

# Benefits Insights

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## What Does the Broker Compensation Disclosure Rule Mean for Employers?

Transparency and shared expectations are gold standards of any successful business relationship. When it comes to a broker, employers should look for someone who keeps them informed about important issues related to their interests.

In that spirit, this article discusses new compensation disclosure rules and sets expectations for the future.

### Broker Compensation Disclosure Rule

The Consolidated Appropriations Act (CAA) was signed into law in late 2020 and contains several provisions related to business transparency. Beginning **Dec. 27, 2021**, as part of the CAA, covered service providers (CSPs)—i.e., insurance brokers and consultants—must disclose all compensation to clients if they expect to receive \$1,000 or more in direct or indirect compensation for providing their services. This means employers will be able to see exactly how brokers earn money, which can help inform plan decisions.

CSPs will be required to disclose the following to plan fiduciaries in writing:

- A description of the services to be provided to the plan pursuant to the contract
- A statement, if applicable, that the broker, an affiliate or a subcontractor will or expects to provide services pursuant to the contract directly to the plan as a fiduciary
- A description of all direct compensation, either in aggregate or by service, that the broker, an affiliate or a subcontractor reasonably expects to receive in connection with the services

- A description of indirect compensation that the broker, an affiliate or a subcontractor reasonably expects to receive in connection with the services
- A description of the arrangement between the payer and the broker, an affiliate or a subcontractor (as applicable) pursuant to which such indirect compensation is paid
- Identification of the services for which the indirect compensation will be received, if applicable
- Identification of the payer of the indirect compensation
- A description of the services for which compensation will be paid and identification of the payers and recipients if such compensation is set on a transaction basis (such as commissions, finder's fees or other similar incentive compensation based on business placed or retained)
- A description of any compensation the broker, an affiliate or a subcontractor reasonably expects to receive in connection with termination of the contract and how prepaid amounts will be calculated and refunded upon termination
- A description of how the compensation will be received

Finally, a disclosure must be made no later than the date that is reasonably in advance of the date on which the contract is entered into, and extended or renewed.



It may appear as though CSPs bear most of the burden of this new law. However, plan fiduciaries are responsible for enforcing these requirements.

As part of the law, CSPs must disclose compensation changes as soon as practicable, but generally within 60 days of knowledge of the change. Furthermore, CSPs must correct inadvertent errors and omissions within 30 days after discovery. If the CSP fails or refuses to disclose compensation information, the plan fiduciary must request full disclosure in writing. If the CSP fails or refuses to respond to the written request within 90 days, the fiduciary must formally notify the Department of Labor within 30 days following the refusal to respond or lapse of the 90-day period.

If a group plan fiduciary does not report the CSP's failure to disclose in a timely manner, they could be subject to fines for a prohibited transaction under ERISA.

In a fully insured plan, the responsibility for plan compliance is usually with the insurance carrier. For self-funded plans, legal responsibility for plan compliance will typically fall to the employer. However, many employers with self-funded plans utilize a third-party administrator (TPA), who is better positioned to handle these requirements. Ultimately, whether an organization is fully insured or self-funded, they should ensure their insurance carrier or TPA is preparing to comply with the requirements of this new law. If neither is applicable, the employer will need to begin preparations of their own.

### Employer Takeaway

Knowing how a broker earns their money helps maintain transparency in pricing conversations. With this new compensation disclosure rule, employers will see precisely the cost of a broker's services. Understanding these prices can help establish greater trust between employers and their brokers. Employers will no longer need to guess how much of their money goes toward their group health plan; they will now be able to see it clearly.

Additionally, plan fiduciaries—whether they be the employer, their carrier or TPA—must be aware that the disclosure rules impose new obligations upon them. Fiduciaries could begin getting disclosure documentation from their broker as early as this fall, so preparation will be key.

### Conclusion

Greater transparency can make for better business and wiser decision-making. Ultimately, knowing where your money is going can lead to better, more informed choices. For employees, that means choosing the best, most affordable care for their unique circumstances. For employers, it means choosing a broker that prizes transparency and puts their clients first.

Reach out to National Insurance Services today to learn more about these and other upcoming health reform rules, including disclosure obligations.