



## PARTNERSHIP FOR EMPLOYER-SPONSORED COVERAGE

July 22, 2021

The Honorable Martin Walsh  
Secretary  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, D.C. 20210

The Honorable Janet Yellen  
Secretary  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 20220

The Honorable Xavier Becerra  
Secretary  
U.S. Department of Health & Human Services  
200 Independence Avenue, SW  
Washington, D.C. 20201

RE: *CMS-9905-NC, RFI Reporting on Pharmacy Benefits & Prescription Drug Costs, CAA*  
Submitted via [www.regulations.gov](http://www.regulations.gov)

Dear Secretaries Walsh, Yellen and Becerra:

The Partnership for Employer-Sponsored Coverage writes with comments under the *Request for Information (RFI) Regarding Reporting on Pharmacy Benefits and Prescription Drug Costs, Section 204 of Title II of Division BB of the Consolidated Appropriations Act, 2021 (CAA)*. **We welcome the opportunity to reiterate our concerns about federal health transparency and reporting requirements that put employers, as group health plan sponsors, in the untenable situation of producing information that is not directly owned or accessible by the business.**

The Partnership for Employer-Sponsored Coverage (P4ESC) is an alliance of employment-based organizations and trade associations representing businesses of all sizes and the millions of American workers and their families who rely on employer-sponsored coverage every day. We are committed to working to ensure that employer-sponsored coverage is strengthened and remains a viable, affordable option for decades to come.

**Employers, as the purchasers and payers of health services for over 181 million working Americans and their families, have a vested interest in health cost transparency and system viability.** Employers support bringing price transparency into our nation's health system to enable businesses and employees to be better consumers of health care. **However, P4ESC is very concerned that placing regulatory requirements and liability on employers to report information to which they do not have direct access to or ownership of will unduly burden businesses and increase compliance costs.**

As conveyed in our recent letter to you dated July 9, 2021, regarding the employer requirement to produce machine-readable data files under the Transparency in Coverage final rule, we are concerned about placing information transparency obligations and liability on employers who do not own or have direct access to data required to report. As previously noted, employers contract with several separate third party administrators (TPAs), pharmacy benefit managers (PBMs), and other vendors to facilitate the delivery of various benefits under an employee's benefits package. The employer, as the TPA's



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client, does not have ownership of or access to the proprietary cost information associated with the benefits, including medical claims data and pharmaceutical purchase prices, rebates, credits, and fees.

Our coalition membership is 17 national, leading trade associations representing every sized business, from the smallest independent business to largest corporation. Several of our coalition members are submitting separate detailed comments in response to the specific questions posed in this RFI. For purposes of this comment letter on the RFI, **P4ESC has coalesced around the following points for the Departments' consideration:**

1. Acknowledge that employers do not own health data
2. Place reporting requirements on ownership parties
3. Understand that burdensome requirements lead to increased compliance costs for employers of all sizes
4. Delay the initial reporting of data to the Departments beyond December 27, 2021

### ***Employers do not own health data***

Employers contract with entities outside their business – TPAs, vendors, insurance carriers and PBMs – to facilitate employee benefits. The employer is a client of these parties, not the owner of their employees' information and health data. In regard to pharmacy benefit and drug pricing information, the employer contracts with a PBM to facilitate the benefit but does not have direct access to drug wholesale or retail prices, rebates, and fees between the PBM and individual drug manufacturers. Employer access to this type of drug cost information must be negotiated with the PBM in the terms of the contract. If information is made available to the employer under the terms of the contract, it is often aggregated into class of drugs termed under that individual contract and not based on individual brand drug or drug manufacturer. Detailed per brand, per manufacturer data is not readily available to an employer.

### ***Place reporting requirement on ownership party***

We strongly urge the Departments to either require data under Section 204 to be reported by the ownership party – TPA, carrier, PBM – instead of obligating employers to do so OR mandate that these parties provide this information directly to employers. As noted, employers do not own drug pricing information and utilize several different parties to facilitate different employee benefit offerings. An employer may contract with a PBM separate from the medical plan carrier and thus, information about in-patient drug costs and utilization would be tied to the medical plan carrier and not the PBM. Under these requirements, the employer is at the mercy of these parties – TPA, carrier, PBM – to acquire the data then consolidate it to be reported to the federal government.

### ***Burdensome requirements lead to increased compliance costs on all sizes of businesses***

Employers have a vested interest in ensuring their workforce is healthy and productive, and they pride themselves on the ability, as plan sponsors, to offer quality health coverage to their employees and families. The ability to offer these benefits becomes more difficult as health costs continue to rise, both in terms of medical costs and regulatory compliance burdens. The Section 204 requirements and others under the CAA and Transparency in Coverage final rules place compliance burdens, costs, and liability directly on employers of all sizes. When an employer's compliance costs rise, there is less money to



put into their employees' benefits and offerings. The compliance burdens and costs for smaller businesses are further compounded. Thus, we ask that consideration be given to non-enforcement by smaller employers.

***Delay initial reporting under Section 204 beyond December 27, 2021***

We strongly urge the Departments to consider delaying the Section 204 reporting requirements until well after regulators thoroughly discuss and review stakeholder feedback under this RFI and subsequent conversations. The December 27, 2021, initial reporting date is an unattainable deadline for employers. The data is not owned by the employer and is not readily accessible by employers, nor has the Departments indicated any structure for reporting this information.

