



Agencies Clarify Implementation Dates for Group Health Plan Transparency Rules

Regulations recently promulgated under the Affordable Care Act (“ACA”) and statutory requirements enacted under the Consolidated Appropriations Act, 2021 (“CAA”) both include new transparency requirements applicable to group health plans. Unfortunately, however, there is substantial overlap and inconsistency among those twin transparency rules, creating confusion among plan sponsors and health care providers. Guidance issued in August by the Departments of Labor, Treasury, and Health and Human Services attempts to resolve that confusion.

Duplicative Transparency Requirements – How Did We Get Here?

Final rules implementing the ACA transparency-in-coverage cost-sharing disclosure provisions (referred to as the “Transparency in Coverage Final Rules,” or “TiC Final Rules”) were issued on November 12, 2020, with effective dates ranging from January 1, 2022, through January 1, 2024. Despite being enacted later in 2020, the CAA generally included earlier effective dates for its transparency requirements. Although the two sets of rules overlap in many respects, the TiC Final Rules do not apply to grandfathered group health plans, whereas the CAA transparency provisions apply both to grandfathered and non-grandfathered plans.

Some of the CAA’s transparency requirements (contained in the “No Surprises Act” and related sections of the statute) were effective immediately upon enactment, while others are effective on January 1, 2022. The first set of Interim Final Rules implementing portions of the CAA was issued on July 13, 2021. These Interim Final Rules primarily focused on the surprise billing rules contained in the “No Surprises Act.”

These competing transparency requirements caused confusion and concern among employers and health care providers, given the significant time constraints and administrative burdens involved in implementing them.

Welcome Clarification in the Form of Joint Agency FAQs

On August 20, 2021, the Departments of Labor, Health and Human Services, and Treasury jointly issued guidance (the “FAQs”) for employers trying to navigate the complexities of these requirements. In response to the overlap between the TiC Final Rules and CAA transparency provisions and the lack of administrative infrastructure needed to implement some of the new requirements, the Departments postponed certain enforcement dates pending additional rulemaking and clarified that other provisions will simply require good faith compliance based on a reasonable interpretation of the statute and regulations.

We summarized the substantive provisions of the CAA and TiC Final Rules in our March 18, 2021, [Health Plan Changes on the Horizon](#) webinar. The FAQs modified many of the original effective dates for those provisions.

Provisions with Current or Upcoming Effective Dates

- **Prohibition on Gag Clauses:** *Effective December 27, 2020* (additional guidance will be issued to implement required attestation of compliance to government agencies, which is expected to begin in 2022);
- **Comparative Analysis of Nonquantitative Treatment Limitations Under the Mental Health Parity and Addiction Equity Act:** *Effective February 10, 2021;*
- **ERISA Plan Service Provider Disclosures Under ERISA Section 408(b)(2):** *Effective for new service agreements entered, renewed, or extended beginning December 27, 2021;*
- **Surprise Billing Rules:** *Effective January 1, 2022;*
- **Updated Provider Directories:** *Subject to good faith compliance effective January 1, 2022;*
- **Modified ID Card Requirements:** *Subject to good faith compliance effective January 1, 2022;*
- **Continuing Care Requirements:** *Subject to good faith compliance effective January 1, 2022; and*

- **Disclosure of Plan In-Network Rates and Historical Out-of-Network Allowed Amounts^[1]**: *Effective July 1, 2022.*

Next Steps for Plan Sponsors

Most plan sponsors will need to rely on third-party administrators and service providers to implement these requirements. We recommend that employers obtain written confirmation from their service providers that they are prepared to comply with the applicable CAA and TiC provisions as of the upcoming effective dates. Employers also should update service agreements to document the parties' respective responsibilities.

Be Prepared for Additional Guidance

This legislation will have a massive impact on group health plans for the foreseeable future. Employers and plan sponsors should be prepared to respond quickly to additional guidance. In addition to future rulemaking on many of the provisions noted above, additional guidance is expected on transparency provisions with postponed enforcement dates, including:

- **Pharmacy Benefit Cost Reporting**: *Expected to begin December 27, 2022;*
- **Price Comparison Tool**: *Expected to be effective beginning January 1, 2023; and*
- **Advanced EOBs**: *Postponed pending further regulation.*

We will keep you apprised of further developments.

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^[1] This requirement is part of the TiC Final Rules and is not applicable to grandfathered group health plans.