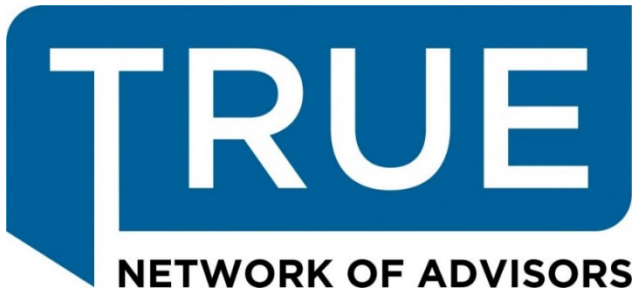
ERISA Notice and Disclosure Requirements



Presented by
Matthew Cannova & Seth Capper
Maynard, Cooper & Gale, P.C.
October 2022

RATED BY Super Lawyers Best Lawyers

Agenda

- ERISA & GHP Notices & Disclosures 101
- CAA and Transparency in Coverage (TiC) Disclosure Requirements
  - TiC Public and Participant Disclosures
  - CAA Disclosures and Reporting
  - CAA Pharmacy Reporting

TRUE NETWORK OF ADVISORS

MAYNARD COOPER GALE

ERISA Notices and Disclosures

- Plan Document
  - Must be furnished within 30 days of receiving written request
  - Failure to furnish within 30 days may result in penalties of up to $110 per day
    - Requirement to furnish also applies to other documents, including SPD, latest Annual Report (*i.e.*, Form 5500), trust agreement, any contract or other instruments under which the plan is established or operated

TRUE NETWORK OF ADVISORS

MAYNARD COOPER GALE

ERISA Notices and Disclosures

- **Summary Plan Description (SPD)**
  - Must be furnished to each participant within 90 days of becoming covered by the plan
  - For new ERISA plans, must be distributed to all participants within 120 days after becoming subject to ERISA
  - Updated SPD must be furnished every 5 years if changes made to SPD information or the plan is amended; otherwise, must be furnished every 10 years

TRUE NETWORK OF ADVISORS

MAYNARD COOPER GALE

ERISA Notices and Disclosures

- Plan Amendments – SPD or SMM?
  - Administrator of a plan must provide timely notice of amendments that would be *material* to reasonable participants
  - Notice can be in the form of new SPD or SMM
- Summary of Material Modifications (SMM)
  - Alternative to distributing new SPD when amendments are made
  - Must be distributed to all participants not later than 210 days after the end of the plan year in which the change is adopted
  - SMM for **Material Reduction** in group health plan benefits or services
    - Must provide no later than **60 days <u>after</u>** change becomes effective

TRUE NETWORK OF ADVISORS

MAYNARD COOPER GALE

Group Health Plan Notices & Disclosures

- Summary of Benefits and Coverage (SBC)
  - Who must provide the SBC?
    - Self-insured plan → plan administrator
    - Fully insured plan → insurer and plan administrator share obligation
  - Must provide to participants with enrollment materials and upon renewal/reissuance of coverage; must also provide to special enrollees no later than 90 days following enrollment
  - If re-enrollment is automatic, must provide no later than 30 days prior to the first day of the new plan year
- Notice of Material Modifications
  - Any change affecting the information in the SBC
  - Must provide no later than **60 days prior** to effective date

TRUE NETWORK OF ADVISORS

MAYNARD COOPER GALE

Group Health Plan Notices & Disclosures

- **Notice of HIPAA Special Enrollment Rights**
  - HIPAA special enrollment period generally must be made available:
    - If an employee or dependent loses eligibility for group health plan or health insurance coverage;
    - On occurrence of certain life events (*e.g.*, when a person becomes a dependent of an eligible employee because of birth, marriage, adoption, or placement for adoption); and
    - Following an individual's eligibility for a state premium assistance subsidy (*e.g.*, Medicaid or CHIP).
  - Initial notices must be provided at or before the time an employee is first offered the opportunity to enroll in the group health plan.

