Health Plan Transparency Requirements are Effective Now

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The Consolidated Appropriations Act, 2021 (?CAA? or the ?Act?) includes several transparency requirements for health plans. Some of these requirements are already in effect for plan years beginning on or after January 1, 2022. This alert outlines the plan requirements and their respective enforcement deadlines for compliance, as well as intersecting requirements of the Transparency in Coverage Final Rules of November 2020 (TiC Final Rules).

Current Enforcement

The requirements identified in this alert are expected to be subject to additional rulemaking. In the interim, the Department of Health & Human Services (HHS) guidelines provide that plans should implement these requirements using a ?good faith, reasonable interpretation of the law.?

Requirements effective for plan years beginning on or after January 1, 2022.

- Health Provider Directories ? Plans and insurers that have a provider network must provide on its public website a database listing the name, address, specialty, telephone number, and digital contact information for each provider. Plans and issuers must establish a process to update and verify the provider directory information. Plans and insurers must also establish a protocol for responding to requests (by phone and by electronic communication) about a provider?s network participation status.

  The Department of Labor, HHS, and the Department of the Treasury (collectively, the ?Departments?) will not deem a plan or issuer to be out of compliance with provider directory requirements as long as the plan or issuer imposes only a cost-sharing amount that is not greater than the cost-sharing amount that would be imposed for items and services furnished by a participating provider, and counts those cost-sharing amounts toward any deductible or out-of-pocket maximum.

- Plain Language Disclosures on Balance Billing Restrictions ? Plans and insurers must provide information on certain state and federal legal requirements and prohibitions relating to balance billing and information on contacting the appropriate state and federal agencies if an individual believes that a violation of these requirements or prohibitions has occurred. The notice must be made publicly available, posted on a public website of the plan or insurer, and included on each covered Explanation of Benefits (EOB).

  The Departments have provided a **model notice** for this disclosure requirement.

- Cost-sharing Disclosures on Identification Cards ? Plans and insurers must include, in clear writing, any applicable out-of-pocket maximum limitations, and a telephone number and website for individuals to seek assistance on any insurance identification card issued to participants, beneficiaries, or enrollees.

- Continuity of Care Rules ? Plans and insurers must incorporate certain protections to ensure continuity of care in instances where the terminations of an insurance contract result in changes to a provider?s or facility?s network status.

Deferred Enforcement ? Specified Alternate Enforcement or Effective Dates

Enforcement of the requirements below has been deferred to a later date. Respective enforcement deadlines are identified in each description.

- Machine-Readable Disclosure Rules: In-Network and Out-of-Network ? Under the TiC Final Rules, plans and insurers must publish to a public website machine-readable files disclosing in-network rates and out-of-network allowed amounts and billed charges. **Enforcement of this requirement has been deferred to July 1, 2022 for all plan years beginning between January 1, 2022 and July 1, 2022. For all plan years beginning after July 1, 2022, disclosure is required the month in which the plan year begins.**

- Pharmacy Benefit and Prescription Drug Cost Reporting ? Plans and insurers will be required to submit a report annually to the Departments on certain information relevant to prescription drug expenditures. This reporting requirement includes reports on 2020 and 2021 expenditures. **Reporting requirements for 2020 and 2021 have been deferred; plans should anticipate reporting 2020 and 2021 data by December 27, 2022. Thereafter, the reporting deadline shall be June 1 for each subsequent year.**

- Price Comparison Tool ? Plans and insurers must provide a price comparison tool by telephone and on the plan?s or insurer?s website. **This requirement is deferred to plan years beginning on or after January 1, 2023.**

Deferred Enforcement ? Pending Additional Rulemaking

Enforcement of the following requirements has been deferred until additional regulations are issued.

- Advanced EOBs ? Plans and insurers must provide participants, beneficiaries, and enrollees a notice containing certain information (identified by the Act) within one business day following receipt of a health provider?s ?good faith estimate.? The ?good faith estimate? is a requirement placed on health care providers by the Act that is not currently enforced pending issuance of additional rules.

- Machine-Readable Disclosure Rules: Prescription Drug Pricing ? Under the TiC Final Rules, plans and insurers must publish to a public website machine-readable files disclosing prescription drug pricing.

For more information regarding the CAA transparency requirements and how they may apply to your health plan, please contact the authors.

Requirement	**Original Applicability**	**Enforcement**	**Notes**
Health Provider Directories	Plan years beginning on or after January 1, 2022	**January 1, 2022** ? based on a ?good faith, reasonable interpretation? of the statute.	Future rulemaki anticipat
Plain Language Disclosures on Balance Billing Restrictions	Plan years beginning on or after January 1, 2022	**January 1, 2022** ? based on a ?good faith, reasonable interpretation? of the statute.	Future rulemaki anticipat

Cost-sharing Disclosures on Identification Cards	Plan years beginning on or after January 1, 2022	**January 1, 2022** ? based on a ?good faith, reasonable interpretation? of the statute.	Future rulemaki anticipat
Continuity of Care Rules	Plan years beginning on or after January 1, 2022	**January 1, 2022** ? based on a ?good faith, reasonable interpretation? of the statute.	
Machine-Readable Disclosure Rules: In-Network and Out-of-Network	Plan years beginning on or after January 1, 2022	Deferred to **July 1, 2022**	
Pharmacy Benefit and Prescription Drug Cost Reporting	2020 Data Reporting Deadline ? December 27, 2021 2021 Data Reporting Deadline ? June 1, 2022	Deferred to **December 27, 2022** for 2020 and 2021 data (anticipated). **June 1** for each year thereafter.	

Price Comparison Tool	Plan years beginning on or after January 1, 2022	Deferred to plan years beginning on or after **January 1, 2023**	
Advanced EOBs	Plan years beginning on or after January 1, 2022	Deferred - TBD	Enforcem is deferre until the Departm adopt fin rules on good fait estimate provision for Provider
Machine-Readable Disclosure Rules ? Prescription Drug Pricing	Plan years beginning on or after January 1, 2022	Deferred - TBD	Enforcem is deferre pending further rulemaki

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