



MarshMcLennan
Agency

Transparency in Coverage (TiC)

Frequently Asked Questions (FAQ)

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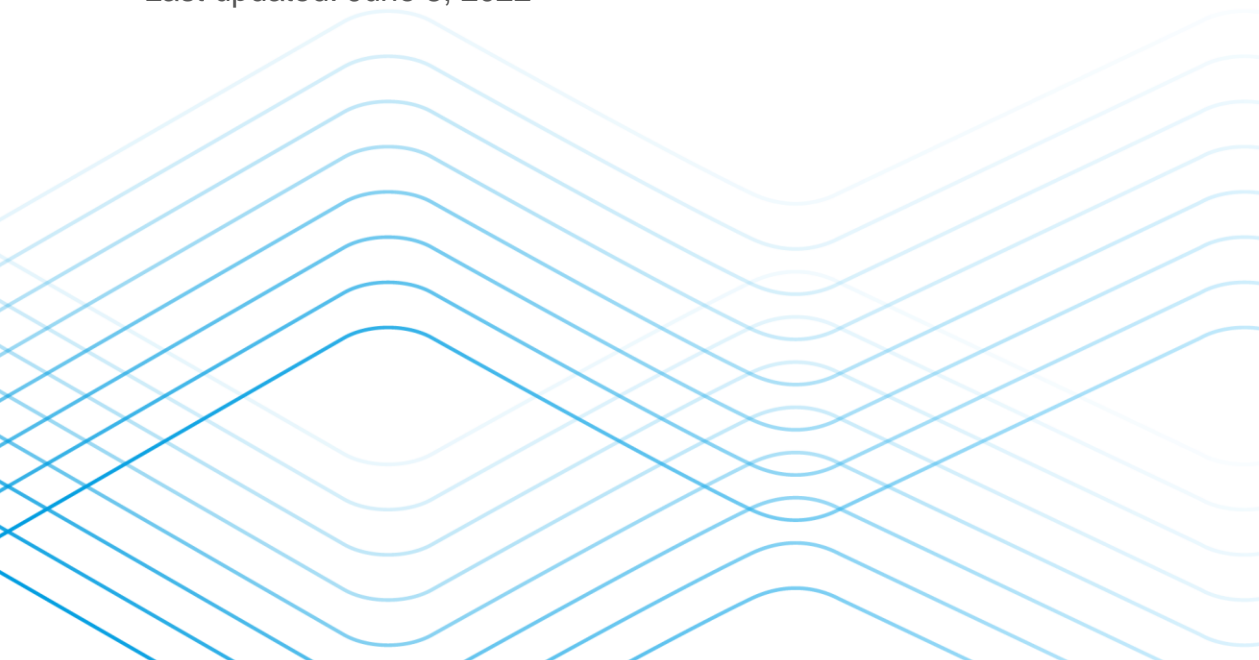


Table of Contents

I.	Table of Contents	2
II.	Overview	3
III.	Machine Readable Files	4
	A. General MRF Questions.....	4
	B. Fully-Insured MRF Questions.....	6
	C. Self-Insured MRF Questions.....	7
	D. Rule Applicability & Other Compliance Questions.....	9

II. Overview

FAQ OVERVIEW

This document is a compilation of frequently asked questions collected from employers during recent informational webinars on the Transparency in Coverage (TiC) rules. The emergent regulatory ecosystem surrounding price transparency is a dynamic and fluid environment and this document, although not exhaustive in nature, is intended to help employers understand answers to common questions that arise in the process of compliance implementation. Both the MMA TiC Employer Playbook and these FAQs will evolve and be updated as the effective and enforcement dates near and additional federal guidance and information from the insurers becomes available.

TiC RULE OVERVIEW

In October 2020, the Departments of Labor, Treasury, and Health and Human Services (Departments) issued the groundbreaking “Transparency in Coverage” Final Rule (TiC), which requires plan sponsors of self-insured plans and fully-insured group health plans to disclose extensive price and cost-sharing information in a set of two different required data disclosures: public disclosures and plan participant disclosures.

These rules will be implemented in phases over the course of about three years, beginning with the public posting of pricing data (known as the “machine-readable files” or “MRFs”) and progressing to a more personalized transparency experience for plan members in 2023 and 2024 through deployment of a consumer price transparency tool or health care “shopping tool” for plan members.

