



Departments Issue Transparency FAQs Limiting Employer Responsibility for Posting MRF Links

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Frequently asked questions (FAQs) issued by the Departments of Labor, Treasury, and Health and Human Services (the Departments) last month narrow an employer's responsibility for posting links to machine-readable files (MRFs) as part of the Transparency in Coverage (TiC) requirements of the Affordable Care Act.

While most employers sponsoring self-insured medical plans can rely upon third-party administrators (TPAs) and other service providers to post the MRFs on the plan's behalf, the Departments' guidance makes clear that employer plans with a public website must post their own links to MRFs in certain circumstances.

The Departments also have included in the new Part 55 FAQ a minor FAQ on the upcoming internet-based self-service tool for participants. The Centers for Medicare & Medicaid Services (CMS) updated its list of technical FAQs to clarify that, while there is no requirement for plans to retain copies of the MRFs that are updated monthly, plans are encouraged to retain records to demonstrate compliance.

Background

Beginning July 1, 2022, non-grandfathered group health plans must create and disclose two medical MRFs on a public website. While MRFs are intended to publicize health care prices, the files are not meant to be participant-facing and are meant to be read by computers. The MRFs must be accessible without login or credentials, and plans must update them monthly. The two required MRFs are:

- **In-Network File or Negotiated Rate File:** This file discloses the negotiated rates between the plan and all providers for all covered services; and
- **Out-of-Network Allowed Amounts File:** This file discloses the historical payments for out-of-network or non-negotiated claims.

The Departments have delayed indefinitely a third MRF for prescription drug costs.

Plans may engage TPAs and other service providers to create and post the MRFs on a public website. TPAs and other service providers are permitted to create an "aggregated" Allowed Amounts File that contains historical actual payments to and billed charges from out-of-network providers for covered items and services across the TPA's entire book of business. In this case, a plan must post a link to the aggregated Allowed Amounts File on the plan's public website.

Prior guidance indicated that plans with self-insured medical benefits must create a public website and post links to the TPA-created MRFs, while plans with fully insured medical benefits could enter into a written agreement with insurers and transfer responsibility and liability to the insurer for compliance. A subsequent CMS FAQ issued on June 17, 2022, indicated that plans with self-insured medical benefits

could satisfy the requirement with a service provider posting the MRFs to a public website on behalf of the plan in certain circumstances, but the self-insured plan retains ultimate responsibility for compliance.

Aon posted a detailed bulletin on these requirements in the May 4, 2022, *Aon Washington Report*, available [here](#), and an update with the expectation of this guidance in the July 13, 2022, *Aon Washington Report* available [here](#).

New FAQ Limits Requirement to Post Links to MRFs

The new FAQ addressing MRFs states explicitly that an employer is not required to create a website for a plan if the plan itself does not have a website, regardless of whether the employer has a public website. Instead, the plan can rely upon medical TPAs and other service providers posting MRFs on their websites, provided the plan enters into a written agreement with the TPA that hosts the MRF.

If the TPA hosts an Aggregated Allowed Amounts MRF, a group health plan with a public website “must post a link to the file hosted by the service provider on the plan’s own website.” This is because the Departments made this an explicit requirement in the regulations, and it would take a new regulation that goes through the entire regulatory approval process to remove that requirement.

In other words, the only time that a plan must post links to a website is when two conditions are met: the plan has its own website, and the medical TPA creates Aggregated Allowed Amounts MRFs rather than a plan-specific Allowed Amounts MRF. As previously understood, the self-insured plan retains ultimate responsibility for compliance, and a failure by the TPA is a violation made by the self-insured plan.

Unknown: When Does the Plan Have a Public Website? The Departments’ latest guidance depends on when a plan has a public website, but there is no guidance for determining when the plan has a public website. A conservative approach would consider any sort of description or function of an employer’s plan or benefits on a public website as being “the plan’s” website, such as a website that publicly hosts the employer’s summary plan descriptions for its health and welfare benefits. Employers should consult with counsel to determine whether the information or function of a public website has enough of a connection to the employee benefits plan to render the website “the plan’s” website, triggering the requirement to post a link to an Aggregated Allowed Amounts MRF.

No Requirement to Retain MRFs. Guidance from the Departments posted on CMS’s Technical Clarification Questions and Answers on August 10, 2022 (FAQ No. 38) has confirmed that there is no requirement for plans to maintain copies of the MRFs that are updated monthly. This is welcome news because the MRFs range in size from several gigabytes to one terabyte and retaining them would be burdensome. However, the Departments recommend plans retain the MRFs to demonstrate compliance and remind plans that they must comply with regularly applicable state and federal laws regarding access to plan information.



Internet-Based Self-Service Tool

The Departments also highlighted that the list of 500 items and services that must be included in the internet-based self-service tool for participants beginning with plan years on or after January 1, 2023, can be found [here](#) on the CMS TiC website.

This list will be updated quarterly and should be used instead of the list in the final regulations.

Resources

FAQs Part 55 can be found [here](#).

CMS Technical Clarification Questions and Answers are available [here](#).



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