

Elements and Deadline in the No Surprises Act and Transparency in Coverage Rule*

There have been two main developments in recent years with respect to increasing transparency requirements on issuers and plans.

1. Promulgation of the final Transparency in Coverage Rule¹ (TiC) by the Departments of Health and Human Services, Labor, and the Treasury.
2. Passage of the Consolidated Appropriations Act, 2021 (CAA)² which established requirements for insurers with respect to surprise billing (No Surprises Act) and prescription drug data collection (RxDC), removing gag clauses on prices and quality, disclosure of broker compensation, and strengthening mental health parity. transparency.

Transparency in Coverage: Requirements and Deadlines

Publicly Available Machine-Readable Files

- Effective Date: July 1, 2022

Consumer Price Transparency Tool

- Effective Dates:
 - Beginning with plan years on or after January 1, 2023, the cost estimator tool must disclose information on 500 items, services and prescription drugs identified in the final rule.
 - Starting with plan years on and after January 1, 2024, the tool must list all covered items and services including prescription drugs.

Consolidated Appropriations Act, 2021 Requirements

Requirements in The No Surprises Act:

- **Ban Balance Billing**
 - Effective Date: January 1, 2022
- **Resolving Payment Disputes**
 - Effective Date: January 1, 2022
- **Transparency in Plan or Insurance Identification Cards**
 - Effective Date: January 1, 2022

¹ The final rule can be found here: <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/CMS-Transparency-in-Coverage-9915F.pdf>

² <https://www.congress.gov/116/bills/hr133/BILLS-116hr133enr.pdf>

- Current Status: Future rulemaking is planned but until that time there is the expectation of implementation using a good faith, reasonable interpretation of the law.³
- **Good Faith Estimate for Insured Individuals**
 - Effective Date: January 1, 2022
 - Current Status: HHS has released the rules for GFEs for self-pay or uninsured patients. However, the rules for GFEs for insured patients has not been finalized. In September 2022, HHS, Labor, and Treasury released a request for information on Good Faith Estimates for Covered Individuals.⁴ Enforcement is deferred until further rulemaking is issued.
- **Advanced Explanation of Benefits**
 - Effective Date: January 1, 2022
 - Current Status: Enforcement is deferred until further rulemaking is issued. In September 2022, HHS, Labor, and Treasury released a request for information on Good Faith Estimates for Covered Individuals.⁵ Comments were due November 15, 2022.
 - Update: In the most recent Unified Agenda (Fall 2023), the administration said that the Department of Labor is expected to publish a notice of proposed rulemaking in March 2025.⁶
- **Improving the Accuracy Provider Directories**
 - Effective Date: January 1, 2022
 - Current Status: Future rulemaking is planned but until that time there is the expectation of implementation using a good faith, reasonable interpretation of the law.⁷
- **Balance Billing Disclosure Requirements**
 - Effective Date: January 1, 2022
 - Current Status: CMS has released model disclosure language for group health plans and health insurance issuers.⁸
- **Price Comparison Tool:** The price comparison methods required by the CAA are largely duplicative with the TiC, with the exception of the requirement to provide it by phone in the CAA.
 - Effective Date: January 1, 2022
 - Current Status: By plan or policy years beginning on or after January 1, 2023, most group health plans and issuers of group or individual health insurance coverage are required to disclose personalized pricing information for 500 covered items and service to their participants, beneficiaries, and enrollees

³ These enforcement delays was included in an FAQ released by DOL in August 2020. <https://www.dol.gov/sites/dolgov/files/EBSA/about-ehsa/our-activities/resource-center/faqs/aca-part-49.pdf>

⁴ <https://www.govinfo.gov/content/pkg/FR-2022-09-16/pdf/2022-19798.pdf>

⁵ <https://www.govinfo.gov/content/pkg/FR-2022-09-16/pdf/2022-19798.pdf>

⁶ <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=1210-AC14>

⁷ <https://www.cms.gov/files/document/a274577-1b-training-2nsa-disclosure-continuity-care-directoriesfinal-508.pdf>

⁸ <https://www.cms.gov/files/document/model-disclosure-notice-patient-protections-against-surprise-billing-providers-facilities-health.pdf>

through an online consumer tool, by phone, or in paper form, upon request. Cost estimates must be provided in real-time based on cost-sharing information that is accurate at the time of the request.⁹ The price comparison tool for all items and services goes into effect on January 1, 2024.

- **Continuity of Care**

- Effective Date: January 1, 2022
- Current Status: Future rulemaking is planned but until that time there is the expectation of implementation using a good faith, reasonable interpretation of the law.¹⁰

Prescription drug data collection (RxDC)¹¹

- Effective Date:
 - The deadline for the 2020 reference year is December 27, 2021. The deadline for subsequent reference years is June 1st of the calendar year immediately following the reference year.
 - For the 2020 and 2021 reference years: The departments are deferring enforcement of the requirement to submit data for the 2020 and 2021 reference years, as long as the data is submitted by December 27, 2022.

Removing Gag Clauses on Prices and Quality

- Effective Date: The provisions went into effect on December 27, 2020. Attestations start in 2022.
 - Current Status: The provision was self-executing. The Department of Labor released an FAQ with additional details on February 23, 2023.¹² Until that time, the departments were relying on good faith efforts at compliance.

Disclosure of Broker Compensation

- Effective Date: The effective date of the statutory requirements is December 27, 2021. CMS proposed the first reporting period beginning on January 1, 2022.

Mental Health Parity Comparative Analysis

- Effective Date: February 10, 2021¹³
- Current Status: In January 2022, DOL released a report to Congress on this analysis and called for additional regulations around mental health parity compliance.¹⁴

⁹ <https://www.cms.gov/healthplan-price-transparency/plans-and-issuers>

¹⁰ <https://www.cms.gov/files/document/a274577-1b-training-2nsa-disclosure-continuity-care-directoriesfinal-508.pdf>

¹¹ <https://www.cms.gov/sites/default/files/2021-12/RxDC-Reporting-Instructions.pdf>

¹² <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-57.pdf>

¹³ <https://www.cms.gov/files/document/mhpaca-nqtl-presentation-health-insurance-issuers.pdf>

¹⁴ <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/report-to-congress-2022-realizing-parity-reducing-stigma-and-raising-awareness.pdf>