

THE BEACON

Exclusive Compliance Alerts from MZQ Consulting

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BIDEN ADMINISTRATION DELAYS ENFORCEMENT OF NEW PLAN TRANSPARENCY AND DISCLOSURE REQUIREMENTS

All health insurance carriers and employers that offer group health coverage to their employees have a wide range of pending compliance responsibilities related to the “No Surprises Act” section of the [Consolidated Appropriations Act of 2021 \(CAA\)](#) and the [final health plan transparency rules](#). However, the Biden Administration just gave these entities a bit of a break by delaying quite a few of the upcoming transparency and disclosure requirements via [FAQ guidance issued on August 20, 2021](#).

The original compliance deadlines were generally December 27, 2021, for plan or policy years starting on or after January 1, 2022. Now, certain enforcement deadlines have been extended by months and others by up to a year. In still more instances, a good faith compliance standard applies until implementation regulations are finalized.

The new requirements apply to all types and sizes of employer group health plans, including those employer plans with grandfathered status. Businesses that offer fully insured coverage share liability for compliance with their carrier. Companies that self-fund their group coverage have sole responsibility for making sure the provisions of both the CAA and the transparency regulation are carried out.

The following charts explain how deadlines have changed for employers, carriers, and, when applicable, health care providers.

TRANSPARENCY IN COVERAGE FINAL RULE

REQUIREMENT	APPLICABILITY	ENFORCEMENT CHANGE	OTHER IMPORTANT NOTES
Publish machine-readable files on a public website of in-network reimbursement rates and out-of-network allowed amounts and billed charges.	Carriers and Group Health Plan Sponsors	Delayed for plan or policy years beginning on or after January 1, 2022, until July 1, 2022.	For 2022 plan years and policy years beginning after July 1, 2022, plans and issuers should thus post the machine-readable files in the month in which the plan or policy year begins.



REQUIREMENT	APPLICABILITY	ENFORCEMENT CHANGE	OTHER IMPORTANT NOTES
Publish machine-readable files on a public website of prescription drug costs and pricing data.	Carriers and Group Health Plan Sponsors	Delayed until further notice.	The Administration plans to use the rulemaking and public comment process to determine whether the requirement remains appropriate.

CONSOLIDATED APPROPRIATIONS ACT OF 2021 – NO SURPRISES ACT REQUIREMENTS

REQUIREMENT	APPLICABILITY	ENFORCEMENT CHANGE	OTHER IMPORTANT NOTES
Publish an Internet-based price comparison tool online for all enrollees and plan participants.	Carriers and Group Health Plan Sponsors	Enforcement deadline changed from plan years starting on or after January 1, 2022, to plan years starting on or after January 1, 2023.	Since the requirement is largely duplicative of the internet-based self-service price disclosure requirement in the health plan transparency rule, the Administration intends to determine if they can combine compliance for both through the rulemaking and comment process. Leading up to January 1, 2023, the Administration will focus on compliance assistance.
Disclose very detailed plan or policy pharmacy and claims cost data to the federal government on December 27, 2021, and every June 1 thereafter.	Carriers and Group Health Plan Sponsors	Enforcement of the December 27, 2021, and June 1, 2022, reporting deadlines is delayed pending the issuance of regulations or further guidance.	Employer plans and issuers are strongly encouraged to be ready to begin reporting the required information with respect to 2020 and 2021 data by December 27, 2022.
Provide enrollees with “advance EOBs” before they incur a claim and following the receipt of a good faith estimate of charges from the insured’s provider.	Carriers and Group Health Plan Sponsors	Enforcement of the plan years starting on or after January 1, 2022, compliance date is delayed until the finalization of implementation regulations.	The Biden Administration plans to investigate whether an interim solution to provide enrollees with advance cost and issuer payment information is feasible.



REQUIREMENT	APPLICABILITY	ENFORCEMENT CHANGE	OTHER IMPORTANT NOTES
<p>Provide insured individuals with a good faith estimate of expected charges when they schedule treatment. The requirement applies to both the scheduled item or service and any items or services reasonably expected to be provided in conjunction with those items and services, including those provided by another provider or facility.</p>	<p>Providers</p>	<p>Enforcement of the January 1, 2022, compliance deadline is delayed until the finalization of implementation regulations with a prospective applicability date.</p>	<p>The Administration will release implementation guidance on providing estimates to uninsured people before January 1, 2022, so providers will need to provide estimates to those individuals on time.</p>
<p>Surprise balance billing requirements.</p>	<p>Providers, Carriers, and Group Health Plan Sponsors</p>	<p>Compliance responsibility with the surprise billing requirements beginning with plan years starting on or after January 1, 2022, is not delayed. However, plans and issuers are expected to implement these requirements using a good faith, reasonable interpretation of the statute until all related implementation rules are final.</p>	<p>Group health plans have a disclosure requirement to follow starting with the 2022 plan year. The Biden Administration published a model disclosure form and directions in July of 2021. If group plan sponsors use it, they will be considered compliant.</p>
<p>Prohibition of “gag clauses” in provider contract with group health plans and health insurance carriers.</p>	<p>Providers, Carriers, and Group Health Plan Sponsors</p>	<p>The December 27, 2021, enforcement deadline is delayed until the finalization of implementation rules. A good faith compliance standard applies until then.</p>	<p>The Biden Administration will issue sub-regulatory guidance to explain how plans and issuers should submit attestations of compliance. The Administration instructs plans and issuers to anticipate collecting those attestations starting in 2022.</p>



REQUIREMENT	APPLICABILITY	ENFORCEMENT CHANGE	OTHER IMPORTANT NOTES
Verification of the accuracy of in-network provider directories.	Carriers and Group Health Plan Sponsors	Enforcement of the plan years starting on or after January 1, 2022, compliance date is delayed until the finalization of implementation regulations.	Until rules are final, if there is a network directory error and someone uses an out-of-network provider that they believed to be in-network due to the mistake, then the plan or issuer cannot require participants to pay any more than in-network cost sharing to be considered compliant. Also, the plan or issuer needs to count those cost-sharing amounts toward any deductible or out-of-pocket maximum.
Include clear information on printed and electronic health plan ID cards about all applicable deductibles and out-of-pocket maximum limitations. Cards must also include a telephone number and website address for individuals to seek consumer assistance.	Carriers and Group Health Plan Sponsors	Enforcement of the plan years starting on or after January 1, 2022, compliance date is delayed until the finalization of implementation regulations.	Until rules are finalized, plans and issuers are expected to implement the ID card requirements using a good faith, reasonable interpretation of the law.
Establish continuity of care protections to protect enrollees in instances when terminations of certain contractual relationships result in changes in provider or facility network status.	Carriers and Group Health Plan Sponsors	Enforcement of the plan years starting on or after January 1, 2022, compliance date is delayed until the finalization of implementation regulations.	Until rules are finalized, plans and issuers are expected to implement continuity of care protections using a good faith, reasonable interpretation of the law.

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