



# Compliance Services Alert

Aug. 25, 2021

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## Feds bow to the inevitable, defer deadlines for key transparency requirements

Federal regulators, acknowledging the extreme difficulty or impossibility of health plan compliance with recent cost transparency laws and regulations by plan years beginning in 2022, have deferred enforcement deadlines for many of these requirements. One key deadline is deferred six months, another 12 months, and several others are deferred indefinitely, pending federal guidance that is not expected until next year at the earliest.

Other imminent compliance deadlines, however, for some of the (relatively) easier transparency requirements remain in place, although regulators note that guidance on those requirements is not imminent and that in the meantime, healthcare plans and insurers should comply by applying a good faith interpretation of the law.

### Background

Since late last year, group healthcare plan sponsors and their insurers have been staring down the barrel of a variety of cost transparency requirements bearing compliance deadlines that are now just around the corner. Some requirements were imposed by Trump administration regulations, but many others were imposed by the Consolidated Appropriations Act (CAA) passed by Congress late last year.

The deadline for the most challenging requirements was the first day of the 2022 plan year, with other requirements carrying compliance deadlines of a few days earlier on Dec. 27, 2021. We have previously detailed these myriad requirements in alerts, webcasts and in our 2021 Employer Playbook, the latter available from your Lockton account team.

Recognizing the complexity faced by plan sponsors and insurers, and the absence of federal implementation standards with respect to many of the requirements, regulators have pushed off the compliance deadlines for several of the most complex requirements. See the chart below.

Requirement	Original effective dates and deferred enforcement dates	Notes
<p><b>Three machine-readable files</b> (Trump regulations)</p> <p>Maintain three files accessible online reflecting plan payment rates for in-network services, billed charges and allowed amounts for out-of-network (OON) services, and prescription drug costs (i.e., the “three machine-readable files” requirement).</p>	<p>Original: For all three files, plan years beginning on or after Jan. 1, 2022.</p> <p><b>Deferred:</b> For in-network and OON data, the deferred enforcement date is the later of the original date and <b>July 1, 2022</b>.</p> <p>For prescription drug data, the enforcement date is deferred <b>indefinitely</b>.</p>	<p>This transparency requirement does not apply to grandfathered health plans.</p>
<p><b>Price comparison tool</b> (CAA)</p> <p>Provide a price comparison tool allowing plan members to determine via internet site and telephone inquiry their cost-sharing responsibility for care received from certain providers.</p>	<p>Original: Plan years beginning on or after Jan. 1, 2022.</p> <p><b>Deferred:</b> The deferred enforcement date is the first day of the plan year beginning on or after <b>Jan. 1, 2023</b>.</p>	<p>This transparency requirement applies to grandfathered plans. The deferred enforcement date aligns with the effective date for a similar price comparison tool requirement under Trump administration transparency regulations.</p>
<p><b>ID cards showing cost sharing</b> (CAA)</p> <p>Supply identification cards reflecting member cost sharing and other information.</p>	<p>Original: Plan years beginning on or after Jan. 1, 2022.</p> <p>Deadline is not deferred; however, until guidance is issued, plans should implement the requirements applying a good faith interpretation of the law.</p>	<p>This transparency requirement applies to grandfathered plans. Federal authorities will issue guidance after 2021.</p>
<p><b>Advance EOBs</b> (CAA)</p> <p>Supply an advance explanation of benefits (EOB) upon receipt from a provider of a good faith estimate of charges it expects a covered member to incur for a scheduled healthcare service.</p>	<p>Original: Plan years beginning on or after Jan. 1, 2022.</p> <p><b>Deferred:</b> The enforcement deadline for both <i>providers’</i> obligations to supply the good faith estimate of charges, and <i>plans’</i> obligation to supply the advance EOB upon receipt of that estimate, are deferred until federal regulators issue and implement guidance.</p>	<p>This transparency requirement applies to grandfathered plans. Federal authorities will issue guidance after 2021.</p>

