
CMS Forecasts Upcoming Guidance on ACA Transparency Machine Readable Files

July 2022

The Affordable Care Act (ACA) Transparency in Coverage (TiC) provisions require that most group health plans and insurers post Machine Readable Files (MRFs) by July 1, 2022. The Centers for Medicare & Medicaid Services (CMS) recently posted a frequently asked question (FAQ) that could mean a relaxation of certain requirements for a subset of employers and that the Departments of Labor, Health and Human Services, and the Treasury (the Departments) would be issuing formal guidance “soon.”

This Aon bulletin addresses:

- Overview of the ACA transparency MRF requirements;
- Who is responsible for implementation;
- The CMS FAQ that provides insight into future official guidance, including what is missing; and
- Next steps for employers.

Overview

Non-grandfathered group health plans with plan years starting on or before July 1, 2022, must publish two MRFs on a public website by July 1, 2022. Plans with plan years beginning after July 1, 2022, must publish the files by the first day of the plan year. For example, a plan with an October 1–September 30 plan year must post the MRFs by October 1, 2022.

The MRFs are intended to make health care prices public (specifically in-network rates and out-of-network allowed amounts for medical plans), and the files are not meant to be participant-facing. (The MRFs pertaining to prescription drug prices have been delayed indefinitely.) The MRFs, as the name implies, can only be read by “machines.” Researchers and data analytics firms can create programs that find the machine-readable files, download them, and use the information in them to produce products and services for both health care payers and health care providers. Aon posted a detailed bulletin on these requirements in the May 4, 2022, *Weekly Aon Washington Report*, available [here](#).

Who Is Responsible for Implementation?

The TiC regulations allow employers who sponsor insured medical options to delegate responsibility via written agreement to insurers. In contrast, while an employer of a self-insured medical option can delegate its responsibility to a medical third-party administrator (Medical TPA) or other entity to host the very large MRFs, the employer/plan sponsor ultimately remains responsible. In ACA FAQs Part 53, the Departments also cautioned employers that MRFs are required by alternative reimbursement arrangements, such as reference-based pricing without a defined network.

The TiC regulations specifically impose the MRF requirements on the employer's "group health plan." In addition, the TiC regulations specifically indicate that if a plan chooses not to host its own file and the Medical TPA aggregates the out-of-network allowed amounts for more than one plan, then the plan must provide a link on its own public website to the location where the file is made publicly available. As a result, most self-insured employers have prepared to post links from Medical TPAs on their "own" public website on behalf of the employer's group health plan, and Medical TPAs have been sending employers links to the MRFs generated by the Medical TPAs.

CMS FAQ

On June 17, 2022, CMS issued the following FAQ on its transparency website. To date, formal guidance as stated in the FAQ has not been issued (underline added):

If a group health plan does not have a public website, the plan may satisfy the requirements for posting the Allowed Amount file and the In-Network file by entering into a written agreement under which a service provider (such as a TPA) posts the Allowed Amount file and the In-Network Rate file on its public website on behalf of the plan. However, if a plan enters into an agreement under which a service provider agrees to post the Allowed Amount file and the In-Network Rate file on its public website on behalf of the plan, and the service provider fails to do so, the plan violates these disclosure requirements. The Departments intend to follow up with the issuance of formal guidance soon.

This FAQ provides more questions than answers but seems to imply that, if the employer does not have a "public website for the group health plan," the employer does not need to post a link on its own site. Aon has raised the following questions with its contacts at the Departments:

- What is a "public website on behalf of the plan" for purposes of what appears to be an exception? Examples:
 - If an employer has a public website for new hires that advertises benefits and maintains the group health plan's summary plan documents but a login for purposes of health plan enrollment, it appears that this employer would need to post links to the Medical TPA's website. Why? It arguably has a public website for the group health plan.
 - In contrast, if the employer has no public website designated for the group health plan but a corporate website, would the employer be able to contract and disregard the "link" concept and instead, merely monitor the MRFs posted on the Medical TPA's website to ensure that information specific to the employer's plan was included?
- What type of plan designation must be included in the MRF on behalf of the employer's group health plan if the Medical TPA uses a landing page (i.e., a website where further information such as employer name and Federal Employer Identification Number must be entered to navigate employer-specific MRFs)?
- What if the Medical TPA refuses to sign a written agreement even though the employer does not have a public website for the group health plan?

Next Steps for Employers

Employers should continue to ensure that its insurers and Medical TPAs, as well as other medical plan administrators such as those who handle reference-based pricing or carved out mental health benefits, are ready to create and host the MRFs on the group health plan's behalf. Employers should work with the insurers and Medical TPAs to implement contracts for assistance and delegation of responsibility with respect to the MRFs. While posting links has been the safe approach to implementation, employers should consult with their own legal counsel until more formal guidance is issued if they are uncertain regarding whether the exemption for duplication will apply to them.

Aon has developed a solution for the MRF transparency requirement (a hub to post links to applicable MRFs) as well as a toolkit for all aspects of ACA and the Consolidated Appropriations Act, 2021, transparency that will evolve as guidance evolves. If you have questions, please reach out to the Aon transparency team at health.transparency@aon.com for details.

Resources

The CMS FAQs are available [here](#).



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