TRUE NETWORK OF ADVISORS

MAYNARD COOPER GALE

Medicare Part D Creditable Coverage Notice

- Medicare Part D requires group health plan sponsors to disclose to Medicare Part D-eligible individuals and to the Centers for Medicare and Medicaid Services (CMS) whether the prescription drug coverage provided by the group health plan is “creditable”
  - Generally, prescription drug coverage is creditable if (a) it constitutes an authorized type of coverage; and (b) the actuarial value of the coverage equals or exceeds the actuarial value of “defined standard Part D prescription drug coverage”
- Applies to group health plan sponsors that provide prescription drug coverage to Medicare Part D-eligible individuals
  - “Part D eligible individuals” include all types of employer-sponsored group health plan participants, such as active employees, employees with disabilities, COBRA participants, retirees, and their covered spouses and dependents

TRUE NETWORK OF ADVISORS

MAYNARD COOPER GALE

Medicare Part D Creditable Coverage Notice

- Electronic submission
- Timing of Sending Disclosure to CMS Form
  - Within 60 days after the beginning date of the plan year for which disclosure is provided.
  - Within 30 days after termination of the prescription drug plan
  - Within 30 days after any change in creditable status of the prescription drug plan

TRUE NETWORK OF ADVISORS

MAYNARD COOPER GALE

Medicare Part D Creditable Coverage Notice

- Paper or electronic (if satisfy DOL safe harbor or CMS guidance)
- When Are Disclosure Notices Required to Be Provided to Part D Eligible Individuals?
  - Prior to commencement of the annual coordinated election period (ACEP) for Part D (i.e., before **October 15** each year)
  - Prior to an individual's initial enrollment period (IEP) for Part D
  - Prior to the effective date of coverage for any Part D eligible individual who enrolls in employer's prescription drug coverage
  - Whenever the employer no longer offers prescription drug coverage or changes it so that it is no longer creditable or becomes creditable
  - Upon request by the Part D eligible individual

TRUE NETWORK OF ADVISORS

MAYNARD COOPER GALE

Group Health Plan Notices & Disclosures

- COBRA Notices
- Newborns' Act Description of Rights
- Women's Health and Cancer Rights Act (WHCRA) Notices
- Wellness Program Disclosures
- Grandfathered Health Plan Notice

Extra Credit

- Employer CHIPRA Notice
- Notice Regarding Availability of Health Insurance Marketplace
  - Within 14 days of an employee's start date
  - No penalty; strategy considerations
- ACA Reporting and Employee Statements (Forms 1095-C) for Applicable Large Employers (ALEs)

TRUE NETWORK OF ADVISORS

MAYNARD COOPER GALE

ERISA Reporting & Related Disclosures

- Form 5500 – Annual Report
  - Due the last day of the 7th month following the end of the plan year (July 31 of the following year for calendar year plans)
  - Up to 2½ month *automatic* extension available with Form 5558
- Summary Annual Report (SAR)
  - Summarizes the data in the 5500
  - Must be distributed to all participants by the later of (i) 9 months after the end of the plan year, or (ii) 2 months after the due date for filing the 5500 (including approved extensions)
- Are you required to file a Form 5500 for your welfare plan(s)?
  - Depends on **PLAN SIZE** and **FUNDING METHOD**
    - **Yes:** Large Plans
    - **Yes:** Funded Plans
    - **No:** Small AND fully-insured, unfunded, or combination fully-insured & unfunded

TRUE NETWORK OF ADVISORS

MAYNARD COOPER GALE

Are you required to file a Form 5500 for your welfare plan(s)?

Must File if **EITHER** of these is true		
Plan Size		Funding Method
Large Plan – 100+ participants on first day of plan year	AND /OR	Funded Plans – essentially meaning benefits are NOT paid from general assets (e.g., paid from a trust)

Exempt from Filing **ONLY IF BOTH** are true		
Plan Size		Funding Method
Small Plan – Fewer than 100 participants on first day of plan year	AND	Unfunded Plan - essentially meaning benefits are paid from general assets
		Fully-Insured Plan
		Combination Fully-Insured/Unfunded

Transparency in Coverage: Public Disclosures

- Non-grandfathered plans and insurers must disclose, through separate machine-readable files (MRFs) on a public website:
  1. Negotiated rates for all covered services and items between the plan/insurer and in-network providers
  2. Historical payments to, and billed charges from, out-of-network providers for covered services and items
  3. Negotiated rates and historical net prices for all covered prescription drugs
     - The third requirement has been delayed indefinitely
- This does not apply to grandfathered plans, account-based plans, excepted benefits, STLDI, or retiree-only plans
- Effective for plan years beginning on or after 1/1/22; **enforcement began 7/1/22**

