



July 22, 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:

The Business Group represents a [network of today's largest and most progressive employers](#), including 70 Fortune 100 companies, providing health coverage for 60 million workers, retirees and their families in 200 countries.

Employer plan sponsors continue to innovate and lead in providing education and tools for employees and their families to make informed health care decisions and achieve better cost and quality outcomes. Employers have invested heavily in technology and navigation services using currently available data (generally retrospective deidentified claims data) to provide a form of transparency. The Transparency in Coverage final rule issued in November 2020 is expected to transform the available data and ultimately impact purchasing behavior and costs. Employers broadly support pricing transparency for their plans and their participants to further enhance health care purchasing and help contain costs.

As has been raised by others, including the Partnership for Employer-Sponsored Coverage (P4ESC),¹ the Transparency in Coverage rule exposes employer plan sponsors to significant penalties for failing to deliver specific files and data over which they have no direct ownership, possession, or control in the vast majority of cases. Employers generally are, and will be, entirely reliant on insurance carriers/TPAs and pharmacy benefit managers (PBMs) taking significant actions in order to satisfy the employers' compliance obligations.

¹ See the July 9, 2021 Partnership for Employer-Sponsored Coverage letter. Business Group on Health is a member of P4ESC and a signatory of that letter.



Employers are actively managing these third-parties to meet the requirements, but are limited in their ability to delve into the innerworkings and potentially trade secret processes and information necessary to ensure compliance by January 1, 2022. In addition to directly addressing the technical and substantive requirements, in some cases complex agreements have been or will need to be reopened and renegotiated. These contractual steps may be required or recommended to account for additional scope of work, liabilities, and other related terms to ensure that employers may reasonably rely on the compliance efforts of the third-parties as allowed in the final rule. Existing contracts may have notice periods, limitations, cost-escalators, or other terms that directly or indirectly impact the employer's ability to reopen and timely finalize such agreements.

The Business Group agrees with P4ESC's request to provide employers with a compliance safe-harbor and/or good faith effort structure to avoid penalties as they continue working with their vendors to comply ("safe harbor"). However, the Business Group additionally and separately requests that a temporary delay, temporary policy of non-enforcement, or other transitional relief ("temporary relief") be granted for a short, but reasonable period of time for employers to continue to engage the necessary third-parties to ensure compliance and protection from penalties.

While we urge the Departments to provide a clear and reliable compliance safe harbor, we do not expect all employers who wish to use it will already, at the time it is issued, be taking the steps necessary to do so by January 1, 2022. If the safe harbor is provided, the additional temporary relief requested here would allow employers to ensure any elements they can unilaterally control to meet such safe harbor are in order. Given the otherwise indirect nature of the employer's compliance with the final rule, we believe it is reasonable and appropriate to allow and encourage as many employers as possible to utilize a safe harbor. Providing this additional temporary relief will promote and support such safe harbor adoption.

Thank you for your consideration. We would welcome the opportunity to discuss these comments or any other matters impacting employer plan sponsors. Please feel free to contact me (kelsay@businessgrouphealth.org) or Garrett Hohimer, Director of Policy and Advocacy, (hohimer@businessgrouphealth.org) to discuss further.

Sincerely,

Ellen Kelsay
President and CEO