CLIENT BRIEF

Compliance Brief

TRANSPARENCY IN COVERAGE

June, 2022

SUMMARY

In October 2020, the Departments of Labor, Treasury, and Health and Human Services (collectively, Departments) released the final rules on the "transparency in coverage" requirements. These rules, among other things, require group health plans to disclose detailed pricing information to the public and cost-sharing estimates to participants *before* they receive care. While the participant disclosures are not required until 2023, the public disclosure requirements go into effect for plans beginning on or after January 1, 2022.

Beginning on July 1, healthcare plans will be required by law to provide more transparent information about the cost of healthcare procedures. The Transparency in Coverage Rule is intended to help U.S. consumers make better informed choices about the cost of healthcare for hundreds of procedures as well as the price of drugs administered by pharmacies.

OVERVIEW

On October 2020, the Departments issued the Final Rule on Transparency in Coverage ("Transparency Rule") which applies to group health plans and insurers.

The Transparency Rule imposes disclosure obligations on non-grandfathered group health plans (including fully insured, level funded, and self-insured plans) and health insurers. The rules do not apply to grandfathered group health plans, excepted benefits (e.g., stand-alone dental and vision), health reimbursement arrangements (HRAs) or other account-based plans, or short-term limited-duration insurance.

The Transparency Rule requires plans to provide two main disclosures:

- **Disclosures to the Public**: Plans that begin on or after January 1, 2022, must post pricing information (for free) on the plans or insurer's website, which must be updated monthly. Disclosures must contain specific content and must be provided on three "machine readable files," and must include:
    - Negotiated rates for all items and services with in-network providers (except prescription drugs)

  - Historical payments to, and billed charges from, out-of-network providers during a specified period; and
  - Negotiated rates for prescription drugs furnished by in-network providers during a specified period.
- **Disclosures to Plan Participants, Beneficiaries, and Enrollees**: Plans must provide plan participants with real-time, personalized out-of-pocket cost estimates for requested covered items and services by a particular provider or providers. This disclosure must be made through a user-friendly online self-service tool or by paper, upon request. By January 1, 2023, they must provide an internet-based self-service tool listing personalized, out-of-pocket cost estimates and other price-related data for the 500 predetermined items and services cited above. By January 1, 2024, they must expand this self-service tool to include all covered items, services, and prescription drugs.

The Transparency Rule requires plans to divulge a substantial amount of detailed and real time information that they were not previously required to disclose. The Departments, recognizing the burden of complying with the new requirements, gave plans and carriers time to prepare by phasing in the rule over a three-year period.

WHAT YOU NEED TO KNOW AS AN EMPLOYER

Employers sponsoring group health plans subject to the Transparency Rule will be subject to new disclosure requirements. For the upcoming 2022 plan year, employers must address how their group health plans will provide the required disclosures to the public. For the 2023 and 2024 plan year, employers will again need to address how their group health plans will provide the required disclosures to plan participants.

Below, we outline what steps you can take to prepare for the new requirements, based on the type of group health plan you have.

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FULLY INSURED EMPLOYERS

Fully insured plan information and disclosure requirements are the responsibility of the carrier, and the carrier (not the employer) is/will be held liable for any failure to provide disclosures. Below you will find a list of the major carriers in North Carolina with links (where available) to the machine-readable files (MRFs)

BlueCross BlueShield of North Carolina	Blue Cross NC will create, host, and update the Files on behalf of fully-insured groups. Blue Cross NC is also in the process of updating its fully-insured group contracts to accommodate the nature of this responsibility. Fully-insured contracts must be reviewed and approved by the North Carolina Department of Insurance before any changes may take effect. Once the changes are approved, we will update groups accordingly.
United Healthcare	UHC will prepare and post the files for fully insured groups, clients are not required to take any further action. Clients, if they choose can find the machine-readable files (MRFs) here: transparency-in-coverage.uhc.com. The MRFs for fully-insured clients will not have clients' name rather they will be posted by legal entity and plan/network. For example: UnitedHealthcare of Colorado, UHC Choice Plus, in-network. Additional information can be found at: https://www.uhc.com/united-for-reform/health-reform-provisions/transparency-in-coverage-rule
aetna	Aetna.com under ALICNational Communications
Cigna	https://www.cigna.com/individuals-families/plans-services/transparency-in-coverage

EMPLOYER TAKEAWAYS:

- Employers should be aware of the website where the public disclosures will be posted (starting in 2022) and online-service tool for participants (starting in 2023).