Compliance with TiC regulations is required for non-grandfathered group health plans, including employer-sponsored plans, multiemployer plans (Taft-Hartley plans), multiple employer plans (e.g., association plans), and non-federal governmental plans (e.g., municipalities). The rules do not apply to grandfathered plans, excepted benefits, or account-based plans. Transparency in Coverage applies to all-size employers, including small groups

This health care price transparency initiative started with an executive order by President Trump in 2019 and has been carried forward by the Biden administration in a show of bipartisan support for equipping consumers and stakeholders with health care price information that encourages informed decisions. Furthermore, the push for transparency underlines a philosophy by policymakers that the market can be revitalized by empowering purchasers and decision-makers with more information and comparison tools.

The direction towards more transparency took root within the context of increased requirements on hospitals to disclose prices and increase cost transparency both to consumers, payers, and other stakeholders. As hospital regulations were finalized and implemented through 2020 and in 2021, transparency within health plans was brought into the conversation and came to a head when the Public Health Service Act required that group health plans and insurance issuers comply with critical sections of the Affordable Care Act. The Departments initially published the final rules in October 2020, though they continue to undergo evolutions even as phased roll-out began on January 1, 2022 with enforcement now beginning to take effect July 1, 2022.

III. Machine Readable Files

A. GENERAL MRF QUESTIONS

Q1: What is the machine-readable file (MRF) requirement?

A1: The MRF requirement takes effect 7/1/22 (but see Q/A #3 below for later effective dates for certain plans) with ***plan sponsors of group health plans*** mandated to publicly disclose contracted rate and out-of-network allowed amount pricing information for their medical plan. The disclosure doesn't apply to excepted benefits such as dental and vision if offered on a stand-alone basis, separate from medical or spending account plans.

This data must be input into two separate machine-readable files – *In-Network File and Allowed Amount File* – that are publicly available and accessible to any person free of charge. The files must be updated on a monthly basis and also clearly indicate the date on which they were most recently posted.

Q2: How can employers meet the machine-readable file requirement?

A2: **Fully-Insured Plans:** Employers with fully-insured plans can delegate both the performance and compliance obligations to the insurance carrier by written agreement. Best practice for employers is to have this agreement in writing from their insurer. This documentation may take several forms such as: saving correspondence from the insurer that states they are satisfying the requirements, signing an “opt-in” letter if the insurer sent one or saving an email exchange with an insurance carrier representative that confirms they are taking care of MRF compliance.

Self-Insured Plans: Employers with self-insured plans can delegate the performance but not the compliance obligation to a third party administrator (TPA). The compliance obligation remains with the employer. The employer's TPA can help employers comply, and in most cases, employers will have their TPA create the MRFs on their behalf. However, ultimately the compliance liability cannot be shifted from the employer to the TPA. Therefore, it is important for self-insured employers to understand the MRF requirements, their TPA's implementation plan and have appropriate contractual representations and indemnification protection in place with the TPA doing the work to meet the requirements.

Q3: So as an employer, we are required to have the MRF posted by 7/1/22?

A3: It depends on your plan year (renewal) and funding status. Plan years beginning from 1/1/22-6/30/22 must begin disclosing the first MRF by 7/1/22. Plan years beginning on or after 7/1/22 must begin disclosing by the end of the month your plan year begins.

If the plan is fully-insured and the insurer has taken on the compliance obligations, the employer will not need to do anything.

If you have a self-insured plan, you will need to either host the files on your own *public* website or post a link to the files on the TPA's website if the TPA agrees to host them on your behalf (we believe most TPAs will agree to host). A “public” website means publicly accessible to everyone, with no log-in or registration required to access the files.

Q4: Our current plan renews on December 1, 2022 - so does that mean that we do not have to provide MRF's until December 31, 2022?

A4: That is correct.

Q5: In simple terms - what is a machine-readable file aka MRF?

A5: A machine readable file is a digital representation of data or information in a file that can be imported or read by a computer system for further processing without human intervention. In this case, the MRFs contain plan pricing data and the files must conform to non-proprietary, open standard format such as XML or JSON

and be available via HTTPS. Formats such as PDF or DOCX are not acceptable file formats.

Q6: Where will employees utilize this tool?

