 1. Detailed instructions are included in the first tab of Attachment 1. Please note that, while we have provided instructions in Excel to make the expected files easier to visualize, we are

maintaining the requirement that carriers submit only pipe-delimited UTF8 text files (ASCII is a subset of the UTF8 character encoding set).

Attachment 1 includes the same information requested in 2019 except that, going forward, OPM is also requiring that the pharmacy cost and utilization data is broken out by age bands as shown below.

Values	Age Bands
1	0-5 years
2	6-10 years
3	11-17 years
4	18-22 years
5	23-34 years
6	35-44 years
7	45-54 years
8	55-64 years
9	65-74 years
10	75-84 years
11	85+ years

The age bands in the cost and utilization reports are based on attained age at the date the prescription was filled.

Also new this year is the addition of the Medi-Span GPI8 column which more clearly identifies the drug name in the rebates file.

Proposed Submission Time Frame

The aggregate cost and utilization data will be hosted in the OPM Health Insurance Data Warehouse (HIDW).

OPM will work closely with Carriers on the file transfer requirements.

Each Carrier will submit FEHB pharmacy cost (including rebates) and utilization data to the HIDW using a Secure File Transfer Protocol (SFTP) account and encryption. HIDW SFTP transfer steps are included as Attachment 2. FEHB Carriers using the same server for submission of enrollment files to HIDW can skip Step 1 and 4 of the SFTP transfer steps.

No later than April 30, 2021, Carriers will have successfully submitted two years of historical cost (including rebates) and utilization data (2019 and 2020). Carriers that have participated in the FEHB Program for fewer than two years should send cost and utilization data dating

back to the beginning of their participation. Thereafter, Carriers will submit an aggregate cost and utilization file to OPM on an annual basis by April 30th.

Conclusion

OPM is committed to providing affordable and high-quality health plans to FEHB enrollees and their families. If you have any questions, please contact OPMPharmacy@opm.gov with a copy to your Health Insurance Specialist.

Sincerely,

Laurie E. Bodenheimer
Acting Director
Healthcare and Insurance

Attachment 1 – PHARMACY COST AND UTILIZATION TEMPLATE AND INSTRUCTIONS
(see attached excel file)

Attachment 2: HIDW SFTP Transfer Steps

All SFTP technical questions or issues should be directed to the HIDW Technical Team at HIDWSupport@opm.gov.

1. **Initiate Account Set-up** – To request an SFTP account, contact the HIDW SFTP Administrators at HIDWSupport@opm.gov with a Point of Contact (POC) to coordinate set-up.
2. **File Specifications** – All transmitted files must be in ASCII or UTF8 pipe-delimited text format with variable names in the first row and data beginning in row 2. The variable names should be identical to those indicated by OPM in the attached template in row 8 of the RxCostUtilization and RxRebates sheets. They are case-sensitive and should appear in the same order.
3. **Select Encryption Software** - The HIDW SFTP process requires that all transmitted data be encrypted. The Carrier must use the same software as the HIDW. File encryption software performs data compression and data encryption. Coordinate with HIDW SFTP Administrators to determine which software will be used.
4. **File Testing** - Coordinate with HIDW SFTP Administrators to transmit test files. Once testing has been completed, a date and time for the initial data transfer and recurring transmissions will be scheduled. OPM prefers that the Carrier send an email to HIDWSupport@opm.gov each time a test file has been transmitted.
5. **File Naming Conventions** – We request the following naming conventions be followed for the transmitted files:

**FEHB_CarrierID_FileType_ExtractStartDate_ExtractEndDate_TransferDate.File
Extention.pgp**

Please note the change in the file naming convention from the one used during submission of 2018 data. The four-character Carrier ID provided by OPM replaces the two-digit alphanumeric plan code in the file name. This allows data for multiple plan codes that belong to the same FEHB Carrier to be included in the same file, reducing the number of files that carriers will have to produce and transfer. The SFTP transmission mechanism can accommodate larger files.

Carrier ID: A four-character Carrier ID provided by OPM, the same as the one used to submit enrollment information to HIDW and the CLER system.

File Type: RXCU for prescription drug cost and utilization, RXRB for prescription drug rebates.

All Dates: YYYYMMDD format

- Example file names for the 2019 and 2020 prescription drug cost and utilization files, assuming they will be transmitted on 30 Apr 2021:

FEHB_ATOZ_RXCU_20190101_20191231_20210430.txt.pgp

FEHB_ATOZ_RXCU_20200101_20201231_20210430.txt.pgp

- Example file names for the 2019 and 2020 prescription drug rebate files, assuming they will be transmitted on 30 Apr 2021:

FEHB_ATOZ_RXRB_20190101_20191231_20210430.txt.pgp

FEHB_ATOZ_RXRB_20200101_20201231_20210430.txt.pgp

We will not accept any files that do not follow the appropriate naming convention.

6. **Confirmation Email** – Carriers must email HIDWSupport@opm.gov after each file/group of files has been transmitted so that OPM can confirm receipt of file(s). In the e-mail, please include the following:
 - I. Record count for Column C (Product/Service ID) for each Pharmacy Cost and Utilization file
 - II. Record count for Column D (product Description) for each Rebate file
 - III. Sum total for Column R (Plan Paid Amount) for each Pharmacy Cost and Utilization file
 - IV. Sum total for Column E (Plan Paid Amount) for each Rebate file