

Transparency in Coverage Compliance Continues

January 3, 2023

Quick Facts

- On November 12, 2020, the Department of Health and Human Services (HHS), the Department of Labor (DOL) and the Treasury finalized the Transparency in Coverage Rule (TiC).
- TiC requires health insurers and group health plans to post machine-readable files and create a price comparison tool for plan participants.
- Plan sponsors will need to rely heavily on carriers and third-party administrators (TPAs) for assistance with compliance.

Background

In recent years, Congress has passed multiple pieces of legislation to promote transparency in health pricing for coverage and services. On November 12, 2020, HHS, DOL and Treasury (collectively known as the Departments) finalized the TiC, and on December 27, 2020, the President signed into law the Consolidated Appropriations Act, 2021 (CAA) which established protections for consumers related to surprise billing and transparency in health care. The TiC requires health insurers and group health plans by July 1, 2022, to post publicly available machine-readable files that include in-network negotiated payment rates and historical out-of-network charges for covered items and services and to create a price comparison tool by January 1, 2023. These transparency requirements intend to help consumers know the cost of covered items and services before receiving care. Although the Departments are still working toward reconciling the different transparency requirements in both pieces of legislation, certain aspects of the TiC and CAA are already in effect or going into effect soon.

Machine Readable Files

As part of the TiC, non-grandfathered group health plans and insurance issuers must make three separate machine-readable files (MRFs) available to the public:

- Negotiated rates for all covered items and services between the plan or issuer and in-network providers.
- Historical payments to, and billed charges from, out-of-network (OON) providers. For privacy purposes, historical payments must have a minimum of twenty entries.
- Detailed network negotiated rates and historical net prices for all covered prescription drugs by plan or issuer at the pharmacy location level.

Posting Requirements

The files must conform to specific format requirements and follow schemas set forth on the [CMS GitHub website](#). The files must be posted on a publicly accessible website and updated monthly. Note that the files must be posted on a publicly accessible website, not a company intranet site because the intent is not to disclose the information only to employees but to make the information publicly available. Guidance released in late June and in August 2022 clarified that an employer can rely on a carrier or TPA to post the MRF on their public website, so long as a written agreement is in place.

The TiC Final Rule requires the machine-readable files to be accessible free of charge, without having to establish a user account, password, or other credentials, and without having to submit any personally identifying information such as a name or email address. The machine-readable files must be updated monthly and must be available in a form and manner specified in any guidance issued by applicable regulatory agencies.

Enforcement Date

The MRF requirement was originally effective on January 1, 2022, but additional guidance delayed enforcement for covered items and services until July 1, 2022. The applicable files should have been published on a public website by July 1, 2022, for any plan years beginning January 1, 2022, through July 1, 2022. For plan years beginning after July 1, 2022, the files should be made available during the first month of the plan year. Enforcement of prescription drug information has been delayed indefinitely.

Pricing Transparency Tool

Beginning January 1, 2023, the TiC requires employers to make a price comparison tool available to plan participants containing information for a list of [500 items and services](#) as specified by the Centers for Medicare and Medicaid Services (CMS). Starting January 1, 2024, a list of all covered items and services must be made available.

The intent is that, with this information now available, plan participants will be able to compare costs for providers and services and make more informed choices before receiving care.

Action Steps

Fully insured plan sponsors should be able to rely on their carriers to provide the price transparency tool by the deadline. Self-funded employers will also need to lean heavily on their third-party administrators (TPAs) for assistance. Although the compliance obligation remains with the plan sponsor, employers with self-funded plans should confirm with their TPAs through a written agreement that the TPA will provide the price comparison tool.

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