Mineral™ First National Insurance Agency

Table of Contents

Transparency in Coverage Rules

The Affordable Care Act (ACA) includes certain “transparency in coverage” requirements that will apply to most nongrandfathered group health plans. In October 2020, the Department of Labor (DOL) and Department of Health and Human Services (HHS) published a final Transparency in Coverage (TiC) rule. The rule covers a wide variety of requirements on health plans and health plan issuers designed to put health care price information in the hands of consumers and other stakeholders and empower them with the critical information they need to make informed health care decisions. For fully insured plans, the insurance carrier will have most of the compliance duties, although employers sponsoring either insured or self-funded plans will have some responsibility.

Additionally, the Consolidated Appropriations Act, 2021 (CAA), which also included the No Surprises Act, contained significant transparency provisions, which do not exclude grandfathered health plans. In August 2021, additional FAQs were issued addressing overlap of the ACA and TiC final rule and delaying implementation of some components.

The Transparency in Coverage and Consolidated Appropriations Act, 2021 compliance charts, provided by Mineral partners Barrow Weatherhead Lent, LLP, outline key requirements, who the requirements apply to, and dates plan sponsors should know. Many of the obligations take effect with plan years starting January 1, 2022, with rolling dates for compliance and enforcement.

Machine Readable Files

Beginning July 1, 2022, most group health plans will be required to post pricing information for covered items and services. The actual start date that covered plans must begin to post depends on when their plan year began. The July 1, 2022, deadline applies to plan years that began during or before July 2022. Employers with plan years beginning after July 2022 should begin to post the required pricing information in the month in which the plan year begins.

Specifically, separate machine-readable files (MRFs) that disclose the following must be posted on a public-facing website:

- In-network provider negotiated rates; and
- Historical out-of-network allowed amounts.

There is also a requirement for an MRF covering prescription drugs, but that requirement is delayed indefinitely.

A ***public-facing website*** is one that is available and accessible to any person, free of charge and without conditions (i.e., no user account, password, etc.). This means a typical employer intranet site or benefits enrollment site will not work because these generally are not public facing and usually require an employee login. In most cases, these files will likely be hosted by the insurance carrier (for insured plans) or the third-party administrator (for self-insured plans). The files must be updated at least monthly and must indicate the date they were last updated.

The rules indicate that the plan sponsor can contract with the insurance carrier or third-party administrator (TPA), in writing, to provide the necessary information. For fully insured plans, the carrier is required to make the information available to the plan sponsor, and if they fail to do so, the carrier is responsible for any compliance violations. For self-funded plans, if the TPA does not agree to provide the necessary information, the plan sponsor is ultimately responsible for any compliance failures. It is likely the carrier or TPA will also host the files, but plan sponsors should confirm this.

Cost-Sharing Information for Covered Items and Services

More requirements will go into effect in 2023 and 2024 that will provide additional access to pricing information, including:

- Scheduled to go into effect in 2023: Internet-based price comparison tool (or disclosure on paper, upon request) providing an individual with an estimate of their cost-sharing responsibility for a specific item or service from a specific provider(s), for 500 items and services.
- Scheduled to go into effect in 2024: Internet-based price comparison tool (or disclosure on paper, upon request) providing an individual with an estimate of their cost-sharing responsibility for a specific item or service from a specific provider(s), for *all* items and services.

Employer next steps:

- Review the chart to understand the specific TiC compliance obligations and due dates.
- Outline responsibilities. In all cases, it is critical that plan sponsors work with their carrier or TPA to clearly outline who will be responsible for what and document such in writing in their contracts, where appropriate.

Enforcement

State departments of insurance will have primary authority to enforce applicable transparency requirements for insured plans. For self-insured plans that are subject to the Employee Retirement Income Security Act (ERISA), the U.S. Department of Labor will have primary enforcement authority. The Centers for Medicare and Medicaid Services (CMS) also have responsibility for enforcing some provisions of the transparency rules.

Additional Guidance

For detailed guidance necessary to comply with the transparency in coverage rules, see the following resources:

- CMS Transparency in Coverage
- Transparency in Coverage Final Rule
- Transparency in Coverage FAQs:
  - August 20, 2021
  - April 19, 2022