A6: The MRFs are not going to be useful to employees. Consumer-driven tools will be implemented later, and we are still waiting for updated guidance on those specifics. The intent of the MRF aspect of the federal transparency rules is to make public the financial arrangements in place between health plans and providers. These files are designed to be read by a computer and are intended to be available at the industry level for health care researchers, policymakers, analytics companies and application software to have access to health plan costs nationally on an aggregate basis for the first time.

Q7: Once the MRFs are posted, do plan sponsors need to provide a communication to participants so they are aware of these files?

A7: No, the MRF files are a public disclosure. The rule does not require communication to plan participants. As answered in the previous question, MRFs will be meaningless to the average consumer.

Q8: Will the information in the MRFs be specific historical information regarding the specific plan? Or theoretical information regarding what the plan would pay rather than what it has paid? Will they contain only info from the specific plan or will be combined with other similar plans?

A8: The information should be specific to the actual plan. The historical prices are for the 90-day time-period that begins 180 days prior to the file publication date.

Q9: Are the insurers/TPAs generating both the In-Network File and Allowed Amount File?

A9: Yes, the insurers/TPAs should handle both in most cases. We are aware of limited situations where the TPAs for self-insured minimum essential coverage plans are not providing MRF support. We do not have a list of MEC TPAs not providing support.

Q10: Is there any concern that the MRFs could reveal the private health data of the insured parties?

A10: No, the MRFs will not disclose any protected or personal health information

Q11: What do you see the insurers/TPAs charging for doing these requirements?

A11: It is going to vary by insurer or TPA. For fully-insured plans, most of the insurers aren't charging an extra fee right now to handle the TiC requirements. For self-insured plans, fee schedules vary by insurer/TPA. Some are providing it for a flat fee or a per employee per month fee/fee increases.

Q12: Are these changes going to result in higher premiums and overall cost to employees/employers?

A12: Probably. We haven't seen specifics yet, but the new requirements will likely result in increases.

Q13: What are the penalties for non-compliance?

A13: There are steep penalties of \$100 per plan member per day.

Q14: What exactly may trigger the fine for an employer?

A14: If one of the enforcement bodies notices you aren't in compliance after 7/1/22 and decides to penalize you. States are the primary enforcer for fully-insured plans with the federal Department of Health & Human Services as back-up. The federal Department of Labor is the primary enforcer of self-insured plans.

We expect the federal and state agencies will adopt a good-faith compliance approach for 2022 and perhaps beyond, but there is no current guidance indicating this.

B. FULLY-INSURED MRF QUESTIONS

Q1: Will the insurers take care of the MRF requirements for employers with fully-insured plans?

A1: Yes, fully-insured employers can largely rely on their insurer to satisfy the requirements. As discussed earlier, an employer can shift both the performance and compliance obligations to the insurer by written agreement.

Q2: If we are fully-insured and haven't had contact from our insurer regarding the agreement to shift compliance responsibility to them, should we reach out?

A2: Yes, most of the major insurers have sent communication already on the MRF requirement so reach out to your insurance carrier representative to ensure both parties are in agreement on who is responsible and get a written statement from the insurer for your records. This documentation may take several forms such as: saving correspondence from the insurer that states they are satisfying the requirements, signing an "opt-in" letter if the insurer sent one or saving an email exchange with an insurance carrier representative that confirms they are taking care of MRF compliance.

Q3: UHC is already saying they are taking this on for fully-insured plans and that there is no agreement to sign.

A3: Under basic contract principles, the written statement via email where they say they will do this is sufficient so long as you do not object. Keep this email in plan records. In that instance, we still generally recommend sending a confirmation email just to be safe. The employer can send that email to its insurance carrier representative.

Q4: Do employers with fully-insured plans have to post the MRF link on the company's website?

A4: If an insurer for a fully-insured plan accepts compliance by agreement, we interpret the rule to mean that the employer DOES NOT have to host the MRFs or post a link to the MRFs on the insurer's website. This also means the employer does not need a public website if it does not already have one. Some insurers take the position that clients must post the links, but there is no harm if the employer does not. An employer can certainly post the links if it wants to.

For fully-insured MRFs the client's name will not be reflected in the MRF name. Fully-insured MRFs will be published and searchable based on the fully-insured plan legal entity. For example, UHC, and the plan/network i.e., UnitedHealthcare or affiliate legal entity-UHC-Choice Plus (network).

Q5: What would you suggest if you are a fully-insured plan now, but plan to move to self-insured plan on 1/1/23?