**Conclusion:**

P4ESC supports efforts to bring price transparency to our nation's health system. However, the manner in which data is gathered and reported to the federal government matters greatly to employers' overall compliance burdens and costs. As previously requested, we would like to speak to regulators in the Departments about detailed compliance issues under the CAA requirements and Transparency in Coverage final rule. We do appreciate that a consultant for the Centers for Medicare & Medicaid Services (CMS) working on the technical, information technology aspects of Section 204 recently reached out to us for direct compliance feedback from our member-company businesses. We look forward to speaking directly to regulators and facilitating employer conversations with the CMS consultant.

Sincerely,

American Hotel & Lodging Association  
American Rental Association  
Associated Builders and Contractors, Inc.  
Associated General Contractors of America  
Auto Care Association  
Business Group on Health  
The Council of Insurance Agents & Brokers  
The ERISA Industry Committee (ERIC)  
FMI – The Food Industry Association  
HR Policy Association  
National Association of Health Underwriters  
National Association of Wholesaler-Distributors  
NFIB – National Federation of Independent Business  
National Restaurant Association  
National Retail Federation  
Retail Industry Leaders Association  
Society for Human Resource Management

Attachment: P4ESC letter dated July 9, 2021, re: Transparency in Coverage final rule



**PARTNERSHIP FOR  
EMPLOYER-SPONSORED COVERAGE**

July 9, 2021

The Honorable Xavier Becerra  
Secretary  
U.S. Department of Health & Human Services  
200 Independence Avenue, SW  
Washington, D.C. 20201

The Honorable Janet Yellen  
Secretary  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
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The Honorable Martin Walsh  
Secretary  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, D.C. 20210

Dear Secretaries Becerra, Yellen and Walsh:

As members of the Partnership for Employer-Sponsored Coverage, we write to raise concerns we have heard from employers about the compliance timelines and obligations for implementation of the Transparency in Coverage final rule. **While we agree with the goal of providing transparency of the costs associated with the delivery of health services to employees, we are concerned about employers' ability to meet compliance deadlines and obligations under the rule because of factors that are outside of their control.**

The Partnership for Employer-Sponsored Coverage (P4ESC) is an alliance of employment-based organizations and trade associations representing businesses of all sizes and the millions of American workers and their families who rely on employer-sponsored coverage every day. We are committed to working to ensure that employer-sponsored coverage is strengthened and remains a viable, affordable option for decades to come.

**We support greater transparency in our nation's health care system and providing Americans with more tools to be better consumers of their health care. However, since the Transparency in Coverage final rule was released and employers have begun to review and act on their obligations, we are very concerned about employers' ability to comply with the machine-readable files requirement by January 1, 2022.**

By and large, self-insured employers contract with several separate third party administrators (TPAs) and other vendors to facilitate the delivery of various benefits under an employee's benefits package. For example, a self-insured employer rents an insurance carrier's provider network and often does not have detailed pricing information from the TPA pertaining to individual providers' network rates. Additionally, a self-insured employer's contract with a pharmacy benefit manager (PBM) is separate from their contract for medical and surgical coverage and the employer does not have access to detailed drug manufacturer pricing and rebate information unless they try to negotiate access to this information from the PBM in the terms of their contract. **Because the employer does not own this network and drug pricing information, they must request it from the TPA/PBM or request that the TPA/PBM directly provide a compliant solution on the employer's behalf. The employer is at the mercy of the TPA/PBM's prerogative and schedule to obtain the information or provide a compliant solution.**

Further, once the employer is able to obtain the information required under the transparency rules from the various TPAs it contracts with, the employer must either build an in-house information technology (IT) system



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to compile this information and convert it into machine-readable files or contract with a separate outside entity to do so on the employer's behalf. **We have heard from numerous employers that they are struggling to find specialized resources to produce, host, or otherwise ensure proper handling of these machine-readable files.**

Additionally, the Departments' Request for Information (RFI) Regarding Reporting on Pharmacy Benefits and Prescription Drug Costs under the Consolidated Appropriations Act, 2021 (CAA, P.L. 116-260), published in the Federal Register on June 23, 2021, seeks operational information from employers about their ability to obtain data similar to that required under the Transparency in Coverage final rule. The operational and compliance feedback the Departments will likely receive from employers and stakeholders under this RFI would better inform regulators of the real-world processes, procedures and costs associated with obtaining pricing data pertaining to the Transparency in Coverage final rules. We hope that the subsequent CAA rules, and potential modifications to the Transparency in Coverage rules, more accurately place responsibilities and penalties on the parties privy to, and in direct possession and ownership of, the information sought under the law.

**Given the impending deadline of January 1, 2022, for employers to publicly release, maintain, and provide monthly updates to three sets of heavily prescribed machine-readable data files, we request that you provide employers with a compliance safe harbor and/or good faith effort structure that would not penalize them while they are working to obtain and publicly report the information obligated under the Transparency in Coverage final rule.**

We are eager to work with you to ensure that consumers, employers, and researchers alike have access to health pricing information while concurrently safeguarding employers from burdensome and costly federal compliance requirements. We would welcome the opportunity to discuss our concerns in further detail. Please contact our executive director, Christine Pollack, at [christine@pollackconsultingdc.com](mailto:christine@pollackconsultingdc.com) to schedule a meeting.

Sincerely,

American Hotel & Lodging Association  
American Rental Association  
Associated Builders and Contractors, Inc.  
Associated General Contractors of America  
Auto Care Association  
Business Group on Health  
The Council of Insurance Agents & Brokers  
The ERISA Industry Committee (ERIC)  
FMI – The Food Industry Association  
HR Policy Association  
National Association of Health Underwriters  
National Association of Wholesaler-Distributors  
NFIB – National Federation of Independent Business  
National Restaurant Association  
National Retail Federation  
Retail Industry Leaders Association  
Society for Human Resource Management