

## MEMORANDUM



**From: SBMA**

**To: Sponsors to Minimum Essential Coverage (MEC) Plans**

**Date: June 30, 2022**

**Re: Transparency in Coverage Final Rules**

---

The purpose of this memorandum is to alert SBMA clients that sponsor SBMA's Minimum Essential Coverage (MEC) plans to certain changes in the law governing group health plan transparency, and to let our clients know what steps SBMA is taking to assist with compliance.

### **Background**

In 2020, the Departments of Health and Human Services, Labor, and Treasury/IRS issued final rules governing group health plan transparency. These rules, which are known and referred to as the "Transparency in Coverage Final Rules" or "TiC Final Rules" generally require group health plans and health insurance issuers to disclose on a public website detailed pricing information in three separate machine-readable files:

- In-network provider negotiated rates for covered items and services (the "In-network Rate File");
- Historical payments to and billed charges from out-of-network providers (the "Allowed Amount File"); and
- In-network negotiated rates and historical net prices for covered prescription drugs (the "Prescription Drug File").

The files must be publicly available and accessible free of charge without any restrictions. Implementation of the Prescription Drug File has been delayed. As a result, the Prescription Drug File is not currently required.

While the transparency in coverage rules were slated to go into effect January 1 of this year, the effective date was pushed forward by guidance released in August of last year to July 1, 2022.

### **Action Steps**

TiC Final Rules impose the requirement to post separate machine-readable files on a public website on *group health plans*. The SBMA MEC plans are self-funded. As a result,

the legal obligation to comply rests with the employer/plan sponsor. SBMA can and of course will assist.

While the TiC Final Rules are not entirely clear on the subject, the consensus is that self-insured employers should post a link on their websites to where the machine-readable files are publicly available.

**NOTE:** The law refers to a “public website.” Nothing in the TiC Final Rules specifies where that website is located. Additional guidance from federal agencies on this topic would be helpful.

The TiC Final Rules provide that a self-insured group health may satisfy the machine-readable-file requirements by entering into a written agreement under which another party (here, SBAM), will make public the required information. (SBMA plans to update its user agreements as they come up for renewal.) This rule is referred to as a “non-duplication” rule: As long as the information may be accessed somewhere, it need not be duplicated elsewhere. While the TiC Final Rules are not clear on this point, the consensus view is that employers may satisfy their compliance obligations by simply providing a link to the location where the machine-readable-files are publicly available. There is an SBMA website, which you can access here: <https://www.sbmabenefits.com/no-surprises-act-resource-page/>.

Each employer that sponsors a MEC plan should add a button on their website designated “Transparency in Coverage,” along with the following text:

“Click here to access information about our company’s group health plan’s payments to, and billed charges from, providers.”

The TiC Final Rules assume that every employer/plan sponsor has a website; it offers no guidance to an employer that does not. Where this is the case, we suggest that employers provide a notice to plan participants advising them that information about the company’s group health plan’s payments to and billed charges from providers is available on the SBMA website.

## **Conclusion**

The transparency in coverage rules are new and complicated. They are part of a larger set of transparency rules that affect all aspects of U.S. health care and health care financing. The rules described above are the first that affect employers and employer-sponsored group health plans. There is still a good deal of guidance yet to come, which we hope will include much need clarification of what is required of employers. The steps set out in this memorandum are a start.

Please contact the SBMA Compliance Department at [compliance@sbmamec.com](mailto:compliance@sbmamec.com) with any questions.