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<p><b>Contractual gag clauses (CAA)</b> Prohibition on transparency-related gag clauses in contracts between plans, third-party claim payers, providers and networks; plans must annually submit an attestation of compliance.</p>	<p>Original: In effect.</p> <p>Deadline is not deferred; implementation guidance is not expected, and plans should implement the requirement applying a good faith interpretation of the law.</p>	<p>This transparency requirement applies to grandfathered plans. Federal authorities will, however, issue guidance on how plans must submit the annual attestation.</p>
<p><b>Accurate network directories (CAA)</b> Maintain accurate network directories and apply only in-network cost sharing to out-of-network care received due to an inaccurate network directory.</p>	<p>Original: Plan years beginning on or after Jan. 1, 2022.</p> <p>Deadline is not deferred; however, until guidance is issued, plans should implement the requirements applying a good faith interpretation of the law and apply only in-network cost sharing if a member receives out-of-network care due to an error in the network directory.</p>	<p>This transparency requirement applies to grandfathered plans. Federal authorities will issue guidance after 2021.</p>
<p><b>Surprise billing-related disclosures (CAA)</b> New federal surprise billing rules require that a plan (and an out-of-network provider) limit a member's responsibility for certain out-of-network claims to the in-network cost-sharing amount. The rules also include an arbitration opportunity to settle disputes between plans and out-of-network providers, and disclosure obligations imposed upon plans referring to surprise billing protections.</p>	<p>Original:</p> <ul style="list-style-type: none"> <li>• Limiting member responsibility to in-network amounts: Plan years beginning on or after Jan. 1, 2022.</li> <li>• Arbitration process: Plan years beginning on or after Jan. 1, 2022.</li> <li>• Disclosure obligations: Plan years beginning on or after Jan. 1, 2022.</li> </ul> <p>Deadlines are not deferred, but until federal implementation guidance is issued regarding the arbitration process and disclosure rules, plans should apply a good faith interpretation of the statutory requirements. Federal regulators issued interim final regulations on the cost-sharing limitation aspect of the surprise billing rules earlier in 2021.</p>	<p>This transparency requirement applies to grandfathered plans. Federal authorities will issue guidance regarding the arbitration process and the disclosure obligations after 2021. However, they provided model disclosure language as part of the interim final regulations issued earlier in 2021 on the member cost-sharing limitations; use of the model disclosure is considered good faith compliance with the disclosure obligation in the meantime.</p>

Requirement	Original effective dates and deferred enforcement dates	Notes
<p><b>Continuity of care (CAA)</b> Provides protection for plan members undergoing treatment from an in-network provider that or who transitions to out-of-network; requires a special disclosure.</p>	<p>Original: Plan years beginning on or after Jan. 1, 2022.</p> <p>Deadline is not deferred; however, until guidance is issued, plans should implement the requirements applying a good faith interpretation of the law.</p>	<p>This transparency requirement applies to grandfathered plans. Federal authorities will issue guidance after 2021.</p>
<p><b>Healthcare plan cost reporting (CAA)</b> Plans must disclose to federal authorities the plans' expenditures in a variety of categories, numbers of enrollees, states in which the plan provides coverage, premiums, and rebates and other compensation paid to the plan by drug manufacturers.</p>	<p>Original: First filing due Dec. 27, 2021, and annually thereafter by June 1.</p> <p><b>Deferred:</b> Federal authorities will not require reporting by Dec. 27, 2021, nor by June 1, 2022, but expect to require the first filing by Dec. 27, 2022, reflecting relevant reportable data for 2020 and 2021.</p>	<p>This transparency requirement applies to grandfathered plans. Federal authorities will issue guidance in the future.</p>
<p><b>Broker/consultant compensation disclosure (CAA)</b> Brokers and consultants must disclose to plan fiduciaries the brokers'/consultants' plan-related compensation &gt; \$1,000.</p>	<p>Applies to contracts, relating to ERISA plans, entered into or renewed on or after Dec. 27, 2021.</p> <p>Deadline is not deferred, and is not addressed in recent enforcement deferral guidance.</p>	<p>This transparency requirement applies to grandfathered ERISA plans. Federal authorities will issue guidance in the future.</p>

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