A5: You'd want to make plans to post your first MRF by the end of the month your self-insured plan year begins. And then also as part of the transition to the TPA, iron out the delegation of performance of MRF hosting and have necessary indemnification provisions in your contract.

Q6: Since we partner with Marsh & McLennan Agency, are we already opted in with our insurer for them to take care of the compliance responsibility?

A6: No, MMA can't opt in for you. Reach out to your insurance carrier representative directly to ensure both parties are in agreement on who is responsible and get a written statement from the insurer for your records.

Q7: Are there differences in the way the major medical insurers are approaching MRF compliance for fully-insureds?

A7: See the following chart with the latest information.

BUCA TRACKER: Approach to MRFs for Fully-Insureds

Insurer	Absorbing compliance responsibility	Sent email notice that can serve as agreement	Hosting & Posting MRFs	Link insurer will post MRFs to on July 1	Sending notice after MRFs are posted	Charging fully-insured clients for MRFs
Anthem	YES	YES	YES	anthem.com	Unknown	NO
UHC	YES	YES	YES	https://transparency-in-coverage.uhc.com	Unknown	NO
Cigna	YES	YES	YES	cigna.com	Unknown	NO
Aetna	YES	NO, did not send out but available by request	YES	aetna.com	NO	NO

C. SELF-INSURED MRF QUESTIONS

Q1: Will our insurer/TPA take care of the MRF requirements?

A1: Self-insured employers can delegate the MRF performance obligation to a TPA, but the compliance obligation remains with the employer. Therefore, it is important for self-insured employers to understand the MRF requirements as well as have an implementation plan and appropriate contractual representations and indemnification protection in place with their TPA in case they drop the ball or make a mistake.

Q2: Are there any TPAs who are agreeing to provide a language change to the contract?

A2: We do not have a list of TPAs willing to modify contracts. If the TPA is not willing to sufficiently address compliance in the contract, the services likely fall under the existing ASA/ASO services agreement. The existing ASA/ASO agreement may or may not contain sufficient indemnification protection for an employer in this situation (we think a “gross negligence” standard is inadequate). Some employers may be able to leverage additional protections, but others may have few available options.

Q3: Do employers with self-insured plans have to post the MRFs on their company website?

A3: Self-Insured employers must either host the MRF file on their own *public* website or post a link to the files on the TPA’s website if the TPA agrees to host them on your behalf (we believe most TPAs will agree to host). Some TPAs (i.e. UHC and Aetna) have offered an option to suppress self-insured files from their designated MRF public website and provide a unique link directly to you, but you must notify the TPA in advance regarding this preference and have provided contact information for them to send you the unique link.

Q4: Is there required language to post along with the URL? How would you recommend it be labeled on our public-facing website?

A4: There is no specific guidance on how it should be labeled, but we think a general label that clearly indicates what it is should suffice, such as “Federal Health Care Price Transparency Requirements.”

Q5: Does the MRF link have to be posted on the home page of our company website? I understand that it has to be accessed without a login but does it have to be on the main page or a sub-page?

A5: There isn't specific guidance on this but best practice is on your main landing page or no more than one click away from the main page (which would allow posting on a sub-page).

Q6: Where are employers posting the links on their public websites? What is best practice?

A6: Most seem to be leaning towards posting under their "benefits" or "careers" section. Based on the information currently available, we do think that would be sufficient. An employer should not rely on posting the information on an intranet site or any location that is password protected/restricted.

Q7: What if your company doesn't have an 'external' website, as they don't work with the public?

A7: To satisfy the requirement, you will still need to post a hyperlink to the MRFs on a publicly available site and, if you don't have an external website you will need to create one. Many TPAs are offering this as part of their compliance support, but if your insurer doesn't, you will have to engage a third party to create the public-facing site.

Q8: Can the employer use an internal app to post the links to the MRFs?

A8: This would not meet the publicly available site requirement.

Q9: Are there differences in the way the major medical insurers are approaching MRF compliance for self-insured plans?

A9: Yes, see chart below with the latest information.

