CORPORATE SYNERGIES®

compliance ALERT

Agencies Delay Healthcare Price Transparency Rules

August 30, 2021

Action Required:

- **Self-insured:** review these requirements with third-party administrators and other plan vendors to ensure compliance.
- **Fully insured:** confirm insurers are on track to meet these compliance deadlines.

On August 20, 2021, the U.S Departments of Labor, Health and Human Services (HHS), and Treasury (the "Agencies") issued FAQ guidance delaying enforcement of some of the most challenging healthcare price transparency requirements in the Consolidated Appropriations Act, 2021 (CAA).

The new guidance also delays enforcement of the "Transparency in Coverage" regulation issued in October 2020 (discussed in our eAlert here) 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.

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 explanations of benefits" providing good-faith estimates of the out-of-pocket costs for scheduled medical services;
- the requirement to implement a "price comparison tool" to enable participants to compare cost-sharing amounts for specific network providers;
- the requirement to report drug cost information to federal regulators; and
- the requirement to disclose to the public (in three separate machine-readable files) health plan pricing information related to in-network rates, out-of-network allowed costs, and prescription drug prices.

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. ■

↓ Full Explanation Follows ↓

Agencies Delay Healthcare Price Transparency Rules

On August 20, 2021, the U.S Departments of Labor, Health and Human Services (HHS), and Treasury (the "Agencies") issued FAQ guidance (the "Guidance") delaying enforcement of some of the most challenging healthcare price transparency requirements in the Consolidated Appropriations Act, 2021 (CAA). The new Guidance also delays enforcement of the "Transparency in Coverage" regulation issued in October of last year (discussed in our eAlert here) 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.

How does the New Guidance Change the Law?

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 explanations of benefits" (Advanced EOBs) providing good-faith estimates of the out-of-pocket costs for scheduled medical services;
- the requirement to implement a "price comparison tool," including online tools and phone support, to enable participants to compare cost-sharing amounts for specific network providers;
- the requirement to report extensive drug cost information to federal regulators, including the 50 most commonly-covered drugs per plan, the 50 most expensive drugs per plan, and the total health spending for each plan broken out into specific categories; and
- the requirement to disclose to the public (in three separate machine-readable files) health plan pricing information related to in-network rates, out-of-network allowed costs, and prescription drug prices.

When were these Transparency Requirements Supposed to Go into Effect? How Long is Enforcement Delayed for these Rules?

Many of these provisions were required, by statute, to go into effect on January 1, 2022, but enforcement of these rules will be delayed for six months or longer in some cases. More specifically, in some cases, enforcement of these provisions will be delayed until further rulemaking or guidance can be issued by the Agencies, and in other cases, the Agencies will not be able to complete rulemaking ahead of 2022. In those cases, the Agencies will apply a "good faith" compliance standard, meaning that they will not impose penalties on plans and insurers that are implementing these rules based on a good faith, reasonable interpretation of the CAA. The Agencies also encourage state agencies (which can also enforce these rules) to provide similar enforcement discretion.

The following enforcement delays were explained in the new Guidance:

- **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. (Q&A #6).
- **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. (Q&A #3).
- **The requirement to report extensive 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. (Q&A #12).
- **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. (Q&A #1-3).

What Other Rule Clarifications were in the new Guidance?

What follows is a summary of the key rule clarifications for employers and plan sponsors in the new Guidance.

Gag Clauses

Under the CAA, plans cannot enter into network, administrative services, or other agreements that would prevent them from making available provider-specific cost or quality-of-care information to providers or participants, electronically accessing de-

identified claims and encounter information for each participant (consistent with privacy laws), or sharing either of those types of information with business associates. Plans have to attest to the Agencies each year that they have no such gag clauses in their agreements. This requirement took effect upon enactment of the CAA on December 27, 2020, and is not changed by the new Guidance. The agencies have indicated that additional guidance is forthcoming on how plans will attest to their compliance with this requirement. (Q&A #7.)

ID Cards

Under the No Surprises Act, plans have to update physical or electronic insurance ID cards to include network and out-of-network deductibles and out-of-pocket limits and consumer assistance contact information. This requirement will go into effect on January 1, 2022, a date unchanged by the new Guidance. The Guidance does clarify, however, that the Agencies will consider both data actually on the cards and data that is "made available through information that is provided on the ID card." (Q&A #4.)

Provider Directories

Under the No Surprises Act, plans are required to take several steps to improve provider directories. These provisions generally require plans and insurers to establish a process to update and verify the accuracy of provider directory information and to establish a protocol for responding to requests by telephone and electronic communication from a participant, beneficiary, or enrollee about a provider's network participation status.

These requirements will go into effect on January 1, 2022, and the Guidance does not change that. The Agencies do indicate that they intend to issue formal regulations in the future on these directories, and that they may also have specific additional guidance on required disclosure of balance billing information. (Q&A #8 and #9).

Continuity of Care Requirements

Under the No Surprises Act, when a provider or network contract is terminated, plans have to take steps to protect hospitalized or other continuing care patients. This requirement will take effect on January 1, 2022. The Guidance clarifies that the Agencies intend to issue formal regulations on this requirement that will be applicable to plans, insurers and medical providers, but will not do so before the effective date. Until such regulations take effect, plans will be held to a good-faith compliance standard. (Q&A #10).

What Should Employers and Plan Sponsors Do Next?

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.

While the news of these enforcement delays is certainly welcomed by employers and plan sponsors, 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. ■

If you have any additional questions, please call your Corporate Synergies Account Manager or 866.CSG.1719.