Full Transparency Is Needed to Help Lower Health Care Costs

Congress Must Act During the "Lame Duck" Session

Codifying and Enhancing the Transparency Rules

The Problem: Increasing the public disclosure of pricing information as required under the Transparency in Coverage (TiC) Rule was intended to empower health plan sponsors and aid them in lowering health care costs by, for example, re-negotiating provider network contracts and developing cost-containment and disease management programs.

Unfortunately, pricing information disclosed by insurance carriers (entities that own the provider network utilized by fully insured and self-insured health plans) is often unusable because inputs in the Machine-Readable Files (MRFs) are unreadable, incomplete, or inaccessible.

Likewise, compliance with the Hospital Transparency Rule remains woefully low despite the threat of increased penalties. Improvements have been made to how pricing information can be communicated through a hospital's MRFs, but in many cases the pricing information in these MRFs is still not consumable by the end-user.

The Solution: Codifying the Hospital and TiC Rules will memorialize these very important requirements in statute, protecting them in the case of a likely court challenge in the wake of the elimination of *Chevron deference*. It will also encourage Congress to improve and expand on both of these Rules by, for example, requiring pricing information from additional providers such as ambulatory surgical centers, clinical diagnostic labs, and imaging centers through regular order, debate, and amendment.

Congress must also keep insurance carriers and hospitals accountable when it comes to posting complete and accurate pricing information in their MRFs. This can be accomplished by requiring an authorized representative from the carrier/hospital to "attest" to the accuracy of the pricing information and compliance with the law, and by increasing penalties for non-compliance.

Congress should also leverage emerging technology by requiring the pricing information to be transmitted to plan sponsors and patients in real-time, directly through an Application Program Interface (API). Congress must also take steps to align and consolidate the overlapping transparency provisions included in the Consolidated Appropriations Act of 2021 (CAA) and the TiC Rule.

Full Transparency Is Needed to Help Lower Health Care Costs

Congress Must Act During the "Lame Duck" Session

Access to Health Claims Data

The Problem: The CAA's "Gag Clause Prohibition" was intended to require owners of the provider network (i.e., insurance carriers) to share health claims data with health plan sponsors. However, despite this requirement being effective since 2021, insurance carriers continue to refuse to share health claims data with employers and unions who sponsor health benefits for employees and families.

These sponsors need their own health claims data to satisfy their ERISA fiduciary duties to keep health plan costs low and act in the best interest of plan participants. If plan sponsors cannot access their plan's health claims data, they cannot satisfy their ERISA fiduciary duties.

The Solution: Congress needs to strengthen the "Gag Clause Prohibition" by imposing penalties on owners of the provider network that refuse to share complete and accurate health claims data with the plan administrator, especially in cases when a plan sponsor cannot rightfully "attest" that there are no restrictive "gag clauses" in their health plan's agreements.

Congress must also allow plan sponsors to share their health claims data with service providers hired by the sponsor to assist in the administration of the health plan. This means that the "Gag Clause Prohibition" requirements must be extended to non-disclosure agreements and agreements in which the health plan may not be the contracting party, including agreements between the plan sponsor and medical providers and/or the insurance carrier.

Third Party Administrators (TPAs) and Pharmacy Benefit Managers (PBMs) Must Furnish Compensation Disclosures, Too

The Problem: Congress always intended for TPAs and PBMs that perform specified services to furnish a "408(b)(2)(B) compensation disclosure" to health plan fiduciaries, just like brokers and consultants are required to do. However, to date, TPAs and PBMs argue that they are not subject to this compensation disclosure requirement because the statute only refers to "brokers" and "consultants."

The Solution: Congress must amend ERISA section 408(b)(2)(B) to clarify that TPAs and PBMs must furnish a compensation disclosure to the plan fiduciary if they perform the types of services currently listed in the statute.