

Agencies Delay Transparency Rules for Healthcare Pricing

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On August 20, 2021, the U.S. Departments of Labor, Health and Human Services (HHS), and Treasury (the “Agencies”) announced a delayed enforcement of some of the most challenging healthcare price transparency requirements in the Consolidated Appropriations Act, 2021 (CAA). They also issued new [guidance](#) related to these delayed transparency rules.

While the new guidance doesn’t change the law, it clarifies several provisions of the CAA, and most notably, it delays enforcement of the following healthcare price transparency rules:

- **The requirement to disclose new advanced EOBs** –delayed from the initial effective date of January 1, 2022 until plans, insurers and medical providers can build the infrastructure necessary to transmit the Advanced EOBs and until the Agencies can issue applicable regulations and guidance on these disclosures.
- **The requirement to implement a “price comparison tool”** –delayed from the initial effective date of plan years beginning on or after January 1, 2022, until plan years beginning on or after January 1, 2023.
- **The requirement to report drug cost information to federal regulators** – the initial reports were to be provided to the Agencies by December 27, 2021, and then by June 1, 2022. The Agencies will delay enforcement related to the 2021 and 2022 reports until they can issue further guidance, although the Agencies are “strongly encouraging” plans and insurers to get ready to report 2020 and 2021 plan year data no later than December 27, 2022.
- **The requirement to disclose to the public health plan pricing information related to in-network rates, out-of-network allowed costs, and prescription drug prices** -delayed on the in-network and out-of-network requirements from the initial effective date of January 1, 2022, until July 1, 2022, and for the prescription drug requirement, enforcement was delayed until the Agencies can issue regulations on this requirement.

Even with these enforcement delays, employers and plan sponsors with self-insured health plans should begin the process now of reviewing and discussing these healthcare transparency requirements with their third-party administrators and other plan vendors to ensure compliance.

While insurers will be responsible for implementing these transparency rules for fully insured plans, given the impact of these provisions on participants and employees, employers and plan sponsors of fully insured plans should also ensure that their insurers are on track to meet these compliance deadlines.

The new guidance also delays enforcement of the “Transparency in Coverage” regulation issued in October 2020 and provides some relief and helpful clarifications related to other key 2021 health benefit compliance items, including the prohibition of gag clauses, transparency requirements of ID cards, the continuity-of-care requirements and provider directories.

The delayed transparency rule enforcement news is certainly welcomed by employers and plan sponsors.

However, not all of the CAA's new transparency requirements will have delayed enforcement or other applicable relief. Specifically, the guidance neither delays nor provides other relief related to the new surprise medical billing requirements under the No Surprises Act, which are still set to take effect on January 1, 2022, or the Mental Health Parity and Addiction Equity Act (as amended by the CAA) "comparative analysis" requirement, which is already in effect.

As always, be sure to work closely with your benefits broker and compliance team to ensure your organization is prepared to meet these requirements.

For full details, please see our August 30 Compliance Alert on the [Compliance Resource Page](#). ■

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