

June 26, 2022

TiC Public Disclosure Requirement Reminder - July 1st Deadline


Beginning July 1, 2022, employers that maintain group health plans will be required to **publicly disclose** their plan's *in-network provider rates*, *out-of-network provider allowed amounts* and *billed charges*. This requirement is applicable to both fully insured and self-funded group health plans and falls under the [Transparency in Coverage final rule](#) ("TiC Rule") issued on October 29, 2020. However, certain plans are excluded, namely "retiree only plans," HRAs, FSAs, excepted benefits (i.e., standalone dental/vision), and other plans that are "grandfathered" under the Affordable Care Act. In addition, the Departments of Labor, Health and Human Services (HHS), and Treasury (the "Departments") have issued guidance in the form of two [FAQs \(see original FAQ\)](#) regarding the implementation of certain reporting provisions to provide clarity on the required disclosures identified in the TiC Rule (specifically prescription drugs).

The basic requirement under the TiC Rule dictates that employers make available on an internet website machine-readable files ("MRFs") containing the criterion established for the aforementioned disclosures. Technical guidance regarding the format of these files is posted on HHS' website ([see here](#)). In addition, these MRFs must consider the following delivery requirements:

- There can be no fees/charges to access the files;
- The user cannot be required to establish a user account, password, or other credentials; and
- The user cannot be required to submit any personally identifiable information such as a name, email address, or telephone number.

However, certain provisions exist under the TiC Rule to help employers comply with the disclosure requirements. The first provision is aimed at preventing duplication, which only applies to fully insured plans. Under this provision, fully insured plans can shift liability for production and disclosure of the files onto the health insurance issuer (or carrier), if services are included in a written contract. Most carriers should be more than willing to assist fully insured group health plans, because the TiC Rules require the carriers to perform these disclosures independently as well.

Under the second provision, self-insured (and level funded) group health plans can contract with a third-party administrator ("TPA") to host the files on the TPA's publicly available website. However, if the TPA fails to satisfy the requirement under this provision, self-insured plans would still be on-the-hook for violation of the TiC Rule. Thus, self-insured plans should try to draft

The logo for EXUDE, with the word in a white, outlined, sans-serif font inside a white rectangular border.The text 'LATEST EDITION:' in a white, bold, sans-serif font.The text 'INDUSTRY INSIDER' in a large, bold, orange, sans-serif font.A dark blue background with a grid of white lines and various white icons representing technology, law, and business. On the left, there is a circular inset showing a person's hands typing on a laptop keyboard.

contracts with their TPAs to include indemnification rights against the TPA for any such failures. Additionally, the TiC Rule and FAQs display some ambiguity as to whether the TPA's hosting of the information is enough to satisfy the requirement or if the self-insured plan must also post the TPA's link on its own public facing website. Accordingly, we recommend self-insured plans follow the most conservative approach and post the link on their own public facing websites. (Note, this site cannot be an intranet or internal benefits/HRIS site.) At this time, there is no requirement on where or how prominent the link must be on the website; however, the link should not be intentionally hidden or hard to locate.

For additional questions regarding this or other compliance issues, please reach out to your Exude Consultant.

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