TRUE NETWORK OF ADVISORS

MAYNARD COOPER GALE

Transparency in Coverage: Disclosures to Participants and Beneficiaries

- Non-grandfathered health plans and insurers must provide to participants and beneficiaries certain personalized cost-sharing information and underlying negotiated rates for all covered services and items:
  - Estimated cost-sharing liability
  - Participant's accumulated amounts toward deductibles and OOP limits
  - INN negotiated rates & OON allowed amounts
  - Items and services subject to bundled payment arrangements
  - Notice of prerequisites (e.g., prior authorization)
  - Disclaimer notice
- Provide through an internet-based self-service tool with search capabilities, or paper format, if requested

TRUE NETWORK OF ADVISORS

MAYNARD COOPER GALE

Transparency in Coverage: Disclosures to Participants and Beneficiaries

- A model notice is available on the DOL's website
- This does not apply to grandfathered plans, account-based plans, excepted benefits, short-term limited duration insurance, or retiree-only plans
- Effective for plan years beginning on or after **1/1/23** for 500 services and items selected by the Departments
- Effective for plan years beginning on or after **1/1/24** for all other covered services and items

TRUE NETWORK OF ADVISORS

MAYNARD COOPER GALE

CAA Disclosures and Reporting

Balance Billing Disclosure

- For plan years beginning on or after **1/1/22**, plans must make publicly available, post on a public website of the plan, and include on each explanation of benefits (EOB) for an item or service with respect to which the surprise billing protections apply the following:
  - The restrictions on balance billing in certain circumstances;
  - Any applicable state law protections against balance billing;
  - The requirements under the new surprise billing rules; and
  - Information on contacting appropriate state and federal agencies
- A model notice is available on the DOL's website

Air Ambulance Reporting

- Plans must submit data regarding air ambulance coverage to the DOL, DOT, and HHS within 90 days after end of calendar year
- Reports due for calendar year **2022 by 3/31/23**, or for calendar year **2023 by 3/30/24**

