Employer Group Health Plan Compliance with Transparency in Coverage Disclosures – **July 2022 Requirements**

The Transparency in Coverage (TiC Regulations) and certain provisions of the Consolidated Appropriations Act of 2021 (CAA) (collectively "transparency requirements") impose certain new obligations on group health plans, health insurers and health care providers. A copy of Moreton & Company's previously provided communication on this issue is attached. Two of these requirements become effective July 1, 2022:

- Group health plans must make public a machine-readable file with in-network provider rates for covered items and services ("In-network Rate Disclosures);
- Group health plans must make public a machine-readable file with out-of-network allowed amounts and billed charges for certain covered items and services ("Out-of-network Rate Disclosures).

While the above obligation is imposed on the group health plans, employers, as sponsors of group health plans, will need assistance from insurance carriers and self-funded plan TPAs to satisfy these requirements. Set forth below are Moreton & Company's suggested compliance strategies.

Fully Insured Plans

Under TiC regulations, fully insured group health plans are considered to have complied with the above requirements if the group health plan requires the health insurance issuer offering the coverage to provide the information pursuant to a written agreement. Entering into such an agreement absolves the group health plan of responsibility for the disclosures, even if the insurance carrier fails to comply with the transparency requirements. Attached is a sample agreement fully insured employers can use with their health insurance carrier to ensure compliance with the July 2022 disclosure requirements.

Self-funded Plans

The TiC regulations note that a group health plan can satisfy the transparency requirements by entering into a written agreement with the plan's TPA to make the disclosures. However, the plan may still be held responsible if the TPA fails to make the disclosures. In addition, if the TPA hosts the information on the TPA's website, the group health plan (or employer sponsoring the plan) must provide a link on its own **public** website to the location where the file is made publicly available. Attached is contractual language that can be inserted into the plan's TPA agreement (or used separately) under which the TPA agrees to assume responsibility for making the July 2022 transparency disclosures. As noted above, in addition to obtaining the TPA's consent to make the required disclosures, the plan sponsor should place a link to the TPA's disclosures on its website. Moreton & Company recommends that the following language be used:

[ABC Company] Health Plan Transparency in Coverage Disclosure: You can find our health plan's in-network and out-of-network rate disclosures as required under the Transparency in Coverage regulations by clicking here:

www.moreton.com/wp-content/uploads/2022/01/2022_Transparency-Requirements-Deadline-Extended-FINAL.pdf

This link can be placed on the home page of your company's website (generally at the bottom of the page where other types of disclosures and links are maintained) or another public page of the company's website.

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Transparency in Coverage Requirements – Extended Deadlines

The Transparency in Coverage Regulations (TiC Regulations) and certain provisions of the Consolidated Appropriations Act (CAA) (collectively "transparency requirements") impose new obligations on group health plans, health insurers and health care providers. The new transparency obligations are intended to provide additional information to health care plans and health care consumers that, in the long run, will assist in bringing down health care costs. While the rules provide a safe harbor for fully insured plans if their insurance carrier has agreed to provide this information, the sponsors of self-funded plans are responsible for compliance with the new transparency requirements. Plan sponsors will obviously look to their health plan third party administrators in connection to meet this new burden. On August 2021, the U.S. Department of Labor published FAQs which extended many of the new deadlines.

https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-49.pdf

Set forth below is a table listing the major transparency requirements for group health plans and health insurers, and the effective date (extended or original, as applicable) of each requirement, along with the source of the requirement (i.e., CAA vs. TiC Regulations). Self-funded clients in particular will want to speak with their third-party administrator about the new requirements.