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SELF-INSURED/LEVEL FUNDED EMPLOYERS

BCBSNC, UHC, Aetna and Cigna have all released documentation where both level and self-funded clients will find access to the MRFs. In the case of these carriers, employers will be able to find their data listing and link directly to it from your website. If you are not with one of these carriers, you should be working directly with your third-party administrator (TPA) to provide the required disclosures. It is important to note that compliance with this rule falls with you the employer. Non-compliance may be subject to an enforcement action under ERISA and a $100 per day excise tax (though the rule provides a safe harbor for plans acting in good faith that correct errors or omissions). Employers could, however, enter into contractual agreements whereby a TPA agrees to indemnify the employer in the event they fail to provide disclosures.

BlueCross BlueShield of North Carolina	https://www.bluecrossnc.com/about-us/policies-and-best-practices/transparencycoverage-mrf#. (This website will be live on July 1, 2022.)
United Healthcare	MRFs can be found at transparency-in-coverage.uhc.com. The data will be loaded on July 1, 2022 and then updated by the first day of each month thereafter. • Self-funded clients can link directly to UHC for this data, or they can post their MRFs on their own websites and have their files suppressed from the public UHC site. Clients who opt to suppress files from the public UnitedHealthcare MRF website may access the MRFs from a dedicated website monthly. The website requires authentication. Please notify your UnitedHealthcare representative by May 15, 2022, if this is your intention. Your UnitedHealthcare representative will provide detailed instructions so the self-funded customer may extract and post the files publicly and update them monthly. • UnitedHealthcare does not support direct customer-specific provider contracting arrangements where claims are not paid by UnitedHealthcare, nor does UnitedHealthcare accept or provide raw data. Additional information can be found at: https://www.uhc.com/united-for-reform/health-reform-provisions/transparency-in-coverage-rule
aetna	Aetna.com support for 2-100 AFA MRFs available on 7/1/22

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Cigna	https://www.cigna.com/legal/compliance/machinereadable-files Note that prior to 7/1/22, this link will take you to the home page of Cigna.com but will access the MRFs page after that date.

EMPLOYER TAKEAWAYS:

If not contracted with one of the major carriers listed, self-insured and level funded employers should reach out to their TPA to discuss the required disclosures. It is important for employers to ensure their TPA can meet the specific requirements outlined under the Transparency Rule, as the employer can ultimately be held liable for failures to comply. For plan years beginning in 2022, employers should ensure any contractual agreement to provide disclosures to the public address the following concerns:

- Ensure TPA is providing disclosures with the specific information and formatting required on three "machine readable files;"
- Ensure TPA is updating the information on a monthly basis
- Determine where the information will be posted; and
- Determine any indemnity provisions or other protections if the TPA fails to provide the required disclosures.

Employers should also check with their TPA to determine whether they are working to make participant disclosures available by 2023. Employers will need to outline a contractual agreement with the TPA on providing the participant disclosures, as well.

The Departments requires that an employer make the required machine-readable files available on a company website and that:

- The files must be accessible free of charge
- Cannot require the user to establish a user account, password, or other credentials
- Cannot require the user to submit any personal identifying information such as a name, email address or telephone number.

The Departments also proposed to allow plans and issuers flexibility to publish the files in the locations of their choosing based upon their knowledge of their website traffic and the website location where the machine-readable files would be readily accessible by the intended users.

WHAT PLANS ARE NOT COVERED BY THE TRANSPARENCY RULE?

The following plans are not subject to this rule:

- Grandfathered plans
- Excepted benefits (e.g., standalone vision, dental, and hearing plans)
    - Dental and vision must be standalone for them to be exempt from this rule. If they are integrated with the medical plan, they are subject to this rule
- Retiree only plans
- Short term limited duration (STLD) plans
- Flexible Spending Accounts (FSA), Health Reimbursement Accounts (HRA) and Health Savings Accounts (HSA)
- Medicare
- Medicaid

Note: Transitional Relief plans and to non-ERISA self-funded plans are not exempt from this rule and must comply.

ENFORCEMENT

The primary enforcement authority will be each states Department of Health and Human Services (HHS). ERISA plan compliance will be enforced by the Department of Labor (DOL)