



SLEVIN & HART, P.C.

Benefits Update

Departments Announce Delayed Enforcement, Rulemaking under Consolidated Appropriations Act and Transparency in Coverage

September 7, 2021

On August 20, 2021, the Departments of Labor, Health and Human Services, and Treasury issued Frequently Asked Questions regarding implementation of the No Surprises Act (part of the Consolidated Appropriations Act or CAA) and the Transparency in Coverage Final Rule (“FAQs”). We discussed the Transparency Rule in our December 28, 2020 [Benefits Update](#). The FAQs announce that enforcement of certain provisions that apply to group health plans, health insurance issuers, and health care providers and facilities will be delayed, and for those CAA provisions that are not being delayed—requirements related to ID cards, provider directory, continuity of care, balance billing disclosures, and gag clause prohibitions—the FAQs direct plans to use a good faith, reasonable interpretation of the CAA to comply.

Delayed Enforcement

The FAQs announce delayed enforcement dates for the following provisions of the CAA and Transparency Rule:

- The requirement under the Transparency Rule to publish in-network rates and out-of-network allowed amounts is delayed until July 1, 2022, without regard to when the plan year began.
- The requirement under the Transparency Rule to publish prescription drug pricing and the CAA’s requirement to report on pharmacy benefits and drug costs are delayed indefinitely, pending further rulemaking.
- The requirement under the CAA that health plans provide a price comparison tool online and by phone is delayed until plan years beginning on or after January 1, 2023.
- The CAA’s requirement that health care providers and facilities provide a good faith estimate of expected charges for an individual’s scheduled service or item to the individual’s group health plan, and plans’ corresponding obligation to provide an advance Explanation of Benefits with the good faith estimate, are delayed indefinitely, pending further rulemaking.

Good Faith Guidance for ID Card, Provider Directory, Continuity of Care and Balance Billing Prohibition Disclosures

The Departments advise that they do not expect regulations to be issued prior to their original CAA effective date (Plan Years beginning on or after January 1, 2022) for the following provisions of the CAA:

- Identification card requirements;
- Continuity of care requirements;
- Provider directory requirements; and
- Balance billing prohibitions disclosures.

Until guidance is issued, the Departments advise that they expect group health plans and health insurance issuers to implement these provisions using a good faith, reasonable interpretation of the statute. Further, any future rulemaking on these issues will have a prospective effective date, so group health plans will have time to implement new procedures. The FAQs provide some limited instruction on what might constitute good faith compliance, including:

- ID cards are only required to have the main deductible and out-of-pocket maximum limitations and will not need to have all deductibles and out-of-pocket maximums;
- A plan will not be treated as violating the provider directory requirements as long as it provides for in-network cost sharing (counted towards any in-network deductible or out-of-pocket maximum) for an individual who receives out-of-network items or services after being provided inaccurate information by the plan that stated the provider or facility was in-network under a provider directory or response protocol; and
- Plans and issuers that use the Departments provided model notice as their balance billing prohibitions disclosure will be considered in good faith compliance.

Finally, the Departments do not intend to issue regulations addressing the CAA's prohibition on gag clauses on price and quality data, which became effective December 27, 2020, because they view the statutory language to be self-implementing. Plans are also expected to implement these requirements using a good faith, reasonable interpretation of the statute. However, the Departments do intend to issue implementation guidance for plans regarding submitting attestations of compliance but do not expect to begin to collect such attestations until 2022 at the earliest.

Further Rulemaking for Machine Readable Files under Transparency in Coverage Final Rule and Price Comparison Tool under CAA

In light of the overlapping provisions of the Transparency Rule and the CAA, the Departments intend to conduct further rulemaking on certain provisions to:

- Consider whether the Transparency Rule's prescription drug machine-readable file requirement remains appropriate, given the potentially duplicative and overlapping reporting requirements for prescription drugs under the Transparency Rule and the No Surprises Act;
- Consider whether compliance with the Transparency Rule's price comparison tool requirements will satisfy the CAA's analogous requirements; and

- Require the same pricing information that is available through the online price comparison tool or in paper form under the Transparency Rule to be provided over the telephone upon request, as is required by the CAA.

Please contact Slevin & Hart if you have questions about this guidance.

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