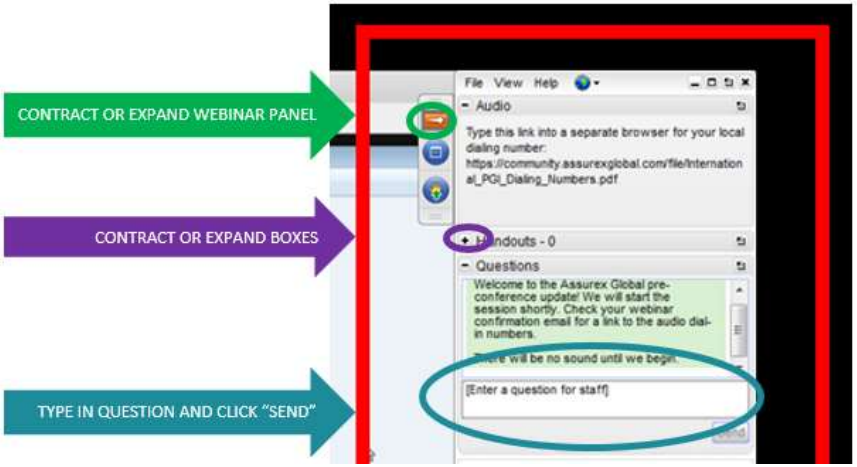
2022

Update on Transparency, Surprise Billing, & Rx Cost Reporting Requirements

Presented by Benefit Comply

Update on Transparency, Surprise Billing, & Rx Cost Reporting Requirements

- Welcome! We will begin at 3 p.m. Eastern
- There will be no sound until we begin the webinar. When we begin, you can listen to the audio portion through your computer speakers or by calling into the phone conference number provided in your confirmation email.
- You will be able to submit questions during the webinar by using the “Questions” or “Chat” box located on your webinar control panel.
- Slides can be printed from the webinar control panel – expand the “Handouts” section and click the file to download.



Assurex Global Partners

- Bolton & Company
- Cottingham & Butler
- Cragin & Pike, Inc.
- Daniel & Henry
- The Graham Company
- Haylor, Freyer & Coon, Inc.
- Henderson Brothers, Inc.
- The Horton Group
- Houchens Insurance Group
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- R&R Insurance
- RCM&D
- The Rowley Agency
- Starkweather & Shepley
- Sterling Seacrest Pritchard
- Woodruff Sawyer

Agenda

- Health Plan Cost Transparency
  - Phase 1 - Health Plan and Insurers Cost Public Disclosure (The Machine-Readable Files)
  - Phase 2 - Rx Cost Reporting
  - Phase 3 - Pricing Tools
  - Phase 4 - Good Faith Cost Estimate and Advanced EOBs
- Other CAA and TiC Issues
- Surprise Billing Review

Health Cost Transparency

How Did We Get Here?

- Hospital Cost Transparency Final Rule - Published Nov. 2019 – Effective Jan. 2021

- Transparency in Coverage Final Rule (TiC Final Rules) - Published Nov. 2020
  - Based on legislation in the Affordable Care Act but never fully implemented
    - Public data files with detailed reimbursement rate information (the machine-readable files)
    - Price comparison tool and personalized cost estimates

- Consolidated Appropriations Act, 2021 (CAA) Transparency & The No Surprises Act
  - Stimulus bill passed by Congress in Dec. 2020
    - Surprise Billing restrictions
    - Price comparison tool, Provider “good faith cost estimate” and “Advanced EOB”
    - ID Card changes
    - Rx Cost reporting

2021

January 2021

Hospital Cost Reporting

2022

January 2022

No Surprises Act

No Gag Clauses in Contracts

Continuity of Care

ID Cards

Provider Directory Accuracy

July 2022

Carriers & Plan Release Health Plan Cost Data Machine Readable Files

December 2022

Rx & Health Care Spending Reporting (Dec. 27, 2022)

2023

January 2023

Price Transparency Tools - 500 Items & Services

2024

January 2024

Price Transparency Tools - All Items & Services

Delayed Until Additional Guidance Is Released

Prescription Cost Data Machine Readable File

Provider treatment cost estimate and Advanced EOB

Health Plan Cost Transparency - Phase 1 Publicly Post Cost Data in a Machine-Readable File

