

Summary of Recently Enacted Health Insurance Compensation Disclosure Requirements

The comprehensive appropriations measure passed by the Congress and signed into law by President Trump in the final days of 2020 included a provision that will have a significant impact on health insurance producers and consultants and require them to disclose their compensation and other information to group health plan sponsors. The act also requires health issuers to disclose to individual health insureds the compensation paid to the agent or broker involved in the coverage selection and enrollment. The new requirements, which can be found in Section 202 of the omnibus law, take effect on December 27, 2021.

Group Health Plan Requirements

Who is subject to the new requirements?

The new disclosure requirements apply to a person (referred to as a “covered service provider”) that:

- Reasonably expects to receive at least \$1000 (an amount that can be adjusted to account for inflation) in direct or indirect compensation in connection with the services provided pursuant to the arrangement or contract with a group health plan; and
- Provides brokerage or consulting services (including providing such services via an affiliate or subcontractor) to a group health plan.

The statute identifies a wide range of services that trigger the disclosure obligations, and the list includes the following:

- Selection of health insurance products (including vision and dental plans);
- Development or implementation of plan design;
- Recordkeeping services;
- Stop-loss insurance;
- Compliance services;
- Benefits administration and benefits administration selection;
- Wellness design and management services
- Transparency tools and vendors;
- Employee assistance programs; and
- Third party administration services.

What must be disclosed?

Any insurance agent, broker, consultant, or other covered service provider subject to the requirements must disclose the following to a responsible plan fiduciary:

- A description of the services to be provided to the group health plan;
- A description, either in the aggregate or by service, of all direct compensation (i.e. compensation received from the plan directly) the service provider or its affiliates or subcontractors reasonably expect to receive;
- A description of all indirect compensation (i.e. compensation received from any source other than the plan or its sponsor) the service provider or its affiliates or subcontractors reasonably expects to receive;



- The identity of any entity paying indirect compensation and description of the arrangement that exists between that entity and the service provider and the services for which the indirect compensation will be received;
- A description of any compensation that will be paid among the service provider, an affiliate, or a subcontractor in certain instances if the compensation is determined on a transaction basis (e.g. commissions); and
- A description of the manner in which any such compensation will be received.

The act notes that any descriptions of compensation may be expressed as “a monetary amount, formula, or a per capita charge per enrollee or, if the compensation or cost cannot be reasonably expressed in such terms, by any other reasonable method.” The text provides some examples of how compensation that may be incalculable at the time the disclosure is made, such as forms of incentive compensation, might possibly be described.

When and how must the disclosures be made?

These disclosures must be made in writing and “not later than the date that is reasonably in advance of the date on which the contract or arrangement is entered into, and extended or renewed.” Any changes in the information disclosed must be updated “as soon as practicable” and no later than 60 days from when the service provider becomes aware of the change. Additionally, service providers must respond when a responsible plan fiduciary or plan administrator requests other compensation-related information that is required by the plan to comply with its own reporting and disclosure obligations.

Next steps

IIABA intends to seek additional clarity and guidance from federal regulators concerning compliance with these new and extensive disclosure obligations, and the association will be providing additional information as the effective date approaches.

Individual Market Requirements

There are also new requirements for health insurance issuers that offer individual coverage or short-term limited duration insurance coverage. Once the act takes effect, it will require companies to disclose “the amount of direct or indirect compensation provided to an agent or broker in connection with plan selection and enrollment.” The disclosure must be made to an enrollee prior to plan selection and be included in any documentation confirming enrollment. The law directs the Department of Health and Human Services to initiate a formal rulemaking process before the notice obligations take effect, and federal officials will be addressing the timing, form, and manner in which issuers must make the disclosures.

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