



## PARTNERSHIP FOR EMPLOYER-SPONSORED COVERAGE

January 28, 2020

The Honorable Alex Azar  
Secretary  
U.S. Department of Health & Human Services  
200 Independence Avenue, SW  
Washington, D.C. 20201

The Honorable Eugene Scalia  
Secretary  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, D.C. 20210

The Honorable Steven Mnuchin  
Secretary  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 20220

RE: CMS-9915-P  
Submitted via [www.regulations.gov](http://www.regulations.gov)

Dear Secretaries Azar, Scalia and Mnuchin:

The Partnership for Employer-Sponsored Coverage (P4ESC) writes with comments on the notice of proposed rulemaking (NPRM) on Transparency in Coverage. We appreciate the commitment the Administration has made to provide Americans with more tools to be better consumers of their health care, and we welcome the opportunity to provide you with operational feedback from employers on implementing the proposed transparency policies. We strongly support progress toward greater transparency in health care.

The Partnership for Employer-Sponsored Coverage is an advocacy alliance of employment-based organizations and trade associations representing businesses of all sizes and the over 181 million American workers and their families who rely on employer-sponsored coverage every day. We are working to ensure that employer-sponsored coverage is strengthened and remains a viable, affordable option for decades to come.

The Partnership for Employer-Sponsored Coverage agrees that more information is needed to help both employers and employees make informed decisions regarding health care costs. Employers understand the importance of providing plan enrollees with detailed coverage information and tools. Providing information about health coverage and services, and empowering Americans to use this information to be better consumers of their health care are goals employers share with policymakers. Employers are already providing price transparency information to enrollees through plan documents, enrollment materials and accessible on-line platforms and portals.

Employer-sponsored coverage has been the backbone of our nation's health system for over seven decades. Employers of all sizes contribute vast resources to their employees and families



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through the employer-sponsored system. As the payer of coverage, employers have a vested interest in health care quality, value, and system viability. Employers have been on the leading edge of health delivery innovation and modeling for decades. P4ESC is in favor of increasing transparency for employers and their employees to empower them as health care consumers; however, as markets differ, the approach to transparency for different types of employer-sponsored plans must also differ.

As the Administration, Congress and the broader stakeholder community explore policies to increase transparency of costs in our nation's health care system, the Partnership for Employer-Sponsored Coverage urges policymakers to take into consideration the compliance operational and implementation issues of employers. Specifically, the P4ESC requests that the Administration consider the unique challenges self-insured employers will have complying with transparency proposals that are written from the viewpoint of the Medicare program and fully-insured plans which are products of insurance carriers.

Self-insured employer plans under the Employee Retirement Income Security Act (ERISA) are uniquely developed and administered for a particular employer's workforce and currently have regulations in place to provide transparency to consumers enrolled in these plans. As such, implementing new federal requirements comes with unplanned compliance burdens and costs to that employer that is already providing similar information through plan documents, enrollment materials and accessible on-line platforms and portals.

The Partnership for Employer-Sponsored Coverage surveyed its members for operational feedback regarding the NPRM on transparency of health coverage costs. Below is feedback and additional questions we received. As the rulemaking process continues, P4ESC welcomes the opportunity to discuss these compliance operational issues directly with the Administration.

### **Compliance and Operational Issues**

Employers have a vested interest in ensuring their workforce is healthy and productive, and they pride themselves on the ability to offer quality, affordable health coverage to their employees and families. The ability to offer these benefits becomes more difficult as health costs continue to rise. Employers will also benefit from price transparency as they design and implement health care benefit offerings for their employees. Employers do not have unlimited financial resources at their disposal for benefits coverage – there exists a balance of providing quality care at a growing cost with the pressures of all other business operations.

#### *Disclosure of Information and Compliance Transition*

Employers support increased transparency of information to enable patients to be better consumers of their health care. There are numerous federal requirements placed on employer plan sponsors to provide their employees with information about their coverage and cost sharing, including the Summary of Benefits and Coverage (SBC). Provider price transparency and easy-



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to-understand information about co-payments and deductibles help enrollees better understand their benefits coverage.

The feedback P4ESC sought for this comment letter from self-insured employers was in the context of compliance implementation of the proposed rules. The feedback we received is reflective of operational issues on implementing the seven content elements of required information and not the overall goal, which P4ESC supports, of providing individuals with additional tools to help them make more informed health decisions.

The Partnership for Employer-Sponsored Coverage requests a longer transitional period for self-insured employers to comply with these proposed regulations due to complex operational and compliance issues with regard to contracting with third-party administrators (TPAs), ownership of data and building and operating new information technology (IT) systems. When asking self-insured ERISA employers whether they would either build a new IT system to gather and disseminate required information or contract with a TPA to comply, respondents said they would likely contract out to a TPA because the employer does not have all of the charge data nor has the capability of collecting. Employers indicated that contracting with a TPA for these requirements would come at a significant compliance cost to the employer. Respondents noted that they rent networks from insurance carriers and contract with the carrier as the TPA to administer plan benefits. It is the carrier that holds the pricing information for medical services, facilities and providers, not the self-insured employer.