TRUE NETWORK OF ADVISORS

MAYNARD COOPER GALE

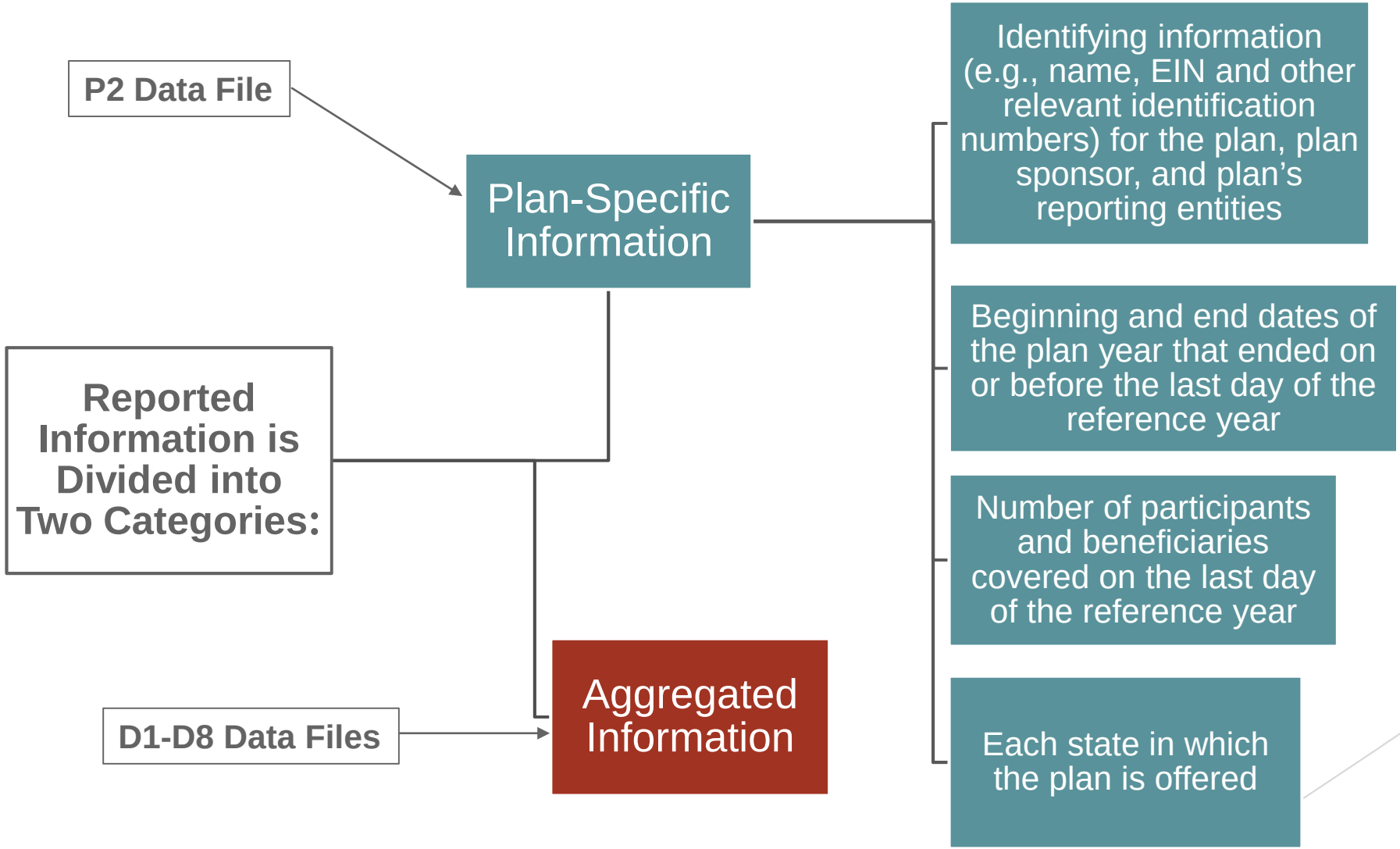
CAA Pharmacy Reporting

- **Which plans/benefits are subject to the pharmacy reporting requirements?**
  - **Group health plans (including grandfathered plans)**
- **Which group health plans are <u>not</u> subject to the pharmacy reporting requirements?**
  - **Excepted benefits (*e.g.*, limited-scope dental or vision offered under separate policies, many EAPs, and fixed indemnity plans)**
  - **Account-based plans (*e.g.*, HRAs and many gap/bridge plans)**
  - **Short-term limited-duration insurance (STLDI)**
  - **Retiree-only plans**
- **What are the deadlines?**
  - **2020 and 2021 calendar year data is due by 12/27/22. Thereafter, annual reporting is due by June 1 of the following year (*e.g.*, 2022 data is due by 6/1/23).**

