**New Guidance on Posting Machine-Readable Files**

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On August 19, a set of frequently asked questions (FAQs) was jointly released by the Department of Labor, Department of Health and Human Services, and the Treasury Department (collectively, the Departments) that clarified the employer’s responsibility regarding the posting of machine-readable health plan cost data files (MRF). The guidance clarifies that as long as there is a written agreement in place, an employer is not required to post a link on their own organization’s public website to files that are made public by the carrier or employer’s plan administrator.

## **Background**

Under the Transparency in Coverage (TiC) Final Rule, effective July 1, 2022, health plans (which include employer sponsored health plans) and carriers must publicly post pricing data known as the “machine-readable files” or “MRFs.” The point of releasing these cost data files has nothing to do with communication to employees or plan participants. Instead, in the name of health cost transparency, this rule requires insurance companies and self-insured plans to publicize what they pay providers for medical services and make that information available to the public.

The applicable files should have been available July 1, 2022, for any plan years beginning January 1, 2022 through July 1, 2022. For plan years beginning after July 1, 2022, the files should be made available during the first month of the plan year.

## **Posting Requirements**

Carriers and plans are required to publicly disclose in a machine-readable file the following data:

* In-network provider rates for covered items and services; and
* Out-of-network allowed amounts for covered items and services.

The TiC Final Rule requires the machine-readable files to be accessible free of charge, without having to establish a user account, password, or other credentials, and without having to submit any personally identifying information such as a name or email address. The machine-readable files must be updated monthly and must be available in a form and manner specified in any guidance issued by applicable regulatory agencies.

## **Compliance Responsibility**

Carriers and administrators have begun to issue communications outlining how they plan to meet these requirements. One of the requirements of particular interest to employers is that the data must be posted on a publicly available website. Carriers and administrators have interpreted this requirement differently, creating some confusion among employers.

On August 19, 2022, the Departments released guidance in the form of FAQs that clarified employers are not required to post a link to the data files on their organizations website as long as there is a written agreement in place that ensures that the carrier or administrator will make the relevant files publicly available in compliance with the requirements.

* **Fully-Insured Plans**: Employers sponsoring fully insured medical plan options can rely on the carrier to satisfy this requirement. The TiC Final Rule specifically states that if the employer has a “written agreement” with the carrier indicating that the carrier is posting the information, then the employer does not need to take further action. In this case CMS clarifies that the carrier is liable of the files are not made available according to the requirements.
* **Self-Insured Plans**: The Departments also make it clear that self-insured employers can also rely on their administrator to make the necessary files publicly available, again as long as there is a written agreement in place. However, in the case of a self-insured plan, if the employer’s vendor does not post the files in accordance with the regulations the employer/plan sponsor is liable.

## **Written Agreement**

There is currently no specific guidance on what constitutes a valid written agreement between the employer and their carrier or TPA. Employers may be able to meet this requirement in a variety of ways:

* Obviously, the best approach would be to include specific machine-readable file language in the group contract or administrative service agreement. However, employers may not be able to get carriers or administrators to agree to contractual language changes
* Alternatively, employers could request confirmation of the vendor’s commitment to make the files available as required and receive a response specific to that employer’s plans.
* Many carriers and administrators have already sent something in writing (email, letter, etc.) from carrier or TPA stating they will make relevant files publicly available. It is not clear whether this constitutes a valid written agreement. Guidance on this from the Departments would be appreciated.
* Many group insurance contracts and administrative services agreement already have more general language regarding carrier or vendor compliance with applicable laws and regulations. Again, it would be helpful if the Departments would provide guidance as to whether this is sufficient.

## **Summary**

It is welcome news that employers do not have to worry about posting a link to the data files on their own organization’s public website. As described above, employers should make sure they have something in writing in place with their carrier or administrator ensuring that the files will be posted in compliance with the applicable rules.

The FAQs may be found at <https://www.cms.gov/files/document/faqs-part-55.pdf>**.**

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