



Regulatory Affairs and Action Update

TO: Our Valued Clients and Brokers
FROM: Health Plans, Inc.
DATE: August 31, 2021
RE: Regulatory Affairs and Action Update

Over the past several months, Health Plans, Inc. (HPI) has issued Compliance Bulletins and Alerts advising our clients about new regulations related to the Transparency in Coverage Final Rule, No Surprises Act, and Enhancements to the Mental Health Parity and Addiction Equity Act (MHPAEA). This new Regulatory Affairs and Action Update provides a high level summary of the regulations with updates on HPI's solutions for meeting the regulatory requirements, as well as links to FAQs. HPI has a dedicated project team working on the new rules which includes representatives from multiple departments.

The majority of the regulations were planned by the Department of Health and Human Services (HHS), the Department of Labor, and the Department of the Treasury (the Departments) to go into effect January 1, 2022, however due to the ongoing pandemic caused by COVID-19 and the intensity of the requirements in the new regulations, many advocacy groups pushed for extensions for implementation of the new regulations and/or a restriction of the requirements within the new regulations. On August 20, 2021, the Departments issued an [FAQ](#) extending certain effective dates (as noted below) and deferring enforcement of the Transparency Rule requirement that plans and issuers publish machine-readable files relating to prescription drug pricing pending further rulemaking. HPI is prepared to implement the known requirements on behalf of our clients' plans under a good faith effort as stipulated in the regulations and currently issued guidance from the Departments.

The Transparency in Coverage Final Rule:

Machine Readable Files (MRFs)

- Pursuant to the Departments' August 20, 2021 FAQ, enforcement is deferred until July 1, 2022 (previously had been effective January 1, 2022).
 - Two separate MRFs must be made available to the public via a website and updated monthly:
 - » Negotiated rates for all covered items and services for in-network providers; and
 - » Historical payments to, and billed charges from, out-of-network providers.
 - Enforcement of a third MRF for in-network negotiated rates and historical net prices for all covered prescription drugs at the pharmacy location level has been deferred to a to be determined future date pursuant to the Departments' August 20, 2021 FAQ.

Note: A Machine Readable File means data formatted in such a way that it can be read by a computer, e.g. comma-separated value (CSV), JavaScript Object Notation (JSON) or Extensible Markup Language (XML).
 - **HPI Solution:** Our network partners will provide us with links to their MRFs which we will post on our public website.
 - **Costs:** There will be no costs for our clients associated with HPI posting the MRF links.

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Transparency Tool

- **Rule Effective January 1, 2023 and January 1, 2024**

- Internet-based self-service tool to obtain personalized out-of-pocket cost information and the underlying negotiated rates for all covered health care items and services, including prescription drugs.
 - » For plan years that begin on or after January 1, 2023: An initial list of 500 shoppable services must be available
 - » For plan years that begin on or after January 1, 2024: The remainder of all items and services must be available
- **HPI Solution:** HPI is partnering with a vendor to create and implement the Transparency Tool for January 1, 2023 and January 1, 2024.
- **Costs:** The costs for the use of the Tool by clients' members is to be determined as we finalize our discussions with the vendor. Costs will not apply until the initial January 1, 2023 implementation date. Further details will be issued as soon as this is determined.

- [Compliance FAQ - The Transparency in Coverage Final Rule](#)

The No Surprises Act:

Payment Amounts

- **Rule Effective January 1, 2022**

- Patients pay only In-Network (INN) Cost Share Amount for:
 - » Out-of-Network (OON) emergency services provided at an OON facility or at an INN facility by an OON emergency physician or other provider
 - » Non-Emergency services provided at an INN facility but by an OON provider i.e. ancillary services such as anesthesia and radiology.
- Plan must pay OON provider the “median contracted rate” (the rate for similar services in a particular geographic area adjusted by the consumer price index to minimize the influence of high outlier rates). The No Surprises Interim Final Rule (IFR) was issued July 1, 2021 and addressed the methods for calculating the “qualifying payment amount” as the median contracted rate.
- Independent Dispute Resolution (IDR) process for Plans and providers to negotiate the rate that will be paid to the OON provider if the parties cannot agree.
- **HPI Solution:** HPI's external vendor partner, Zelis, that works in payer/provider negotiations and prices OON claims for our clients' plans will be pricing the applicable OON claims in accordance with the median contracted rate requirements in order for HPI to administer your plan in compliance. Zelis will also provide all needed backup pricing information to support IDR if applicable; however, the goal is for Zelis to negotiate with the provider to accept payment and avoid the need for IDR.
- **Costs:** There will be no additional costs for our clients associated with pricing the OON claims. As specified in the No Surprises Act, if a claim goes to IDR, the costs of arbitration would be charged to the client's plan if the plan loses in IDR.

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EOB Requirements-Model Notice

- **Rule Effective January 1, 2022**

- Per the IFR, Plans must post on a public website and include on each EOB for services subject to the No Surprises Act.
 - » the restrictions on balance billing in certain circumstances;
 - » any applicable state law protections against balance billing;
 - » the requirements under the No Surprises Act; and
 - » information on contacting appropriate state and federal agencies in the case that an individual believes that a provider or facility has violated the restrictions against balance billing. A Model Notice has been issued.
- **HPI Solution:** We will issue the Model Notice with EOBs and we will post the Notice on our public website.
- **Costs:** There will be no costs for our clients associated with issuance and posting of the Model Notice.