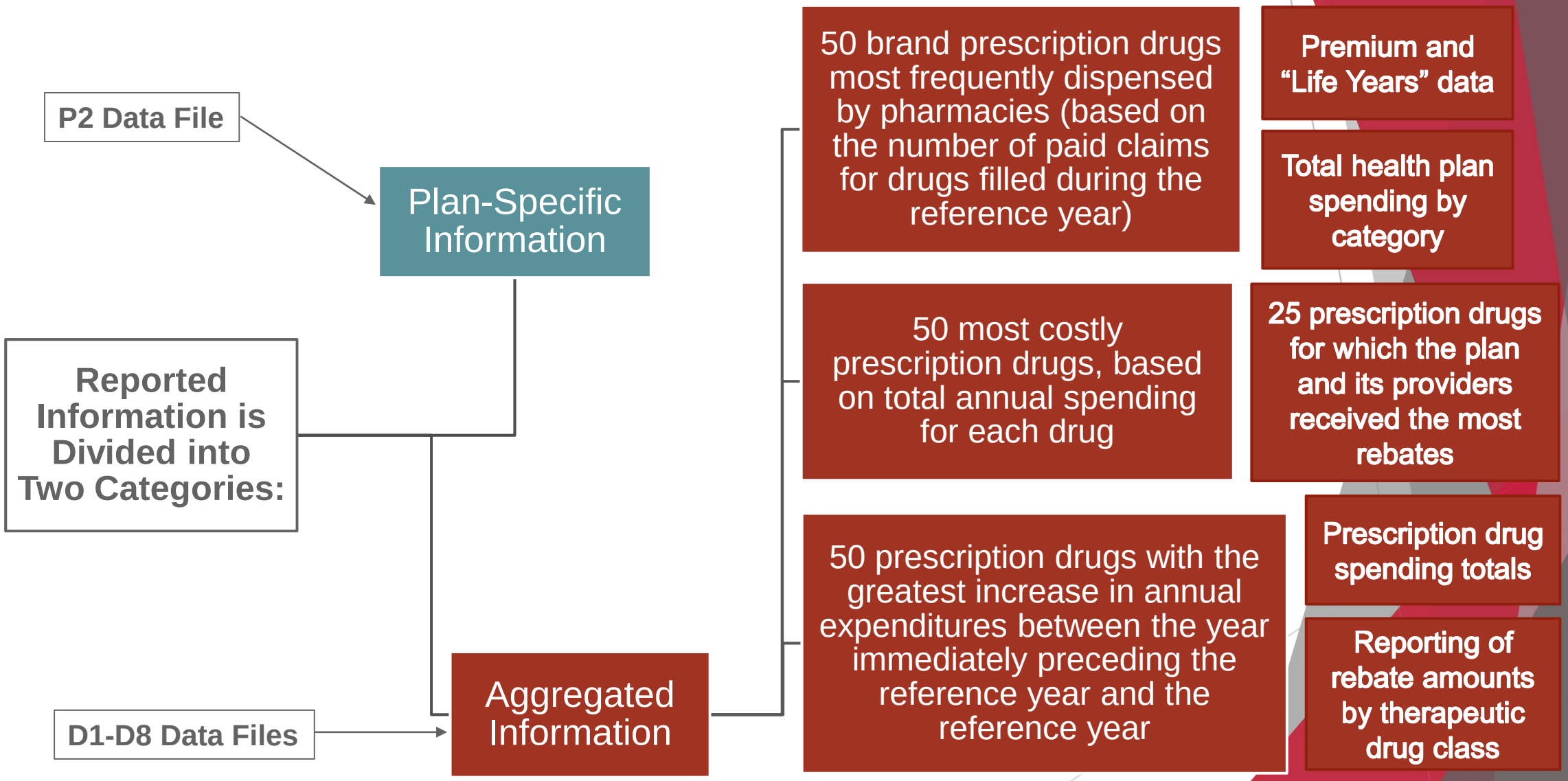
TRUE NETWORK OF ADVISORS

MAYNARD COOPER GALE

Plan-Specific vs. Aggregated Information



Plan-Specific vs. Aggregated Information



Aggregated Data Files

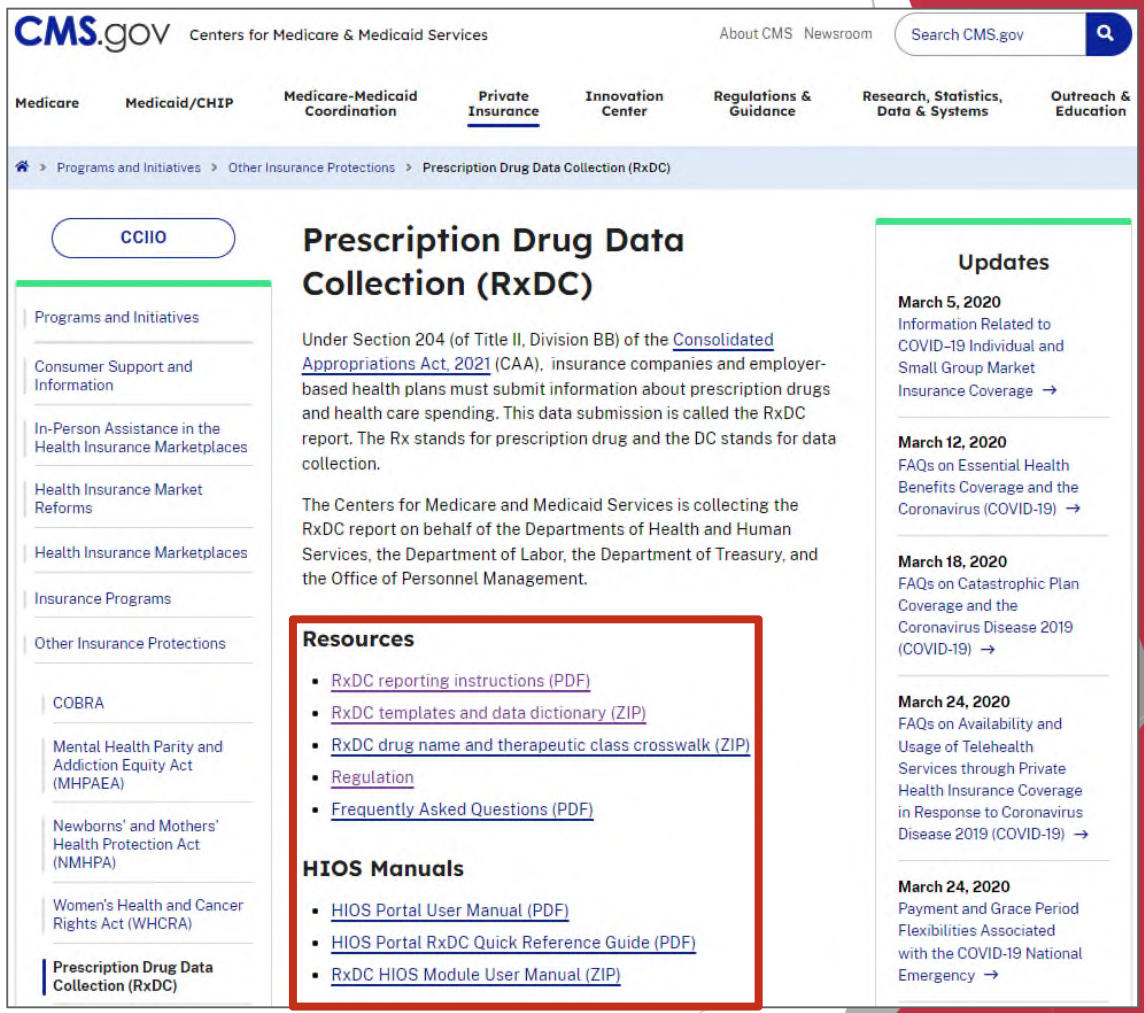
- If a reporting entity submits data on behalf of more than one plan in a state, the reporting entity may aggregate data in its D1-D8 Data Files
- Aggregation is by (1) state, (2) market segment, and (3) issuer/TPA. If a PBM is the reporting entity, then the PBM aggregates data separately for each issuer/TPA used by the plans the PBM services.
- *Aggregation by state – which state?*
  - Fully insured plan → State where contract was issued
  - Self-funded plan → State where the plan sponsor has its principal place of business
    - Level-funded = Self-funded
  - MEWA → For a "plan" MEWA, generally the place where the group/association has its principle place of business
- *Market segments*:
  1. Individual market, except for student plans
  2. Student market
  3. Fully insured, small-group
  4. Fully insured, large-group
  5. Self-funded, small-group
  6. Self-funded, large-group
  7. Federal Employee Health Benefits (FEHB)

TRUE NETWORK OF ADVISORS

MAYNARD COOPER GALE

CMS RxDC Website

- The CMS.gov Prescription Drug Data Collection (RxDC) website includes reporting instructions, data file templates, HIOS user manual, and other important and helpful information.
- Filers must have a Health Insurance Oversight System (HIOS) account through the CMS Enterprise Portal

