Compliance Watch

RxDC Deadlines, PBM Accountability, Medicare Part D Changes & More

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In the News

Missed the RxDC Carrier Deadline?

More employers than ever are finding themselves unexpectedly responsible for submitting part of their annual Prescription Drug Data Collection (RxDC) reporting to CMS. In earlier years, insurers and TPAs heavily publicized their data requests, but that emphasis has faded. At the same time, many carriers and TPAs moved their internal deadlines forward this year, leaving employers with less time to respond. As a result of these two factors, a growing number of employers have missed their vendor's cutoff and now find themselves needing to complete portions of the RxDC filing on their own.

Applies To: All sized employers sponsoring prescription drug coverage who missed their insurer's or TPA's internal RxDC data-request deadline. RxDC reporting does not apply to health FSAs, HRAs, ICHRAs, excepted benefits such as standalone dental or vision, fixed indemnity insurance, and retiree-only plans.

Go Deeper:

Group health plans and insurers are required to report certain medical and prescription drug spending data to CMS on an annual basis. The reporting is submitted via CMS's Health Insurance Oversight System (HOIS) portal via a series of Data Files (numbered D1 through D8) with an accompanying Plan List file (known as the P2 file).

While insurers and TPAs have access to the bulk of the information needed, they do not track the average monthly employee and employer contributions required on the "D1" Data File. If the employer or other plan sponsor does not provide this missing information to the insurer or TPA by its internal deadline (many of which were much earlier this year than in prior years and may have already passed), they will file only the information they do have. It then becomes necessary for the employer to self-submit their own D1 and P2 files to CMS by the final June 1 deadline.

Because it can take two or more weeks to obtain system access to the HIOS portal necessary to self-report the missing D1 and P2 files, employers who missed their cutoff are strongly urged to begin the HIOS registration process now.

Part of the set-up process includes a series of steps to prove the submitter's identity, requiring them to provide personal information, such as their social security number, as well

WHAT'S NEW

- **RxDC self-reporting deadline approaching** — Employers who missed carrier cutoffs must register with HIOS now or risk missing the June 1, 2026 filing deadline.
- **IRS refreshes Section 127 plan document** — Updated sample incorporates permanent student loan reimbursement language and inflation-indexing provisions effective 2027.
- **Medicare Part D creditable coverage threshold rising** — CMS finalizes 73% actuarial value standard for 2027, with further increases expected through 2030.
- **PBM accountability under intensifying pressure** — State legislation, federal RICO litigation, and ERISA preemption rulings are reshaping the PBM regulatory landscape simultaneously.

TAKEAWAY

Employer benefit obligations are expanding on multiple fronts at once, what has historically been treated as routine vendor-managed compliance is increasingly becoming a direct employer responsibility, requiring plan sponsors to actively verify what was filed, by whom, and whether it was done correctly.

as an authorization for a soft credit check with Experian. Because these steps take time, employers who wait until the last week or two of May may miss the 2025 RxDC Reporting deadline of June 1, 2026.

The good news is that, to assist those who must self-report, we can provide an RxDC Submission to HIOS walkthrough which outlines the five-step process that must be followed. We are also available for technical questions as needed.

Penalties for Non-Compliance:

Failure to comply with RxDC requirements may result in:

- **Penalties and Enforcement Actions:** Federal agencies can impose penalties under ERISA, the Internal Revenue Code, and the Public Health Service Act.
- **Increased Scrutiny:** Non-compliance could invite audits or investigations.
- **Plan Sponsor Liability:** Employers may face financial and reputational harm if they fail to ensure accurate and timely submissions.

Practical Impact to Employers

Employers of all sizes are recommended to follow these steps to ensure full compliance:

- **Verify Reporting Responsibility:** Determine whether the carrier, TPA or PBM will handle reporting. Ensure agreements are in place to confirm accountability.
- **Gather the Necessary Data:** Work with vendors and other stakeholders to collect the required plan, cost and utilization data.
- **Monitor Deadlines:** Track annual submission deadlines, including carrier or TPA deadlines and confirm reporting has been completed.
- **Self-Submit any Missing D1 and P2 Files (if needed):** When necessary (such as when the carrier or TPA cutoff has passed), employers should verify what data was submitted and what data remains for the employer to submit, then consult CMS's RxDC webpage for the current FAQs, instructions, templates and weblinks. If only the employer and employee contribution splits need to be reported, we can provide a simplified walkthrough on request.
- **Document Compliance:** Maintain records of data submissions, agreements with service providers and communications related to compliance efforts.

