July 22, 2021

Submitted electronically via Regulations.gov

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

Attention: **CMS-9905-NC,** Request for Information Regarding Reporting on Pharmacy Benefits and Prescription Drug Costs

Dear Sir or Madam:

I write on behalf of Common Ground Healthcare Cooperative (CGHC) to respond to the Departments' and OPM's Request for Information regarding implementation of the data collection provisions of the Consolidated Appropriations Act (CAA), and the associated impact on plans and issuers.

CGHC is a non-profit health insurance cooperative that was created to serve the health insurance needs of individuals and small employers living and working in the state of Wisconsin. While we are the largest individual market insurer in the state of Wisconsin, we are otherwise a relatively small carrier with an almost exclusive focus on the individual and small group markets. We offer plans in 22 of Wisconsin's 72 counties and are one of the last three remaining Consumer Operated and Oriented Plans (CO-OPs) under the ACA.

We provide the following responses to specific questions asked in the RFI:

1. Do plans/insurers have all the info they need to complete the reporting? The Senate HELP Committee included a companion piece to the reporting requirement in its version of the Lower Health Care Costs Act which was not incorporated into the CAA prior to passage. The provision would have required PBMs to report costs, fees and rebate info on a quarterly basis to health plans. That provision would have also prohibited PBMs from charging plans more for a drug than the PBM paid. We believe it would be helpful if this provision were incorporated into rulemaking to ensure plans had access to this information prior to reporting. We would ask that plans be held harmless for relying on this reporting from PBMs.
2. What is the appropriate timeline? We would need to understand the required specifications for the data reported and what dates of service should be included on the first report. Ideally, we would have at least six months to implement reporting once the final data specifications are known.

3. Should there be special considerations based on plan size? We greatly appreciate the inclusion of this question in the RFI. There are a multitude of new and imminent federal requirements on health plans that we support because they will ultimately benefit consumers. Unfortunately, they are also exhausting our small health plan's limited IT resources. Capacity is also low for reliable IT consultants and vendors that we would otherwise look to for outsourcing. Further, the cost of compliance places a greater burden on a 50,000-member health plan when compared to a 500,000-member health plan, which puts smaller plans at a disadvantage in the market. For all these reasons, smaller health plans greatly appreciate a longer runway on new compliance requirements in general, so we can better manage the demands on resources and costs. We acknowledge that the data collection requirements subject to this RFI will be a lighter compliance lift compared to the numerous other upcoming compliance concerns that will have a much greater impact on our health plan such as interoperability, transparency, and other provisions of the CAA.
4. Can issuers submit on behalf of multiple group health plans? Could PBMs submit on behalf of plans? CGHC would prefer to verify data from our PBM prior to submission, and it is important for transparency purposes that the information be shared with plans. It is likely that CGHC will have to append the PBM's report with additional information to meet the requirements regardless.
5. How should the departments define "rebates, fees, and any other remuneration?" There is newer guidance on this relative to the requirements surrounding MLR/MLR Calculations. We would prefer consistency in definitions across all regulations.
6. Should the Departments collect and report information separately by market, state, or employer size? What data elements or subcategories are of interest? Our plan serves one state and relatively few markets. Therefore, we do not believe we would benefit from additional breakdowns. If additional breakdowns are required, we would ask that PBMs be required to provide plans with the information needed (see answer to question 1).
7. What considerations are important for plans and issuers in measuring the impact of drug manufacturer rebates on premiums and out-of-pocket costs? As a non-profit healthcare cooperative, CGHC uses rebates to benefit all members (and the federal government) through lower premium costs. We believe having this flexibility as a cooperative is most effective in helping us provide the greatest cost benefit to the largest number of our members.
8. Are there opportunities to remove other reporting requirements applicable to issuers or to leverage or combine those requirements? Thank you for this question. As mentioned in a previous response, there were additional transparency reporting requirements that were considered for the PBM industry. If PBMs are the source of the information, they should be regulated directed by the government instead the more typical path of regulating them through health plans.
9. Should the public report include a comparative analysis of prescription drug costs for plans and issuers, relative to costs under Medicare or in other countries? Yes. We believe this would be beneficial for consumers in general to understand. Medicare in particular is an important benchmark that all payers should be referencing.
10. What costs will be incurred in complying with this? Benefits? What can the departments do to mitigate the costs? Until we see the specific requirements, we are not able to know the price our PBM will charge for providing the information we will require.

Thank you for considering my response to the RFI. Please do not hesitate to contact Melissa Duffy, Government Affairs, at mduffy@commongroundhealthcare.org if you have questions.

Sincerely,

Cathy Mahaffey, CEO
Common Ground Healthcare Cooperative of Wisconsin