FEATURE

Rx Data Reporting Stops Short of **Price Transparency**

PBMs find a way around CMS requirement meant to prevent hidden rebates

Written By Bruce Shutan

Peeling back the curtain on prescription drug spending has proven to be a monumental task for self-insured employers over the past two years since an Rx price-transparency requirement under the Consolidated Appropriations Act of 2021 (CAA) took effect.

Employer-based group health plans and health insurers must annually submit detailed information about prescription drug spending and coverage to the Centers for Medicare and Medicaid Services (CMS) by June 1. The intent is to prevent pharmacy benefit managers (PBMs) from hiding how much rebate money they're keeping from employer customers.

However, coordinating that effort, known as RxDC, has been an enormous challenge for third-party administrators (TPAs), PBMs, brokers and health plan sponsors, explains Lauren Wells, a practice leader for Healthcare Reporting. What's more, PBMs are exploiting a loophole that allows them to continue these unscrupulous practices, which federal regulators and lawmakers on both sides of the political aisle are trying to end.

The reporting consists of eight data files – each containing different fields of information. Those categories, known as D1-D8, include premium and life years (D1), spending by category (D2), the top 50 frequent brand drugs (D3), top 50 most costly drugs (D4), top 50 drugs by spending increase (D5), Rx totals (D6), Rx rebates by therapeutic class (D7) and Rx rebates for the top 25 drugs (D8).

Wells explains that RxDC involves an extreme amount of coordination among the plan sponsor, TPA and PBM to complete the full filing and comply with the requirement. While many PBMs claim they're completing D3 through D8 on behalf of their employer clients, she says "they're not completing the pieces they don't have the data for, which means that those groups are not in compliance with the regulations."

DATA AGGREGATION VEIL

Another important part is the aggregation levels and restrictions that CMS has imposed in the instructions. "If you're a large TPA that works with 50 PBMs, you have to figure out how each one is doing their filing," she notes. In addition, there's plan sponsor information that TPAs don't track, such as employee plus dependent contributions or answers to so-called "narrative" file questions that CMS poses.

There's a clause in the CMS regulations that forces a PBM to aggregate their files at the plan sponsor level. She provided an example of one PBM's twofold options for a particular plan sponsor to explain how rebates are hidden. In one scenario, that PBM would charge $1,000 to create and submit to CMS on behalf of the employer D3 through D8 files in the aggregate. In another, it would charge $5,000 for those that prefer to keep their own data.

While plan sponsors would be tempted to choose the cheaper option, she explains that it's impossible to deduce from aggregated data the amount of PBM rebates that the group should have received. Based on those examples, she says the plan sponsor should have received $46,000 in rebates but secured just $20,000. "That's going to cause them to raise a red flag," she says, "and this is why there has been such pushback in the market on this type of reporting. PBMs are trying to hide this particular column of information from employers.

The bottom line is that non-aggregated data files produced at the plan sponsor level allow for true transparency so that informed decisions can be made by their benefit partners when cost breakdowns within the D1 to D8 data files can be seen, according to Wells.

Reporting non-aggregated information that's specifically broken down in D4 would enable a plan sponsor to justify implementing a specialty Rx program for, say, a high infusion med that's costing a lot of money. "That's why the transparency of this data is so important," Wells observes. "A lot of employers have no clue that their PBM is hiding."

FIGHTING FOR UPDATED INSTRUCTIONS

Since PBMs have already figured out how to evade RxDC reporting on their rebate amounts, Wells has fought tooth and nail with CMS to amend the reporting instructions, which allow only the submitting party access to health plan information – and that can be the PBM. "The goal is not to allow a PBM to aggregate the data and continue to hide what they're making," she says.

In conversations about this issue with CMS, she says that PBMs have argued that it's easier for them to just aggregate the data. She's hopeful that CMS will eventually come around. Here's why: roughly $200 billion in pharmacy rebates are being paid out every year to PBMs and plan sponsors, but CMS is trying to figure out why there is so much medical debt when there's so much money being paid out.

"The only way they're going to come to a resolution on that is by updating the instructions because the regulation falls on the plan sponsor," she explains. "It's not the PBM that gets in trouble. It's not the TPA that gets in trouble if they don't file. So why wouldn't you simplify the instructions to

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say no aggregation and that you don't get to hide your totals?"

Even though the reporting itself is already so complex, Wells says CMS also made the actual filing process extremely complicated. In the first year of the reporting, many plan sponsors couldn't create a CMS account called a Health Insurance Oversight system because they weren't approved. Personal information had to be submitted, much like getting a soft credit check done, which she described as a baffling requirement just to create an account.

When pressed for reasons why such information was required, she says CMS officials replied, "Because that is the way that it's done. That's the regulation." Consequently, she believes it resulted in many plan sponsors initially not reporting information about their prescription drug spending. There is no official penalty for non-compliance at this point outside of the standard ERISA penalty, which she adds is not to imply that it won't happen in the future.

Whatever happens with the RxDC reporting, Wells notes that decent-sized employers need to hold their brokers, TPAs and PBMs accountable for what they're paying them. She says they should be receiving financial reports on a regular basis so that by the end of the year, everything is in hand for reporting total pharmacy claims, administrative costs, stop-loss premiums and what employee dependents had for contributions.

"If your broker does not have an analytics system to track financial capabilities and they're still sending reports self-created out of Excel, that's not acceptable in this day and age," she opines. ■

Bruce Shutan is a Portland, Oregon-based freelance writer who has closely covered the employee benefits industry for more than 35 years.