IRS Updates Sample Educational Assistance Program Document

The IRS has released an updated sample Educational Assistance Program plan document. While employers are not required to use the IRS template, a separate written plan is mandatory, and the sample offers helpful insight into the language and structure the IRS views as compliant. The new version also incorporates several updates and clarifications that many employers should consider adopting.

Applies To: All employers who offer Educational Assistance Programs to their employees, regardless of employer size and ERISA status.

Go Deeper:

Under Internal Revenue Code (IRC) Section 127, employers are allowed to provide up to $5,250 per calendar year in certain educational assistance benefits on a tax-favored basis. However, after going unchanged for many years, new rules allow this

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maximum to be indexed for inflation beginning in 2027. To qualify for tax-favored treatment, the plan must be created for the exclusive benefit of employees and cannot unduly favor highly compensated employees.

Qualifying expenses can generally include tuition, fees, books, along with certain supplies and equipment directly related to classes or other courses of instruction as long as the employee is not allowed to keep them once the class has concluded (e.g., a laptop that they can keep when the class is done will not qualify). These expenses can result from undergraduate or graduate courses as well as certain qualifying non-degree programs and professional certifications, so long as they reasonably constitute education of the employee.

Among other requirements, such programs require a **separate written plan document** and cannot merely be described in an employee handbook, for example. Importantly, this plan document requirement should not be confused with other types of plan documents already familiar to employers. These programs are not subject to ERISA and therefore should not be included in the employer's ERISA Plan Documents. Likewise, these expenses are also not qualifying expenses under Section 125 and therefore should not be referenced within, nor run through, the employer's Section 125 'Cafeteria' Plan Document.
In addition to minor formatting and structural changes, the IRS's new sample plan document also contains several important revisions from their June 2024 version, including the following:

- **Evergreen indexing language has been added.** In response to a change in the law, the sample now includes indexing language so that the $5,250 per calendar year maximum is automatically adjusted from year to year, thus making annual amendments unnecessary.
- **Updated language for Qualified Education Loans.** The previous version of the sample plan document contained language indicating that the temporary, pandemic-related option to reimburse student loans was no longer permitted after 2025. This new version now reflects its permanent inclusion provided under the One Big Beautiful Bill Act.
- **The definition of "Eligible Educational Institution" has been expanded for certain internships and residency programs.** To better align with recent guidance/FAQs, the new version now explicitly allows qualifying expenses related to "an institution conducting an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility which offers postgraduate training."
- **Certain reimbursement language has been removed/reworded.** Specifically, to better align with current guidance, the new plan document language clarifies that the qualifying expenses must not have been incurred prior to the individual's employment.

Together, these updates modernize the sample plan document and align it with current Section 127 requirements.

Penalties for Non-Compliance:
Failure to have a separate and compliant Educational Assistance Program Document can result in many adverse consequences, including the following:

- **Loss of Tax-Favored Status.** As is the case under Section 125, having no Section 127 plan document technically means there is no Section 127 plan. This means any reimbursements of even otherwise qualifying educational assistance expenses must be reported as taxable income to the employee.
- **Penalties and Enforcement Actions.** The IRS can impose penalties for noncompliant programs as well as for filing inaccurate

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Forms W-2. Penalties and interest can also result for both the employer and the employee if taxable wages were underreported, or if FICA, FUTA, and federal and state income taxes are not properly withheld or paid on a timely basis.

- **Increased Scrutiny.** Non-compliance in this area could easily invite audits or investigations to both the employer and employee.

