

Regulations Provide for More Cost Transparency in Health Coverage

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The federal Departments of Health and Human Services, Labor, and the Treasury (collectively, the **Departments**) have jointly issued final regulations that are intended to provide for more transparency in health coverage (the **Regulations**). The Regulations have important implications for employer sponsors of certain group health plans (**Plans**) and health insurers. The Regulations do not apply to health plans that are grandfathered under the Affordable Care Act, health reimbursement arrangements, certain other account-based group health plans, or short-term limited duration insurance. The Regulations require two key forms of disclosures (collectively, the **Disclosures**) in order to provide for this improved transparency:

- **Self-Service Disclosure.** First, the Regulations require Plans and insurers in the individual and group markets to disclose certain cost-sharing information upon request to a participant, beneficiary, or enrollee (or his or her authorized representative), including (a) an estimate of the individual's cost-sharing liability for covered items or services furnished by a particular health care provider and (b) information regarding any required prerequisites to coverage (such as prior authorization or step therapy) that are applicable (the **Self-Service Disclosure**). Plans and insurers are required to make this information available through an Internet-based self-service tool and, if requested, in paper form, thereby allowing a participant, beneficiary, or enrollee (or his or her authorized representative) to obtain an estimate and other information regarding his or her out-of-pocket expenses prior to incurring a claim for health care services.

The Self-Service Disclosure must be available for plan (or policy) years beginning on or after January 1, 2023, with respect to an initial list of 500 designated health care items and services and for plan (or policy) years beginning on or after January 1, 2024, with respect to all covered health care items and services.

- **Public File Disclosure.** Second, the Regulations require Plans and insurers to disclose in-network provider negotiated rates, historical out-of-network allowed amounts, the associated billed charges, and negotiated rates for prescription drugs through three machine-readable files posted on an Internet website (the **Public File Disclosure**). The Departments intend to issue future guidance regarding the specific format for and manner of posting these files. The files must be updated monthly and made publicly available and accessible to any person free of charge and without preconditions (such as establishment of a user account and password).

The Public File Disclosure must be available for plan (or policy) years beginning on or after January 1, 2022.

The Regulations specifically permit Plans to delegate the preparation and administration of the Disclosures to their insurers (for fully-insured Plans) or to a third-party service provider (such as a claims administrator or pharmacy benefit manager, for self-funded Plans). Such delegation must be made pursuant to a written-agreement between the parties. **Note:** Although the dates for complying with the Regulations are not imminent, service providers and insurers will likely soon begin building

the technical infrastructures needed to support the Disclosures, and if so, plan sponsors should anticipate entering into the required written agreements with their service providers or insurers beginning next year. The Regulations confirm that in the case of self-funded Plans, even if a Plan delegates the preparation and administration of its Disclosures to a service provider via a written agreement, the Plan retains the obligation for legal compliance of its Disclosures with the Regulations. Consequently, it is important that employer-sponsors of self-funded Plans ensure that any written disclosure agreements with their service providers contain appropriate indemnification language to protect the Plan and the plan sponsor from liability in the event of non-compliance by service providers with the Regulations. The Regulations are available [here](#). The Agencies' Fact Sheet is available [here](#). The press release regarding the Regulations is available [here](#).