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Deadline for Transparency in Coverage Compliance Fast Approaching

June 23, 2022

As discussed in our [previous Client Alert](#), the Transparency in Coverage Rule (the “Rule”) requires group health plans to disclose two machine readable files (“MRFs”) beginning July 1, 2022. The first MRF must disclose information on in-network pricing for certain items and services, and the second MRF must disclose out-of-network allowed amounts. This Client Alert provides additional guidance on disclosing the MRFs by the July 1 deadline.

Are self-insured group health plans subject to the Rule?

Yes, self-insured plans are subject to the Rule and must provide the MRFs.

Are fully insured plans subject to the Rule?

Yes, fully insured plans are subject to the Rule and must provide the MRFs.

Are grandfathered plans subject to the Rule?

No. The Rule applies to non-grandfathered plans, not grandfathered plans.

What information is included in the in-network MRF?

The in-network MRF must include rates for all covered items and services, except prescription drugs subject to a fee-for-service reimbursement arrangement. For each coverage option, this includes:

- The plan’s name and 14-digit Health Insurance Oversight System (HIOS) identifier, the 5-digit HIOS identifier where the 14-digit identifier is not available, and if no HIOS identifier is available, the Employer Identification Number.
- A billing code.
- All applicable rates, which may include negotiated rates, underlying fee schedule rates, and derived amounts.
- Other information relating to the rates, reimbursement arrangement, and providers.

What information is included in the out-of-network MRF?

The out-of-network MRF must include for each coverage option:

- The plan’s 14-digit HIOS Identifier, the 5-digit HIOS identifier where the 14-digit identifier is not available, and the Employer Identification Number where no HIOS identifier is available
- A billing code.
- Unique out-of-network allowed amounts and billed charges with respect to covered items or services for specified time periods.

Information relating to the allowed amount, including the amount of each item or service and provider information.

Do the MRFs have to be publicly available?

Yes. The MRFs must be publicly available, free of charge, and available without conditions. This means a plan cannot require individuals to create credentials, user accounts, or submit personally identifiable information before giving them access to the MRFs, and the MRFs cannot be password protected.

May the MRFs be provided in a proprietary file format?

No. The MRFs must be provided in a nonproprietary, open format. A portable document format (PDF) file, for example, would not meet this requirement due to its proprietary nature.

Does a plan need to contract with a third party to create and host the MRFs?

The Rule does not require a plan to contract with a third party to create and host the MRFs. Regulators anticipate that plans will contract with third parties to create, host, maintain, and update the MRFs. We encourage all plan sponsors to amend existing contracts with their insurers and TPAs to facilitate compliance with the Rule.

Do self-insured and fully-insured plans have to post a link to the MRFs on their public website?

The Rule is not completely clear on this issue, but the answer is likely yes. If a third party has posted the MRFs on its website, the plan should post a link to the MRFs on its public website. In addition to linking to the MRFs on the public website, links can be included on intranet websites, in SPDs, and open enrollment materials.

What is the deadline for making the files publicly available?

The effective deadline for making the files publicly available is July 1, 2022, as that is when the U.S. Department of Labor will begin enforcement.

What if a plan or employer does not have a public website?

The regulations are not clear on what happens in this circumstance. The regulations do not explicitly require an employer to create a website; they assume a website exists. The regulations require that a group health plan or health insurance issuer make the information available on a website. As such, an employer may want to consider creating a public website to link to the MRFs. We anticipate future guidance will address this frequently asked question.

Are the MRFs different than the notice regarding balance/surprise billing prohibitions?

Yes. As noted in our [previous Client Alert](#), the Consolidated Appropriations Act, 2021, added a new disclosure obligation relating to prohibitions on balance billing. Each group health plan and health insurance issuer offering group health insurance coverage must make publicly available, post on a public website of the plan or issuer, and include on certain explanations of benefits information regarding balance billing prohibitions. The U.S. Department of Labor issued a model notice that can be used for this purpose. This notice applies to plan or policy years beginning on or after January 1, 2022.

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Next Steps

Employers should:

- Check with its plan administrator or insurer to confirm that the MRFs are available on their websites.
- Post links to the MRFs on their public websites.
- Amend their contract with the insurer, third-party administrator, or other third party to create, host, maintain, and update the MRFs in accordance with the Rule.
- Confirm the balance/surprise billing prohibition notice is publicly available, posted on their public website, and included with applicable explanations of benefits.

If you have any questions about the required content in these MRFs, please contact a member of the [Kutak Rock Employee Benefits Practice Group](#).

