

Departments Delay Health Plan Price Transparency Rules, CAA Requirements

August 2021

The Departments of Labor, Health and Human Services, and Treasury (the Departments) have issued a set of frequently asked questions (FAQs) delaying enforcement of the Affordable Care Act (ACA) health plan price transparency rule issued in November 2020 and providing some delay and guidance for the health plan provisions in the Consolidated Appropriations Act of 2021 (CAA). The delays provide some relief for employers, who should continue planning with their insurance carriers and third-party administrators (TPAs) to ensure timely implementation of these rules.

This Aon bulletin discusses:

- Background to the ACA and CAA Transparency Rules;
- The Departments' Delays in Guidance and Enforcement; and
- What Employers Need to Do Now.

Background

In the past year, the Departments have issued two different sets of transparency rules for group health plans.

ACA Health Plan Transparency in Coverage Rule

The Departments issued the final Transparency in Coverage Rule (TiC Rule) in November 2020 to implement the health plan transparency provisions in the ACA. The TiC Rule applies to non-grandfathered group health plans and excludes retiree-only plans, account-based plans such as health reimbursement arrangements and health flexible spending accounts, and excepted benefits such as vision and dental plans. The TiC Rule has two parts:

Publish Three Machine-Readable Files: Group health plans must publish on an internet website three machine-readable files that disclose the plan's in-network rates paid to providers, the plan's historical out-of-network allowed amounts paid to providers, and negotiated rates and historical net prices for covered prescription drugs. The three machine-readable files were required to be published by the start of plan years beginning on or after January 1, 2022.

Provide Price-Comparison Tool: Group health plans must provide price-comparison information to participants through an online self-service tool and on paper, upon request. The price-comparison tool must be implemented for 500 "shoppable" services by the start of plan years beginning on or after January 1, 2023, and for all services covered by the plan by January 1, 2024.

CAA Transparency Provisions

The CAA became law in December 2020 and included several transparency provisions applicable to group health plans. Some of the provisions implement the No Surprises Act, while others act more generally to improve the functioning of the health care and health insurance markets. The CAA transparency provisions that apply to sponsors of group health plans include:

- Price-comparison tool available telephonically and applicable to all group health plans, including grandfathered plans;
- Deductible and out-of-pocket maximum on insurance ID cards;
- Advanced Explanations of Benefits for scheduled medical procedures;
- Prohibition on gag clauses on price and quality data in provider contracting;
- Maintaining an accurate and current in-network provider directory;
- Balance billing protections disclosure to participants;
- Continuity of care and coverage when a provider transitions out of network; and
- Pharmacy drug cost and coverage reporting to the Departments.

These provisions become effective in plan years beginning on or after January 1, 2022, with the exception of the provisions for pharmacy drug reporting to the Departments, which would be due in December 2021, and the prohibition on gag clauses, which became effective on the date that the CAA became law.

Delays and Guidance

The Departments, recognizing the daunting implementation task these rules present for the industry, have announced the following delays in enforcement and guidance on their enforcement approach:

Provision	Original Due Date	Enforcement Date & Commentary
Machine-Readable File: In-Network Rates and Out-of-Network Allowed Amounts	Plan years beginning on or after January 1, 2022	July 1, 2022
Machine-Readable File: Prescription Drugs	Plan years beginning on or after January 1, 2022	Indefinitely until further rulemaking
ACA Price Comparison Tool	Plan years beginning on or after January 1, 2023 for 500 items and services, and plan years beginning on or after January 1, 2024 for all covered items and services	Plan years beginning on or after January 1, 2023 for 500 items and services, and plan years beginning on or after January 1, 2024 for all covered items and services
CAA Price Comparison Tool	Plan years beginning on or after January 1, 2022	Plan years beginning on or after January 1, 2023 [combined with ACA Price Comparison Tool]
ID Card Deductible and Out-of-Pocket Maximum Disclosure	Plan years beginning on or after January 1, 2022	Plan years beginning on or after January 1, 2022 with good faith effort to comply
Advanced Explanation of Benefits	Plan years beginning on or after January 1, 2022	Indefinitely until further rulemaking
Prohibition on Gag Clauses in Provider Contracting	December 27, 2020	December 27, 2020, good faith compliance until Agencies issue implementation guidance and require submission of attestations of compliance in 2022
Updated Provider Directory	Plan years beginning on or after January 1, 2022	Plan years beginning on or after January 1, 2022 with good faith effort to comply
Balance Billing Disclosure	Plan years beginning on or after January 1, 2022	Plan years beginning on or after January 1, 2022 with good faith effort to comply (model notice is available)
Continuity of Care	Plan years beginning on or after January 1, 2022	Plan years beginning on or after January 1, 2022 with good faith effort to comply
CAA Pharmacy Drug Cost and Coverage Reporting	December 27, 2021 and every June 1 thereafter	Indefinitely until further rulemaking or guidance; prepare for first reporting as of December 27, 2022

Under “good faith” compliance efforts, the Departments, rather than issue specific guidance or rules, will treat reasonable interpretations of the existing guidance and statutes as sufficient to avoid penalties and other consequences of noncompliance. The FAQs provide examples of good faith compliance in a few instances, such as:

- If any physical or electronic ID card contains the applicable major medical deductible and out-of-pocket maximum, a telephone number and website for assistance, and access to additional applicable deductibles and maximum out-of-pocket limits (QR code or hyperlink), then the plan should be in compliance until there is additional rule making.
- If a participant receives assistance from an out-of-network provider and was provided inaccurate information in the provider directory or response protocol (i.e., that the provider was in-network when it was not), then the plan cannot impose a cost-sharing amount that is greater than the cost-sharing amount that would be imposed for items and services furnished by a participating provider and must count such amounts towards the deductible and out-of-pocket maximum.

The FAQs also reiterate that the CAA, including the No Surprises Act and the health plan transparency provisions, applies to grandfathered plans. Because the FAQs indicate that the CAA price-comparison tool requirement will be combined with the TiC Rule price-comparison tool requirements, it is now not clear how and to what extent a grandfathered health plan must provide a price-comparison tool to comply with the CAA. Further guidance from the Departments will be necessary.

What Employers Need to Do

Update Service Contracts: Both fully insured and self-insured group health plans are ultimately responsible for compliance with the provisions of the CAA, and non-grandfathered plans are ultimately responsible for compliance with the TiC Rule. Employers should update policies and service contracts to obligate insurers and TPAs to adjust their coverage and services to comply with the rules as they become effective and enforced.

Continue Preparation for Publishing Machine-Readable Files: While the prescription drug machine-readable file is significantly delayed, the two files associated with medical coverage are still due to be published by mid-2022 for most plans. Employers should continue working with their insurers and TPAs to determine how the insurers/TPAs will provide the necessary files and where the files will be hosted on a publicly accessible website.

Resources

The FAQs from the Departments are available at this link: [FAQs About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 49](#).

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