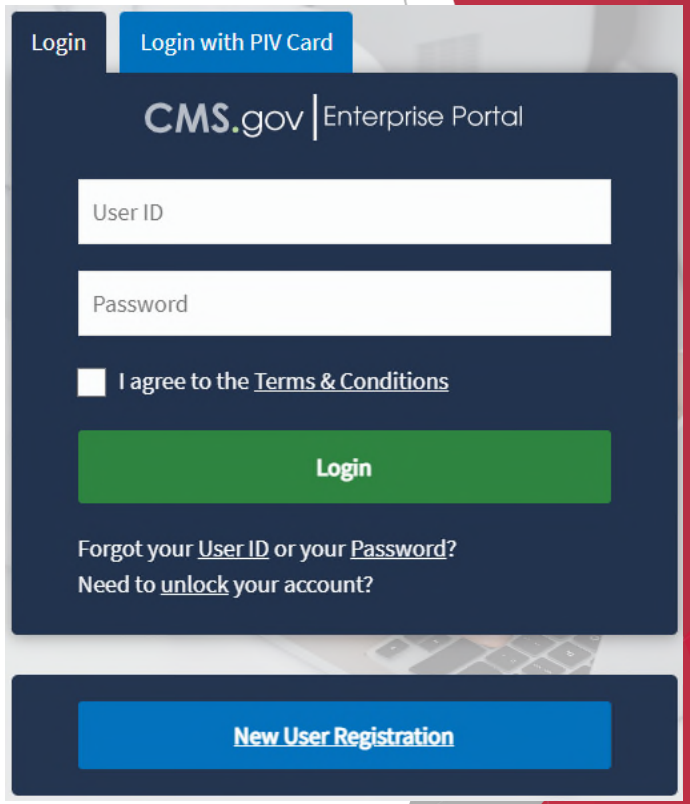


TRUE NETWORK OF ADVISORS

MAYNARD COOPER GALE

HIOS Submission Process

- Submit Data Files through the RxDC module in the Health Insurance Oversight System (HIOS). To log in to HIOS, go to the CMS Enterprise Portal.
- If you are submitting the Data Files, you must have a HIOS account.
  - It can take up to two weeks to create your accounts. Don't wait until the last minute!
- Instructions to create HIOS accounts are in the HIOS Portal User Manual. The instructions for using the RxDC module are in the RxDC HIOS User Manual.
  - CMS Enterprise Portal Quick Reference Guide
- Select "New User Registration"
  - Application = HIOS



Other CAA Requirements

The following requirements are effective for plan years beginning on or after January 1, 2022:

- Advanced ID Card Requirement
- Advanced Explanation of Benefits (EOB)
- Notice of Continuity of Care
- Price Comparison Tool
- Updated Provider Directories
- No “Gag” Clauses Allowed on Price or Quality of Care Information (Including Submission of Attestation of Compliance)
- Mental Health Parity Comparative Analysis of NQTLs

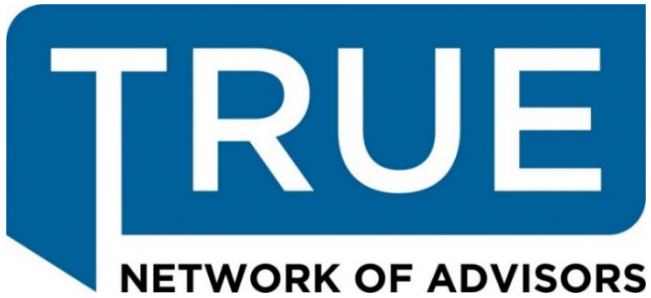
TRUE NETWORK OF ADVISORS

MAYNARD COOPER GALE

Selected Limits for Health and Welfare Plans

	2020	2021	2022
Annual Cost Sharing Limit (self-only coverage)	$8,150	$8,550	$8,700
Annual Cost Sharing Limit (other than self-only)	$16,300	$17,100	$17,400
HDHP Out-of-Pocket Maximum (self-only coverage)	$6,900	$7,000	$7,050
HDHP Out-of-Pocket Maximum (family coverage)	$13,800	$14,000	$14,100
HDHP Minimum Deductible (self-only)	$1,400	$1,400	$1,400
HDHP Minimum Deductible (family)	$2,800	$2,800	$2,800
Maximum Annual HSA Contributions (self-only)	$3,550	$3,600	$3,650
Maximum Annual HSA Contributions (family)	$7,100	$7,200	$7,300
Maximum HSA Catch-Up Contribution	$1,000	$1,000	$1,000
Health FSA Maximum	$2,750	$2,750	$2,850
Health FSA Rollover Maximum	$550	$550	$570
Employer Mandate Penalty A (Fail to Offer)	$2,570 per FTE	$2,700 per FTE	$2,750 per FTE
Employer Mandate Penalty B (Unaffordable)	$3,860 per EE	$4,060 per EE	$4,120 per EE
414(q) Highly Compensated Employee Threshold	$130,000 (for 2021 determinations)	$130,000 (for 2022 determinations)	$135,000 (for 2023 determinations)

TRUE NETWORK OF ADVISORS MAYNARD COOPER GALE



MAYNARD
COOPER GALE

ALABAMA | CALIFORNIA | FLORIDA | GEORGIA | IOWA
NEW YORK | TENNESSEE | TEXAS | WASHINGTON DC

MAYNARDCOOPER.COM