Practical Impact to Employers:

Employers who choose to sponsor a Section 127 Educational Assistance Program are urged to take the following steps on an annual basis, before the start of each new calendar year:

- Review program goals and make sure the program continues to be utilized in a nondiscriminatory manner.
- Confirm the program's maximum benefit does not exceed the indexed maximum permitted for the calendar year in question (only applicable to 2027 calendar years and beyond).
- Confirm any other changes that may be necessary. This includes those resulting from changes in the law or guidance that may affect plan design or eligibility for the new calendar year.
- Review the plan document(s) to make sure they do not contain any outdated language or impermissible features. For example, programs after 2025 must not include language permitting reimbursement toward student loan repayments.
- Update and distribute all communications about the program to reflect any changes. This includes in summaries found in Employee Handbook (if applicable)

On the Horizon

Changes to Medicare Part D Creditable Coverage Guidelines for 2027 Finalized

On April 2, 2026, the Centers for Medicare and Medicaid Services (CMS) finalized their previously proposed rule to explicitly exempt Health Reimbursement Arrangements (HRAs), including Individual Coverage HRAs (ICHRAs), from issuing Part D creditable or non-creditable notices. They also finalized their proposal to increase the actuarial value threshold for prescription drug coverage to be creditable for 2027 and future years.

Applies To:

- Employers sponsoring an HRA or ICHRA.
- Employer prescription drug plan for which creditability is not determined so a simplified determination actuarial tool must be used.

Go Deeper:

HRA/ICHRA Exemption from Notice of Creditable Coverage

First, CMS finalized the rule exempting certain account-based plans from providing the annual Notice of Creditable Coverage to Medicare Part D-eligible individuals, as well as the obligation to notify CMS each plan year of whether their prescription drug coverage is creditable or non-creditable. This exemption applies to account-based plans that reimburse prescription drug expenses, including Flexible Spending Accounts (FSAs), Health Savings Accounts (HSAs), and Health Reimbursement Arrangements (HRAs), including Individual Coverage HRAs (ICHRAs).

While this change eases administrative burdens for sponsors of these types of plans, it is important to note that it does not affect traditional group health plans, which still must continue to provide notices and report their status each year as they have since 2006.

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Revised Actuarial Value Percentage

CMS also finalized the rule to increase the actuarial value threshold used to determine whether prescription drug coverage is creditable in 2027. The revised simplified determination method (introduced for 2026) requires plans beginning in 2027 to pay at least 73% of covered prescription drug expenses to be deemed creditable (meaning employees are expected, on average, to pay no more than 27% of covered prescription drug expenses). Additional, to-be-announced incremental increases for 2028 and/or 2029 are expected, eventually settling at 75% for 2030.

It is important to note, group health plans are not required to offer prescription drug coverage that is deemed creditable, they only must communicate its status. Also, most insurance carriers, third party administrators (TPAs), or pharmacy benefit managers (PBMs) determine creditability for prescription drug plans on their customers' behalf. But, in the event an employer must make their own determination, an actuarial tool is likely used, and such tools must be updated to reflect the 73% actuarial value standard for 2027 plan years as well as the official indexing for future years through 2030.

Regardless of how creditability status has been determined, the key requirement for employers is to furnish plan eligibles with the correct notice (i.e., either the Notice of Creditable Coverage or the Notice of non-Creditable Coverage) and report the creditability status to CMS each year.

Under the Radar:

PBM Regulation and Enforcement Updates

We continue to track several news items related to Pharmacy Benefit Managers (PBMs), including the following:

- **Ohio Governor Signs New PBM Law.** Effective July 1, 2027, Ohio's House Bill HB 229 creates regulatory framework to impose and enforce several new licensing, transparency, conduct, and reporting requirements on PBMs doing business in Ohio. It also adds consumer protections and fair-pharmacy rules, including limits on patient cost-sharing and new rights for Ohio pharmacies to challenge PBM-enforced reimbursement caps.
- **Tennessee PBM Laws Preempted by ERISA.** Earlier this month, the Sixth Circuit Court of Appeals ruled that two significant portions of Tennessee's PBM laws impermissibly interfered with self-funded ERISA plan design and administration and is therefore pre-empted by ERISA. As a result of this preemption, the court held that Tennessee cannot force ERISA self-funded plans or their PBMs to follow the state any-willing-provider and anti-steering provisions.
- **Express Scripts Charged in RICO Lawsuit.** In a recently filed class action lawsuit, Express Scripts and its parent company Cigna are being accused of running a fraudulent kickback and rebate-diversion scheme involving their Swiss affiliate Ascent Health Services. Although a rigorous defense is expected, these allegations of racketeering are particularly noteworthy because they fall under the Racketeer Influenced and Corruption Organizations (RICO) Act, a federal law normally used to prosecute organized crime. We will continue to follow this case as it winds its way through the courts.

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