Plan ID Cards

- **Rule Effective Plan Year Start on or after January 1, 2022**

- Cards must include
 - » In-Network (INN) and Out-of-Network (OON) Deductibles;
 - » INN and OON Out-Of-Pocket Limits; and
 - » consumer assistance information (phone number and website).
- **HPI Solution:** We will re-issue all existing clients' ID cards starting with plan year start dates January 1, 2022 and after to include all required information. New clients on or after January 1, 2022 will also receive our new ID cards including all required information.
- **Costs:** There will be no costs for our clients associated with issuance of ID cards.

Advanced EOBs

- **Pursuant to the Departments' August 20, 2021 FAQ, enforcement is deferred until further federal guidance is issued (previously had been effective January 1, 2022).**

- Plans must provide to a member or provider upon request, the estimated costs of procedures and services, including the additional costs of Out-of-Network (OON) providers. The request for an Advanced EOB must include the billing and diagnostic codes for the anticipated services. The Advanced EOB must then be provided within one business day of request for scheduled procedures (three business days if the request is made at least 10 business days before the scheduled procedure).
- **HPI Solution:** We are waiting for further federal guidance.
- **Costs:** We do not expect there will be any costs for our clients associated with Advanced EOBs; however, we will confirm after the additional federal guidance is issued.

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Price Comparison Tool

- **Pursuant to the Departments' August 20, 2021 FAQ, enforcement of the price comparison tool will be deferred to January 1, 2023 to align with the Transparency Tool requirements of the Transparency in Coverage Final Rule (previously had been effective January 1, 2022). However, the Price Comparison Tool may be rescinded pending rulemaking by the Departments to determine if the requirements of the Transparency Tool satisfy the Price Comparison Tool.**
 - Plans must create and maintain a web-based price comparison tool for use by members. The tool must include out-of-pocket cost comparisons for various services by an In-Network (INN) provider for a specific geographic region and plan year. This is a general comparison tool only. It is not the full Plan specific estimates required under the full Transparency Tool.
 - **HPI Solution:** We are waiting for further federal guidance.
 - **Costs:** If the Price Comparison Tool is rescinded, there will be no costs. See above cost information related to the Transparency Tool.

Continuity of Care

- **Pursuant to the Departments' August 20, 2021 FAQ, the effective date of the Rule is delayed until further rulemaking is issued with an applicable effective date. However, plans must still use a good faith, reasonable interpretation of the rules to begin implementation,**
 - Plans are required to allow “continuing care” patients, including those in an active course of treatment or who have a life-threatening illness, to continue to see their provider with In-Network (INN) cost sharing if the provider’s contract is terminated. These protections apply for a continuing care patient for up to 90 days.
 - **HPI Solution:** We will administer the Continuity of Care requirements for all applicable members in accordance with the Rule.
 - **Costs:** There will be no costs for our clients associated with the Continuity of Care requirements.

Provider Directories

- **Rule Effective January 1, 2022**
 - Plans must ensure provider directories are current and accurate, with regular verification of provider contract status and updates required at least once every 90 days.
 - If a member receives services from a provider who was out of network but the member was told the provider was in network (due to the directory not being updated on time or other error), the member can only be charged the in-network cost share amounts.
 - **HPI Solution:** Our network partners will update and maintain their provider directories in accordance with the requirements of the Rule. Links to our clients’ networks and provider directories are posted on our website. HPI will also apply the in-network cost share amount in accordance with the Rule as applicable.
 - **Costs:** There will be no costs for our clients associated with the provider directory requirements.
- [Compliance FAQ - The No Surprises Act](#)

Enhancements to the Mental Health Parity and Addiction Equity Act (MHPAEA)

- **Rule:**

- The new enhancements to the MHPAEA issued under the Consolidated Appropriations Act 2021 require plans to perform and document comparative analyses of the design and application of non-quantitative treatment limitations (NQTLs) (e.g., preauthorization requirements, network sufficiency, medical management standards) applicable to mental health and substance use disorder (MH/SUD) benefits. The analysis must be provided, upon request, to the secretaries of HHS, DOL, and Treasury. The DOL has issued a Self-Compliance Tool found at www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/self-compliance-tool.pdf, which plans can use to conduct the analysis.

- Federal guidance advises Plans to use the Self-Compliance Tool which covers not only NQTL analysis, but also quantitative treatment limitations (QTLs) (e.g. copays, deductibles, coinsurance).

- **HPI Solution:**

- » HPI will assist our clients to help them comply with the new enhancements to MHPAEA by providing NQTL data and reporting upon request for clients to use when they complete the Self-Compliance Tool for their plans.
- » We will assist those clients for whom we perform medical management services. If the client outsources its medical management to another vendor, the client will need to engage with that vendor for the NQTL analysis.
- » We have contracted with an outside actuarial firm to perform the QTL testing upon a client's request.

- **Costs:** The costs for the QTL analysis and calculations and the NQTL comparative analysis services will be \$2,000.

- [Compliance FAQ - Mental Health Parity and Addiction Equity Act \(MHPAEA\)](#)

Thank you for your patience with HPI as we work and move forward with understanding, implementing, and communicating the impacts of the new regulations. If you have any questions, please feel free to reach out to your HPI Account Services Team.

The information in this Compliance Alert is intended to provide a summary of our understanding of recent regulatory developments which may affect our clients' plans. It should not be construed as specific legal advice or legal opinion.