Requirement	Original Compliance Date	Extended Compliance Date
Group health plan must include deductibles and OOP maximum on ID cards. **CAA**	Plan years beginning on or after 1/1/2022	Not extended. Use a good faith, reasonable interpretation of the requirement pending regulations (not expected prior to 1/1/2022). DOL FAQs Part 49 Q&A-4.
A **group health plan** is prohibited from entering into a contract that has a gag clause applicable to provider cost or quality data. **CAA**	12/27/2020	Not extended. Use a good faith, reasonable interpretation of the requirement. The Departments will publish regulations on the process for submitting attestations of compliance. DOL FAQs Part 49 Q&A-7.
A **group health plan** must apply in-network cost sharing to a participant's claim if a participant relies on directory information that incorrectly identifies a health care provider as in-network. **CAA**	Plan years beginning on or after 1/1/2022	Not extended. Use a good faith, reasonable interpretation of the requirement pending regulations (not expected prior to 1/1/2022). DOL FAQs Part 49 Q&A-8
Group health plan and carriers must provide continuity of care , when termination of contractual relationship results in changes in provider or facility network status. **CAA**	Plan years beginning on or after 1/1/2022	Not extended. Use a good faith, reasonable interpretation of the requirement pending regulations (not expected prior to 1/1/2022). DOL FAQs Part 49 Q&A-10.

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Transparency in Coverage Requirements – Extended Deadlines *(continued)*

Requirement	Original Compliance Date	Extended Compliance Date
Group health plan must make public a machine -readable file with in-network provider rates for covered items and services. **TiC Reg**	Plan years beginning on or after 1/1/2022	For plan years starting 1/1/2022-6/30/2022, the compliance date is extended to **7/1/2022.** Not extended for plan years beginning on or after 7/1/2022. DOL FAQs Part 49 Q&A-2.
Group health plan must make public a machine -readable file with out-of-network allowed amounts and billed charges for covered items and services. **TiC Reg**	Plan years beginning on or after 1/1/2022	For plan years starting 1/1/2022-6/30/2022, the compliance date is extended to 7/1/2022. Not extended for plan years beginning on or after 7/1/2022. DOL FAQs Part 49 Q&A-2.
Group health plan must make public a machine -readable file with negotiated rates and historical net prices for covered prescription drugs. **TiC Reg**	Plan years beginning on or after 1/1/2022	Indefinitely extended, pending publication of revised regulations. DOL FAQs Part 49 Q&A-1.
Group health plan must offer self-service price comparison tool for 500 shoppable covered items and services. **TiC Reg**	Plan years beginning on or after 1/1/2023	Not extended. The Departments will propose the addition of a telephone number for assistance. DOL FAQs Part 49 Q&A-3.
Group health plan must offer a self-service price comparison tool for all covered items and services. **TiC Reg**	Plan years beginning on or after 1/1/2024	Not extended. The Departments will propose the addition of a telephone number for assistance. DOL FAQs Part 49 Q&A-3.
Group health plan must offer a price comparison tool. **CAA**	Plan years beginning on or after 1/1/2022	The Departments think the price comparison tool required by the CAA is "largely duplicative" of the price comparative tool required by the transparency regulations. (See preceding table entry.) In order to line up to the two sets of requirements, the Departments extended the compliance date of the CAA price comparison tool to the plan years beginning on or after 1/1/2023**.** The Departments expect to propose that compliance with Treas. Reg. §54.9815-2715A2 (updated to include a telephone number) will constitute compliance with CAA Div. BB §114. DOL FAQs Part 49 Q&A-3.
A health care provider and **group health plan** must work together to provide an advanced EOB to a patient scheduling service. **CAA**	Plan years beginning on or after 1/1/2022	Indefinitely extended, pending publication of regulations. DOL FAQs Part 49 Q&A-6.
A **group health plan** must provide certain prescription drug information and costs to the government. **CAA**	First report is due by 12/27/2021. Subsequent reports are due by 6/1 of following years.	Deadline for first and second reports extended, pending regulations or further guidance**.** Plans should expect to have to report 2020 and 2021 data by 12/27/2022. DOL FAQs Part 49 Q&A-12. (Departments to issue reporting forms and online reporting tool.)

Note that new requirements associated with the CAA's surprise billing protections were not postponed, and are still scheduled to apply to plan years on or after January 1, 2021.

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