Further, it was noted that employers who rent carriers' networks are not directly privy to certain negotiation information between the TPA and providers. There is a great deal of information that an employer would need to obtain and update from a TPA should the self-insured employer decide to build and operate a cost estimator tool in-house. An employer responded that the man-hours of creating an in-house system from scratch to accept insurance carrier codes and reimbursement rates for virtually every medical service are unimaginable. P4ESC also requests that the compliance time for producing paper copies of personalized information be consistent with current federal requirements for furnishing paper copies of the SBC, summary plan description or COBRA information.

In addition, P4ESC received feedback from employers about possible privacy concerns with moving plan information from behind a secure firewall to the public domain. Plan information is currently available from the TPA through the participant's secure log-on. There is concern about the privacy of HIPAA protected health information (PHI) with placing data in the public domain and not behind a protected, log-on secure portal. An employer respondent also noted human resource department concerns about employee privacy and compliance with HIPAA and workers' compensation requirements. The employer stated that having such information about their employee's dependents could lead to legal liability for personnel actions based upon disabilities or perceived disabilities.



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### *Value-Based Insurance Design*

Self-insured ERISA employers have been leaders in developing and implementing innovative plan designs to both provide quality coverage to the employees and families and address rising systematic health costs. Employers have been at the forefront of developing and implementing high value provider networks at the lowest possible cost, including telehealth, on-site and near-site health centers, utilizing centers of excellence, direct contracting, provider transparency initiatives and wellness programs.

There are compliance and plan development concerns about applying a medical loss ratio (MLR) system and direct consumer reimbursements from the fully-insured market to the self-insured ERISA market. A shared savings or MLR system that is implemented by a fully-insured carrier across its product lines is a different economy of scale than a self-insured ERISA plan that is tailored for a particular workforce. Additionally, a self-insured ERISA employer may utilize several different TPAs for various functions of the plan and tracking shared savings and issuing rebate checks may be more daunting and complicated to these employers.

### *Quality Measurement and Data*

Providing quality and affordable coverage to employees is a foundation of the employer-sponsored system. As financial stewards, self-insured ERISA employers take seriously the task of offering high-quality and affordable plans to their employees. The request for information on future quality measurement requirements for employers concerns us from a compliance burden and cost standpoint. P4ESC is concerned that the operational and financial burden would lie on the self-insured employer to determine data feeds, quality sources, and aggregate information to share with enrollees. Additional compliance costs on employers will lead to higher premiums for employees. As such, a new federal mandate of quality measurement and data collection should not be shouldered by individual self-insured employers but rather administered by an appropriate entity with the expertise for compiling and disseminating such information.

### Conclusion:

The Partnership for Employer-Sponsored Coverage supports the Administration's overall goal of providing individuals with additional tools to help them make more informed health decisions, and we are willing to lend our expertise so that policies to ensure transparency can be implemented in ways to truly empower consumers while containing health care costs. The foundation of the employer-sponsored coverage system is rooted in workforce policy and business operations. Employers of all sizes offer coverage for employee recruitment and retention. The functionality of a business is centered around a productive, thriving and healthy workforce. The ability to offer coverage to employees and the ability to operate a business for its core purpose are not mutually exclusive functions.



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Benefits offerings and coverage plans in the employer-sponsored system are as diverse as employers themselves. There is no one-size-fits-all employer plan. A larger employer who offers self-insured ERISA coverage – which comes with the most financial risk but has the benefit of being able to be tailored for their workforce’s specific needs – is considerably different from a smaller or midsize employer who offers fully-insured coverage – which faces fiscal pressures of the individual and small group market without the ability to tailor coverage.

An employer offer of coverage is not merely a transaction in which an employee fills out paperwork, enrolls in coverage, and receives an insurance card – it is a multifaceted fiscal and operational commitment at the core of an employee-employer relationship. As employers are making the decision to offer coverage and determine which type of coverage to offer their employees, a critical aspect of this deliberation is the administrative compliance costs and complexities associated with the coverage.

The Partnership for Employer-Sponsored Coverage appreciates the opportunity to work with the Administration, Congress and the broader stakeholder community in a bipartisan manner on reforms to our nation’s health care system to ensure that employer-sponsored coverage is preserved and thrives for generations of hardworking Americans to come. As a coalition representing businesses of all sizes, we have the unique ability to provide operational input across the full spectrum of the employer system – from the smallest family business to the largest corporation. Employers have a great stake in the development and implementation of health care policies, and we look forward to working with you as this process continues.

Sincerely,  
Partnership for Employer-Sponsored Coverage

*The Partnership for Employer-Sponsored Coverage ([www.p4esc.org](http://www.p4esc.org)) membership includes: American Hotel & Lodging Association, American Rental Association, American Staffing Association, Associated Builders and Contractors, Inc., Auto Care Association, HR Policy Association, International Franchise Association, National Association of Health Underwriters, National Association of Wholesaler-Distributors, National Restaurant Association, National Retail Federation, Retail Industry Leaders Association, Society for Human Resource Management*

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