BUCA TRACKER: Approach to MRFs for Self-Insureds (SI)

TPA	Will host MRFs if desired by SI client	Sent notice they are publishing MRFs on SI clients behalf	Link TPA will post MRFs to on July 1 which employers can add to their public website to fulfill the posting requirement	SI clients who choose to host their own files or have another third party do so on their behalf can get their applicable MRFs via the following...	Will create public website if SI client doesn't have one	Sending notice after MRFs are posted	Confirmed they will update MRFs monthly
Anthem	YES	YES	anthem.com/machine-readable-file/search	anthem.com/machine-readable-file/search	Unknown	Unknown	YES
UHC	YES	YES	https://transparency-in-coverage.uhc.com	SI clients who have opted out of their files being published to the UHC public website must retrieve files from a dedicated website https://private-transparency-in-coverage.uhc.com/ These clients must publish the files monthly to their own publicly available website. Clients are able to retrieve their MRFs by 7/1/22 and monthly thereafter	NO	Unknown	YES

Cigna	YES *Cigna's hosting approach applies to standard US Commercial clients and Taft-Hartley SAR clients. Allegiance and Payer Solutions are excluded.	YES	cigna.com	cignaforemployers.com	YES	Unknown	YES
Aetna	YES	YES	Aetna is only posting their small group AFA (level-funded product) to aetna.com	All other SI clients will receive their unique MRF link to post to their website based on the name/email address you have provided to your account manager. Aetna aims to send the URLs out ~ 6/10/22 and employers will need to post the URL on your public website by 7/1/22 or upon renewal date, whichever comes first. You will receive the URL once. You do not need to update the link again because the files will be automatically refreshed each month	Aetna account manager can offer options	NO	YES

D. RULE APPLICABILITY & OTHER COMPLIANCE QUESTIONS

Q1: Does an employer using reference-based pricing (RBP) for provider reimbursements need to capture those reimbursements into the "out of network" MRF?

A1: Yes, RBP should be included in the out-of-network allowed amount file.

Q2: Do the MRF rules apply to private individual health plans?

A2: This rule will require most group health plans, and health insurance issuers in the group *and* individual market to disclose price and cost-sharing information to participants, beneficiaries, and enrollees. Insurers will generally have the sole responsibility for individual coverage.

Q3: Does that include health plans with an HRA in place?

A3: Account-based plans aren't subject to the MRF requirements.

Q4: What about ICHRA plans?

A4: As an account-based plan, ICHRAs are not subject to the MRF requirements. Any MRF or other

transparency requirements for individual health coverage purchased with an ICHRA should be met by the insurance carrier.

Q5: I assume the rule applies to all group sizes?

A5: Yes. There is no small group exception. HHS has indicated that it will not take enforcement action against "grandmothered" plans in the small group market.

Q6: Do the rules apply to group health plans provided through a PEO?

A6: Yes, it is considered a group health plan so subject to the rules as long as it is non-grandfathered.

Q7: If so, is the PEO or the employer responsible for adhering to the TiC reg?

A7: The plan sponsor is responsible for compliance with the regulation. So, if the plan is sponsored at the PEO level the PEO will comply. If sponsored at the employer level the employer will comply. Reach out to your PEO contact.

Q8: What happens if we move from a grandfathered plan to a new plan in the next 1-4 years?

A8: The non-grandfathered plan will be subject to these requirements and will need to comply as of the beginning of its initial plan year.

Q9: How would we know if our plan is grandfathered?

A9: A grandfathered plan is one that was in existence on the date the ACA was passed on March 23, 2010. The plan was only able to make very limited changes to benefits and contributions from that date in order to remain grandfathered. The plan must also include a statement of grandfathered status in its SPD and any benefit communications like annual enrollment guides.

Q10: Our health coverage is in a trust. Will the trust or employer be responsible for the data elements and contract language?

A10: A trust is the plan's funding arrangement but not the medical plan itself. The MRF obligation for medical coverage funded through a trust belongs to the identified plan sponsor. For multiple employer plans, such as Taft-Hartley or other union-based coverage, this is usually the trust's board of trustees

If the medical coverage is fully-insured and the trust exists merely to collect and remit premiums, the MRF rules for fully insured coverage apply.

Q11: Please confirm, I hear that churches must comply with this too. Is this correct?

A11: True. There is no exclusion for church plans or church organization-affiliated plans.

Q12: For association plans, is central posting of the MRF link sufficient, or must each association member post as well?

A12: The MRF obligation for medical coverage offered through a MEWA/AHP generally belongs to the identified plan sponsor. The requirement should be met if the plan sponsor centrally posts this information on behalf of the plan.

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