Health Plan Cost Transparency and Disclosure

- Pricing Data Disclosure – The Machine-Readable Files
  - Effective Jul. 1, 2022 - Plans & insurers must publicly post machine-readable cost files
    - The In-Network Rate File
      - All applicable rates with in-network providers for all covered items and services (including negotiated rates, underlying fee schedules, or derived amounts)
      - Safe harbor for percentage-of-billed-charges alternative reimbursement arrangements
    - The Allowed Amount File
      - One on billed charges and allowed amounts for covered items and services provided by out-of-network providers
    - The Prescription Drug File - Enforcement delayed indefinitely
      - Negotiated rates and historical net prices for prescription drugs furnished by in-network providers
  - Plans not subject to disclosure requirements
    - Grandfathered plans
    - Account based plans (HRA, FSA)
    - Excepted benefits (Dental, vision, etc)

Machine-Readable Files

- This information must be made publicly available on carrier's or plan's website free of charge
  - Data must be updated monthly
- This has nothing to do with your employees, so no employee notification is necessary

Note:
Employers do not have the data to create these files and must rely on carriers, TPAs, and vendors to create, post, and update monthly…

- Fully-insured plans
  - If there is a "written agreement" with carrier, then the employer does not need to post files or link to files
- Self-insured plans
  - Contract with TPA or other vendor to post files

Details regarding self-insured plans requirement to post a link to data are unclear at this time…

Machine-Readable Files FAQs

Q: Fully-Insured Plans - Do You Need to Post a Link to the Machine-Readable Files on Your Website?

A: Probably Not

Fully-Insured Plans – If employer has a written agreement with carrier, the employer does not need to post files or link to files

- What constitutes a written agreement?
  - Specific amendment to group contract – Yes of course!
  - Existing contract language saying carrier will follow all applicable laws – Most likely yes
  - Email from carrier stating they will be posting files - Probably

Machine-Readable Files FAQs

- Q: Self-Insured Plans - Do You Need to Post a Link to the Machine-Readable Files on Your Website?
- A: Maybe…

- Self-Insured Plans - Contract with TPA, network provider, or other vendor to post and update files
  - At this time, pending additional guidance, we still recommend employers with a self-insured plan should be prepared to post a link to the appropriate data files hosted by the TPA/vendor

Breaking News!
CMS Technical Released Friday 6/17

*If a **group health plan** does not have a public website, the plan may satisfy the requirements for posting the [files] by entering into a written agreement under which a service provider (such as a TPA) posts the [files] on its public website on behalf of the plan. However, if…the service provider fails to do so, the plan violates these disclosure requirements.*

The Departments intend to follow up with the issuance of formal guidance soon.

Machine-Readable Files FAQs

- Self-Insured Plan - Other Details
  - Depending on how the vendor publishes the data, there may be more than one file to point to (in-network file and allowed charges file)
  - Where to post on your website?
    - It doesn't really matter as long as it is publicly available (contact page, about us page, legal notices page, etc.)
  - What if your vendor does not post required files by July 1?
    - Employers should take this into consideration when assessing vendor relationships going forward
- Final Thoughts and Questions
  - Direct provider contracting
  - Reference based plans
  - Remember level-funded plans are considered self-insured plans

Health Plan Cost Transparency - Phase 2
Prescription Drug Cost Reporting

Rx Cost Reporting

- Detailed Rx and other cost data must be reported annually to federal government
  - Why – to collect data on drug costs with the hope that the data can be used by the federal government and businesses to lower drug costs
    - The federal government will issue a report on the data every year
  - Reports for calendar years 2020 and 2021 due by Dec. 27, 2022
    - Then by Jun. 1 every year after that
  - What Must be Reported
    - Rx spending by plan and participant
    - Total spending by the plan by types of cost (e.g., hospital, primary care, specialty care, provider services, Rx, etc.)
    - Number of enrollees
    - 50 most common brand prescription drugs and claims paid
    - 50 most costly drugs by total annual spending
    - 50 drugs with the greatest year-over-year cost increase
    - Average monthly premiums paid by employer and participants
    - And more...

