

Final Rule Requires Health Plans to Disclose Prices for 'Shoppable' Care

Group plans will provide pricing data through an online self-service tool

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In a final rule released Oct. 29, federal agencies detail new requirements for employer-sponsored group health plans to provide plan enrollees with estimates of their out-of-pocket expenses for services from different health care providers.

Under the Transparency in Coverage final rule (<https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/CMS-Transparency-in-Coverage-9915F.pdf>)—issued by the Departments of Labor (DOL), Treasury, and Health and Human Services (HHS)—self-insured group health plans and insurance companies will make this information available through an online self-service tool, so enrollees can shop and compare costs for services before receiving care.

HHS's Centers for Medicare and Medicaid Services also posted a related fact sheet (<https://www.cms.gov/newsroom/fact-sheets/transparency-coverage-final-rule-fact-sheet-cms-9915-f>).

The guidance is part of the federal government's attempt to create price competition in the health care marketplace. It follows a final rule requiring hospitals to publish their prices online (www.shrm.org/ResourcesAndTools/hr-topics/benefits/Pages/health-care-price-transparency-outlook.aspx) for standard charges, including rates negotiated with providers. That rule, to take effect in January 2021, has been challenged in court (<https://www.fiercehealthcare.com/hospitals/appeals-court-skeptical-aha-lawsuit-over-hhs-price-transparency-rule>) by hospital industry groups.

The Transparency in Coverage rule requires plans and insurers to disclose in-network rates negotiated with health care providers, payments made to out-of-network providers and prices for prescription drugs. The information must be available online or on paper, if requested.

"Plans and insurers have flexibility to create these tools, but the [online tool] should enable users to search for cost-sharing information from a specific in-network provider (<https://www.healthaffairs.org/doi/10.1377/hblog20201101.662872/full/>) or all in-network providers using a billing code ... or a descriptive term (such as 'rapid flu test')," blogged Katie Keith, a former research professor at Georgetown University's Center on Health Insurance Reforms and a contributor to the Health Affairs blog.

Health insurers and group health plan sponsors "have to ensure that all plan participants have access to critical advance-pricing information," according to a blog post by MZQ Consulting. "However, plans have a relatively short amount of time to build complex systems (<https://www.mzqconsulting.com/blog/on-transparency-and-voting-power-is-in-the-details>) to support information requests."

Phase-In Period

The rule will begin to take effect in January 2022 but will not take full effect until 2024. During the phase-in period:

- Rates for all covered items and services negotiated with in-network providers, historical payment amounts made to out-of-network providers, and in-network negotiated rates and historic net prices for all covered prescription drugs are required to be made public for plan years that begin Jan. 1, 2022.

- Cost-sharing information for over 500 "shoppable services" must be made available to enrollees for plan years beginning Jan. 1, 2023.
- Cost-sharing information must be disclosed for all services for plan years beginning Jan. 1, 2024.

Employers sponsoring group health plans should begin to discuss compliance steps with their insurance carrier or, if self-insured, their third-party administrators, benefit advisors said.

Shoppable Care

"We want every American to be able to work with their doctor to decide on the health care that makes sense for them, and those conversations can't take place in a shadowy system where prices are hidden," said HHS Secretary Alex Azar. "With more than 70 percent of the most-costly health care services being shoppable, Americans will have vastly more control over their care," leading to lower costs and better health outcomes, he said.

"If health care providers, health insurers and group health plan third-party administrators can pay claims and issue explanations of benefits *after* we've incurred health care expenses, why couldn't they disclose those costs and covered benefit amounts *before* we incur the health care expenses? (<https://www.benefitslawadvisor.com/2019/11/articles/transparency-in-coverage/stimulating-consumerism-in-health-care-by-revealing-costs/>)," asked Monique Warren, a principal at the White Plains, N.Y., office of law firm Jackson Lewis, when the proposed rule was released last year. "Many have no idea how much the physician's visit will cost before going to the appointment, much less how much the blood test or MRI the doctor orders will cost."

According to Chatrane Birbal, vice president of public policy at the Society for Human Resource Management, "providing information about health coverage and services, and empowering Americans to use this information to be better consumers of their health care are goals employers share with policymakers."

Implementation and Cost Concerns

While transparency in health care pricing is generally welcomed by employers, they have also raised concerns about the cost and complexity of meeting the new price-disclosure obligations.

Susan Nash, a partner at law firm Winston & Strawn in Chicago, observed last year that "employers may balk at the cost of preparing the online or mobile app-based cost-estimator tools, or purchasing such tools from vendors."

SHRM, Birbal said, is a member of the Partnership for Employer-Sponsored Coverage (P4ESC), an advocacy alliance representing businesses of all sizes. P4ESC submitted a comment letter on the proposed rule (<https://static1.squarespace.com/static/5a5ceeaf49fc2b12ef547012/t/5e307c34d30cb9303f50fbb7/1580235828921/P4ESC+CMS9915P+Transparency+in+Coverage+012820.pdf>) stating that it "agrees that more information is needed to help both employers and employees make informed decisions regarding health care costs," while noting that there were "complex operational and compliance issues with regard to contracting with third-party administrators (TPAs), ownership of data, and building and operating new information technology (IT) systems."

When P4ESC asked self-insured ERISA employers whether they would build a new IT system to gather and disseminate required information or contract with a TPA to comply, respondents said they would likely contract out to a TPA because the employer does not have all of the charge data nor the capability of collecting much of the data.

"Employers indicated that contracting with a TPA for these requirements would come at a significant compliance cost to the employer," the group said. "As employers are making the decision to offer coverage and determine which type of coverage to offer their employees, a critical aspect of this deliberation is the administrative compliance costs and complexities associated with the coverage."

Related SHRM Articles:

Is There a Future for Price Transparency in Health Care? (www.shrm.org/ResourcesAndTools/hr-topics/benefits/Pages/health-care-price-transparency-outlook.aspx), *SHRM Online*, November 2019

Proposed Rule Would Require Health Plans to Disclose Out-of-Pocket Costs by Providers (www.shrm.org/resourcesandtools/hr-topics/benefits/pages/proposal-requires-health-plans-to-disclose-out-of-pocket-costs-for-services.aspx), *SHRM Online*, November 2019

Can Tech Tools, Incentives and Advice Inspire Health Care Shopping? (www.shrm.org/ResourcesAndTools/hr-topics/benefits/Pages/tech-tools-incentives-advice-inspire-health-care-shopping.aspx), *SHRM Online*, October 2018

Health Care Shopping Tools Often Go Unused (www.shrm.org/resourcesandtools/hr-topics/benefits/pages/health-care-shopping.aspx), *SHRM Online*, May 2016

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