

# Transparency in Coverage, CAA Transparency Rules & the No Surprises Act

## Questions to Ask Your Carrier or TPA

It is important for employers to ensure their carrier or third-party administrator (TPA) can meet the multitude of new requirements that come with the Transparency in Coverage Final Rule (TiC Final Rules), the Consolidated Appropriation Act (CAA) transparency rules and the No Surprises Act. For fully insured plans, most of the requirements discussed here will be the responsibility of the carrier (often referred to as the “payer” in many of the rules). However, for self-insured plans, the employer is ultimately responsible for ensuring that their plans are in compliance. But in this case, employers will need to rely on their **TPA or plan administrator** to implement most of the things necessary to comply with the rules. In addition to verbal conversations and assurances, employers should review service agreements and contracts to make sure they are protected and try to shift ultimate responsibility to the TPA through contractual language, including indemnity provisions. We have outlined a few questions and talking points that benefits advisors can use to assist in doing their due diligence with **TPAs and plan administrators**.

## Now and Year 2022

For all the requirements listed here you should review contracts to determine if changes need to be made to any indemnity provisions or other protections need to be included in the contract or service agreement to protect the employer in the event the TPA does not comply with a relevant provision.

### No Gag Clause in Provider Contracts

Effective December 27, 2020

- Review existing contracts and service agreements
- Ask TPA for confirmation that gag clauses prohibited by the CAA do not exist in current contracts or service agreements
- Amend contracts and service agreements as needed

### ID Card and Provider Directory Accuracy

Effective for Plan Years Starting January 1, 2022

**⚠ NOTE:** Frequently asked questions (FAQs) say no further guidance is coming soon, so plans must make a good faith attempt to comply.

- Confirm identification (ID) cards will include required information
- Ask for TPA standards on provider directory maintenance (i.e., at least every 90 days)

## Surprise Billing Rules and Balance Billing Protection, Including Notice Requirements

Effective for Plan Years Starting January 1, 2022

- Confirm the carrier or TPA is on track to comply with these rules by January 1, 2022
- Confirm the carrier or TPA will include the required Notice with explanation of benefits (EOBs) in correspondence and on the administrator's public-facing website
  - The employer, as plan sponsor, should verify that this is being handled by the carrier or TPA on their behalf, as applicable
    - Confirm that the carrier for a fully insured plan subject to state surprise billing requirements will include the specific state language into the new federal notice and distribute appropriately
  - Available [Surprise Billing Model Notice](#)
- Update any plan communications that describe how payment for emergency or other services are calculated to reflect these new rules (or review communications that the carriers or TPAs provide)
- Confirm the approach the TPA is using to calculate the Qualified Payment Amount (QPA)
- Confirm how the TPA will determine what to pay for the Initial Payment Amount
- Confirm the approach the TPA will use for negotiation with providers on the out-of-network (OON) rate amount
- Confirm the approach the TPA will use for independent dispute resolution (IDR) arbitration

## Continuity of Care

Effective on January 1, 2022

- Confirm the carrier or TPA will be able to identify and notify individuals eligible for transitional care as well as provide an opportunity for participants to request transitional care using a good faith, reasonable interpretation of existing guidance

## Health Plan Data Files

Effective Beginning July 2022

Plans and insurers must publicly post three machine-readable files (in-network rate file, allowed amount file and prescription drug file).

**⚠ NOTE:** the Prescription Drug File enforcement is delayed indefinitely.

- Ensure TPA will provide disclosures with the specific information and formatting required on the machine-readable files
- Ensure TPA will update the information on a monthly basis
- Determine where the information will be posted

## Years 2023 and 2024

### TiC Final Rules: Advanced Cost Estimate “Price Comparison Tools”

Effective Beginning in 2023 and 2024

- Upon request, plans and insurers must disclose estimates of cost-sharing for covered healthcare items and services from a particular provider
  - Minimum of 500 items and services listed effective January 2023 and all items and services listed effective January 2024
- Confirm with carrier or TPA that they are on track to provide this information via web tool and paper within required timeframe

### General

Ask the carrier or TPA for a detailed breakdown of additional costs, if any, for the resources or services they will provide.

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