



**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  
Washington, D.C. 20220

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