Milliman

Multiemployer Alert

Update on Issues Affecting Taft-Hartley Plans SEPTEMBER 2021

Delayed enforcement of certain provisions of the No Surprises Act and Transparency in Coverage Final Rule

Sean Silva, FSA, MAAA, CEBS | Katy Mohr

The U.S Departments of Labor, Health and Human Services, and Treasury (the Departments) released an FAQ on August 20, 2021, intended to provide guidance regarding the implementation of certain provisions of the Consolidated Appropriations Act, 2021 (CAA) and the Transparency in Coverage Final Rules (TiC Rules).

The CAA, signed into law on December 27, 2020, and the TiC Rules, released November 12, 2020, are intended to protect healthcare consumers from certain surprise bills for out-of-network medical services and increase transparency around medical and prescription drug costs and coverage.

The Departments released an FAQ on August 20, 2021, that defers the effective date for enforcement of several provisions of the CAA and TiC Rules. The intent of this Multiemployer Alert is to provide plan sponsors with information regarding the FAQ and its potential effects on plan sponsors and participants.

PRICE COMPARISON TOOL

The CAA and TiC Rules both include price comparison tool requirements for non-grandfathered group plan sponsors.

The CAA requires non-grandfathered group plan sponsors to create and maintain a web-based price comparison tool and have price comparison information available by telephone for plan years beginning on or after January 1, 2022. The TiC Rules also require group plan sponsors to disclose on a public website and by hard copy (if requested) the price information for 500 common services for plan years beginning on or after January 1, 2023, and for all services for plan years beginning on or after January 1, 2024.

Due to the duplicative nature of these two requirements, the Departments will defer enforcement of the CAA price comparison tool to plan years beginning on or after January 1, 2023, and will plan to release more guidance regarding whether separate tools are necessary to satisfy these requirements.

ADVANCED EXPLANATION OF BENEFITS AND GOOD FAITH ESTIMATE

The CAA mandates that grandfathered and non-grandfathered group health plan sponsors provide an Advanced Explanation of Benefits (EOB) to plan participants for medical appointments for plan years beginning on or after January 1, 2022. The EOBs must include specific information regarding the scheduled services, such as the network status of all providers and facilities and an estimate of the out-of-pocket cost of the services to the participant.

Due to feedback from the public regarding the challenges of developing the technical infrastructure necessary for all stakeholders to comply with this mandate, the Departments will defer enforcement of this mandate and issue more guidance after January 1, 2022.

PHARMACY AND DRUG COST REPORTING

The CAA mandates that non-grandfathered group plan sponsors annually disclose certain metrics regarding pharmacy and drug costs to the Secretary of Health and Human Services, with the disclosure data for 2020 originally required by December 27, 2021, and all future disclosures on June 1 of each year.

Due to potentially significant operational challenges that plan sponsors may encounter in complying with these reporting requirements, the Departments will defer enforcement of this mandate until December 27, 2022, for 2020 and 2021 data.

TIC RULES – MACHINE-READABLE FILES

The TiC Rules mandate that, for plan years beginning on or after January 1, 2022, non-grandfathered group plan sponsors must make in-network provider rates, various out-of-network amounts, and historical net prices for prescription drugs available on a public website through three machine-readable files, with the information to be updated on a monthly basis.

Due to the potentially considerable time and effort required to make the machine-readable files available in the form and manner required, the Departments will delay the enforcement date of the in-network and out-of-network disclosures until July 1, 2022. In addition, the Departments will delay the enforcement pertaining to prescription drug pricing indefinitely.

MORE INFORMATION FORTHCOMING

The Departments specify that more information will be released after January 1, 2022, for the identification card requirements, prohibition on gag clauses, continuity of care protections, balance-billing disclosures, and provider directory provisions, and that group plan sponsors should continue to implement good faith interpretations of these provisions in the meantime.

Milliman

IT TAKES VISION®

Milliman is among the world's largest providers of actuarial and related products and services. The firm has consulting practices in life insurance and financial services, property & casualty insurance, healthcare, and employee benefits. Founded in 1947, Milliman is an independent firm with offices in major cities around the globe.

milliman.com

CONTACT

Sean Silva
sean.silva@milliman.com

Katy Mohr
katy.mohr@milliman.com

