

Individual, Large Group, Small Group | CO, CT, GA, IN, KY, ME, MO, NV, NH, NY, OH, VA, WI

Update Regarding the Consolidated Appropriations Act

January 3, 2022

On December 27, 2020, the President signed the Consolidated Appropriations Act (CAA) legislation, which included various healthcare-related provisions, including requirements for the disclosure of broker and consultant compensation in the individual and group health plans markets.

The CAA defines compensation broadly as anything of monetary value except non-monetary compensation valued at \$250 or less. This includes all forms of compensation, including but not limited to:

- Standard, ongoing compensation such as base commissions
- Bonuses
- Finder's fees
- Prepaid (advanced) commissions
- Payments made by third parties
- Incentive programs not solely related to the plan
- Service and/or consulting fees
- Compensation paid based on transactions (per claim, per visit, per prescription, per person etc.)
- Compensation and bonuses based on achievement of growth targets, volume targets, or other specified goals
- Non-cash compensation that has monetary value greater than \$250 such as meals, entertainment, gifts, or trips

While it is the insurer's obligation to disclose agent and broker compensation for individual and short-term health coverage, in the group health market, brokers and consultants have the obligation to disclose their compensation to a group health plan's fiduciary.

Individual Market Compensation Disclosure Requirements

The CAA requires health insurers offering individual and short-term health insurance coverage to disclose compensation information to individuals who purchase coverage and who are responsible for the payment of premiums and to report this compensation to the U.S. Department of Health and Human Services (HHS). HHS published [Proposed Rules](#) implementing the individual market compensation disclosure requirements on September 10, 2021, but those regulations are not yet final.

Effective Date

Under the Proposed Rules, an insurer's agent/broker compensation disclosure and reporting requirements would apply with respect to contracts executed between an agent or broker and a health insurer on or after December 27, 2021. The Proposed Rules state that if there is an amendment to the material terms of a pre-existing contract, it will be considered a new contract. Unfortunately, final regulations have not clarified the effective date of these requirements.

Content and Timing of Disclosures and Reporting

Disclosures to individuals must include the following information:

- Direct and indirect compensation provided by the insurer to an agent or broker associated with enrolling the individual in coverage, and
- An explanation of qualifying thresholds for the payment of indirect compensation to an agent or broker.

Insurers must disclose the compensation to enrolled individuals and potential enrollees as follows:

- Prior to when a potential enrollee finalizes their plan selection and in any documentation confirming the initial enrollment
- For renewals, with the plan renewal notice, and
- If there are no state or federal law or other requirements regarding new policy or renewal notices, with the invoice for the first premium payment for the initial coverage term and for each renewal period.

Insurers also must submit an annual report to HHS on a calendar year basis, which the [Proposed Rules](#) indicate would have to be submitted no later than the last business day of July and would reflect payments made during the prior calendar year.

Group Health Plan Disclosure Requirements

For purposes of the CAA compensation disclosure requirements, “group health plan” is defined broadly as any employee welfare benefit plan that provides medical care (e.g., health reimbursement arrangements (HRAs), individual coverage health reimbursement arrangements (ICHRAs), and flexible spending accounts (FSAs) except qualified small employer health reimbursement arrangements (QSEHRAs)).

Effective Date

For contracts entered into, extended, or renewed on or after December 27, 2021, brokers and consultants (including their affiliates and subcontractors) who expect to receive \$1,000 or more in direct or indirect compensation must disclose to a group health plan fiduciary the compensation they receive for the brokerage or consulting services they provide to the plan.

Brokerage and Consulting Services

The CAA defines brokerage and consulting services broadly to include the selection of:

- Health plans (including dental and vision)
- Pharmacy benefit management services
- Wellness services
- Transparency tools and vendors
- Group purchasing organization preferred vendor panels
- Disease management vendors and products
- Compliance services
- Employee assistance programs, or
- Third-party administration services.

Content and Timing of Disclosures

The disclosures must include descriptions of:

- The services provided to the group health plan
- All direct compensation, either in the aggregate or by service, that the broker or consultant, an affiliate, or a subcontractor reasonably expects to receive in connection with the covered services
- All indirect compensation
- All transaction-based compensation, and
- Any compensation payable in connection with termination and, if applicable, how any prepaid amounts may be refunded and calculated.

Brokers and consultants must provide disclosures and other communications as follows:

- Direct or indirect compensation prior to the date the contract or arrangement is entered into, extended, or renewed
- Compensation changes within 60 days of being informed of the change
- Correction of inadvertent errors and omissions within 30 days of discovery, and
- Responses to any written request made by the client within 90 days.

Be sure to check your Broker News for updates, additional information, and helpful resources regarding disclosure of compensation and CAA.