



# SLEVIN & HART, P.C.

---

## Benefits Update

### **Departments Issue Final Rule on Transparency in Coverage**

December 28, 2020

The Departments of the Treasury, Labor, and Health and Human Services recently released a final rule (“Final Rule”) that will require extensive disclosures of cost-sharing information by group health plans and health insurance issuers. The Final Rule will follow a phased implementation plan beginning in 2022 and compliance is likely to require significant cooperation between plans and service providers.

The Final Rule applies to non-grandfathered group health plans, both insured and self-insured, as well as health insurance issuers. The Final Rule does not apply to grandfathered health plans under the Affordable Care Act, or to plans consisting solely of excepted benefits, short-term or limited-duration insurance, or health reimbursement arrangements. Retiree-only health plans also appear to be exempt from the Final Rule.

#### **Required Public Disclosures**

Beginning in 2022, the Final Rule requires non-grandfathered group health plans to make three separate “files” of detailed pricing information available to the public on a publicly accessible website. These files must be machine-readable, in a format that can be plugged into an electronic database without further data entry or the use of proprietary software, and plans will be required to provide updates to the files on a monthly basis.

The pricing information to be made available includes:

- (1) an “In-network Rate File”, showing negotiated rates for covered items and services with in-network providers;
- (2) an “Allowed Amount File,” showing different billed charges and allowed amounts paid for covered items or services by out-of-network providers; and
- (3) a “Prescription Drug File,” detailing the in-network negotiated rates and historical net prices for all covered prescription drugs.

Plans will be required to publish these files, available to the public, at the start of the plan year that begins on or after January 1, 2022.

### **Required Disclosures to Participants Upon Request**

In addition to the pricing information described above, beginning in 2023, the Final Rule requires covered health plans to make available to participants, beneficiaries, and enrollees (or their authorized representative) certain personalized out-of-pocket cost information, and the underlying negotiated rates, for all covered health care items and services, including prescription drugs, through an internet-based self-service tool and in paper form, if requested. The cost-sharing information is required only for individuals who are enrolled in the plan and not those who might become eligible for the plan in the future.

The Final Rule will require information on an initial list of 500 shoppable services, as determined by the Departments, to be available via the internet-based self-service tool beginning in 2023. Information on all items and services under the plan will be required beginning in 2024.

### **Compliance Issues**

The Final Rule contemplates that both insured and self-insured plans will need to contract with providers to comply with the regulations. Fully-insured plans may assign responsibility for compliance to the insurer by entering into a written agreement to provide the requisite information. For self-insured plans, although the plan may contract with a TPA or claims processor to comply with the disclosure requirements, the plan “must monitor the other party to ensure that the entity is providing the required disclosure” and retains ultimate responsibility for compliance with the Final Rule.

Because the Final rule requires disclosure of financial and other information that likely is subject to confidentiality provisions in current provider contracts, plans will need to closely coordinate with providers to determine whether modifications are necessary to allow for the required disclosures. In the preamble to the Final Rule, the Departments note that many affected contracts may already provide exceptions for disclosures required by applicable law.

The Final Rule includes safe harbor relief from penalties for plans, acting in good faith, that make an error or omission in a disclosure, including those due to good faith reliance on information from another entity.

### **Further Developments**

The future of the Final Rule is uncertain. The Departments expect various legal challenges, including challenges based on the Departments’ statutory authority under section 1311(e)(3) of ACA, as well as constitutional and trade secret issues. There is also the possibility that the new administration will undo or modify the Final Rule or delay its enforcement. We will continue to monitor this issue and provide updates as it develops.

Please contact Slevin & Hart for more information about how this regulation affects your plan.

## Attorneys



Timothy K. Eicher

*This publication is intended to provide general information only, and is not intended to provide legal advice. The distribution of our publications is not intended to create, and receipt of them does not constitute, an attorney-client relationship. Permission is granted to make and redistribute, without charge, copies of this entire document provided that such copies are complete and unaltered and identify Slevin & Hart, P.C. as the author. All other rights reserved.*