Note that different stakeholders will need to be involved to collect all required data

Rx Cost Reporting

- Who?
  - Requirement applies to employer plans and carriers
    - Regulators very clear that self-funded employers are responsible for compliance even if depending on vendor to do some or all of the reporting
  - Coordination between TPA, PBM, and employer will be necessary to report all required information
- How?
  - Federal Government will set up a reporting website
    - Detailed reporting instructions expected to be released in conjunction with the release of the website
    - Multiple “reporting entities” (PBM, TPA, employer) may need to submit different parts of the required data

Health Plan Cost Transparency - Phase 3 Make Price Comparison Tool Available to Participants

Health Plan Cost Transparency and Disclosure

- Advanced Cost Estimate “Price Comparison Tools”
  - Plans and insurers must disclose estimates of cost-sharing for covered health care items and services from a particular provider
    - Disclosure must be by “web tool” and paper option offered when requested by participant
  - Effective dates
    - 500 items & services by Jan. 2023 - all items and services by Jan. 2024
  - Many carriers and vendors already offer pricing tools
    - Existing tools may need updating to meet requirements
- Compliance Responsibility
  - Fully-insured plans can rely on their carrier
  - Self-insured plans technically liable for the compliance of their plan, but can contract with TPA, administrator, or network to offer the pricing tool

Health Plan Cost Transparency - Phase 4
Provider Good Faith Estimate & Advanced EOB

Provider Good Faith Estimate and Advance EOB

- Effective Date – ~~Originally January 2022 –~~ Delayed Pending Further Guidance
- Provider Estimate
  - Providers must provide patients with a good faith estimate of expected costs
    - Enforcement delayed for patients covered by a health plan until further guidance is issued
  - Information must be provided to the patient's health plan
    - If patient is not covered by a health plan, the notice must be provided to the individual
- Advanced EOB
  - Payer must provide an advanced EOB estimating participants' out-of-pocket expenses based on provider cost estimate, plan benefits, and participants' current cost-sharing situation
    - Enforcement delayed indefinitely until further guidance is issued

Other CAA and TiC Issues

Other Issues

- No Gag Clause in Provider Contracts
  - First effective Dec. 27, 2020
  - Health plan attestation requirement – pending release of guidance…
- ID Card Requirements
  - ID cards must include deductible and out-of-pocket maximum amounts
  - Effective for plan years beginning Jan. 1, 2022
- Provider Directory Accuracy
  - If an individual receives services from an out-of-network provider and relied on inaccurate provider directory information, the plan must play the claim as if it was provided in-network
  - Effective for plan years beginning Jan. 1, 2022
- Continuity of Care
  - Participants with certain types of conditions must be allowed to continue to receive care at the in-network level from a provider that leaves the network
  - Effective for plan years beginning Jan. 1, 2022

Surprise Billing

Surprise Billing

- Effective Date – Plan years beginning Jan. 1, 2022
- Affected Claims
  - Out of network emergency services
  - Out of network providers in an in-network facility
  - Out of network air ambulance
- Capped Payments
  - All-Payer Model Agreement (state payment agreement)
  - State law
  - Qualifying payment amount (QPA)
    - Average in-network rate for same or similar items or services for the health plan
- External Review Process
  - Available for all affected claims, even for grandfathered plans

Surprise Billing

- Plan Disclosure Requirements
  - Must make information available on a public website and on any EOB outlining the new balance billing limitations for affected claims
  - Model notice is available
  - Employers may rely on carriers or TPAs to post this notice
    - May be appropriate to post it on the employer's intranet or benefits portal
    - Could include the disclosure in enrollment materials, but not required
    - SPD may need to be updated depending upon drafting

Summary & Review

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Closing Thoughts for Employers

- Transparency Rules and Reporting
  - Employers simply do not have access to the provider-specific reimbursement data necessary to meet most of the transparency requirements
    - Fully-Insured Plans
      - Carrier is responsible for most aspects of the requirements
      - Employers should pursue written agreements with carriers defining responsibility
    - Self-Insured Plans
      - Employer (as plan sponsor) is technically responsible for the plan's compliance
      - Employer must work with administrators and vendors to ensure compliance

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