

## July 1 Transparency Deadline: Publicly Available Machine-Readable Files

### Gallagher

The effort to have transparency in healthcare cost and quality information has been building since 2020 to one of the first major steps for group health plans and health insurance issuers. On July 1, employers sponsoring non-grandfathered group health plans and health insurance issuers offering non-grandfathered coverage in the group and individual markets must make publicly available in machine-readable format, files containing in-network and out-of-network cost information. The separate machine-readable files, updated monthly, include in-network and out-of-network cost information on covered items and services. A third category – network negotiated rates and historical net prices for prescription drugs – has been delayed while the Departments consider further guidance.

### Background

In 2020, in response to [Executive Order 13877](#), which directed the Departments of Labor, Health and Human Services, and Treasury (the Departments) to ensure access to price and quality information prior to the delivery of care, the Departments issued the Transparency in Coverage (TiC) Final Rules. See Gallagher's [Technical Bulletin](#) for a summary of all the transparency requirements, including the TiC Final Rules that apply to only non-grandfathered plans and the Consolidated Appropriations Act of 2021 (CAA) that applies to both grandfathered and non-grandfathered plans.

The original deadline imposed for the TiC requirement to make machine-readable files publicly available was beginning for plan years starting on or after January 1, 2022; however, in FAQ 49 (see our article [DOL Issues ACA FAQ Part 49 on Transparency](#)), the Departments delayed the effective date until July 1, 2022. The FAQs also paused the prescription drug machine-readable file requirement until further guidance is issued.

### Guidance

The machine-readable files must include an in-network rate file containing names and identifiers for each coverage option, billing codes, and applicable rates, including negotiated rates and fee schedule rates. The out-of-network files include the same identifier and billing code requirements, along with allowed amounts and billed charges furnished by out-of-network providers during the 90-day time period that begins 180 days prior to the publication date.

Although the TiC and CAA impose the various transparency requirements on plan sponsors and health insurance issuers, practically, insurers and third party

administrators (TPAs) for group health plans are the primary sources for the information. The regulations recognize this for fully insured plans, allowing the plan and insurer to have a written agreement that obligates the insurer to disclose the files; however, the regulations do not contain a similar provision for self-insured plans.

To assist plans in this effort, some insurers and TPAs are offering employers a choice – they will either 1) build and host a separate employer-specific publicly available website for a fee or 2) provide a link to the files that would allow employers to make that link publicly available. Although fully insured plans may be able to obtain the written agreement from their insurer to make the information available as required, self-insured plans will need to consider how the employer’s plan will make these files *publicly available*.

From guidance, we know the files must be accessible free of charge and without conditions (i.e., no requirement to input a password or other personally identifiable information to access the file). But, in FAQ 49, the Departments notified plan sponsors that no further guidance would be issued prior to the compliance date, and plan sponsors should use good faith efforts to comply with existing guidance.

Many plans sponsors have a benefits website that contains all the plan information that participants need to utilize the plan. While that seems to be the best location for the information or the link to the information, those sites most likely require identifying information or a password to enter the site, making it unavailable to spouses and dependents, or third parties such as researchers, and therefore are unlikely to meet the publicly available requirement. Employers might consider some of the following scenarios:

- Engage the TPA for a TPA-hosted and created plan-specific site with no password or identifying information required to enter the site.
- Create their own publicly available plan site without required passwords or inputting of identifying information.
- Place the link on the benefits website. If this site requires a password or identifying information or is not publicly available, it will not meet the requirement to make it publicly available.
- Place the link on the employer’s commercial website. These requirements are placed on the plan (not the employer, which is a separate legal entity). Further, most commercial sites do not contain plan information, though they may. Therefore, it is unclear whether this approach would work, though it is clearly the most publicly available site.

The first two options more clearly align with the requirements. They are also the most costly for plan sponsors, though plans should discuss these options further with their

insurers and TPAs. The second two options, or a combination of the two, each have their own issues, though may be the only options, at least temporarily, as employers wait for the Departments to provide further guidance on what it means to be publicly available.

## Employer Action Steps

- Review contractual arrangements with insurers and TPAs to ensure they agree to provide the machine-readable files according to the TiC Final Regulations.
- Fully insured plan sponsors should consider engaging the insurer in a written agreement requiring the insurer to satisfy the requirements.
- Self-insured plan sponsors should confirm with their TPAs the options available to them to make the information publicly available.
- Self-insured plan sponsors, and fully insured plan sponsors who do not engage in the written agreement, should confirm whether the plan's website meets the publicly available requirements.
- Plan sponsors with plan websites that require passwords and identifying information to access the sites, should consider further steps to ensure they are making a good faith effort to make the information publicly available.
- Make the machine-readable files publicly available by July 1, 2022.

*The intent of this article is to provide general information on employee benefit issues. It should not be construed as legal advice and, as with any interpretation of law, plan sponsors should seek proper legal advice for application of these rules to their plans.*