




COMMISSIONER OF SECURITIES AND INSURANCE

Troy Downing
Commissioner

Office of the
Montana State Auditor

ADVISORY MEMORANDUM

To: ALL INTERESTED PERSONS

From: TROY DOWNING 
Montana State Auditor and Commissioner of Securities and Insurance (CSI)

Date: December 14, 2022

Re: Advisory Memorandum Regarding Transparency in Coverage Final Rules

SUMMARY

On November 12, 2020, the U.S. Department of Health & Human Services, the Department of Labor, and the Department of the Treasury (Departments) finalized the Transparency in Coverage Rules (TiC Final Rules) in 45 CFR part 147 related to price transparency requirements for group health plans (fully insured and self-funded) and health insurance issuers. The Federal Register finalizing these rules can be found [here](#).

The TiC Final Rules set forth two main requirements for non-grandfathered group health plans (Plans) and health insurance issuers (Issuers) offering non-grandfathered coverage in the individual and group markets, as follows:

- (1) **Price Comparison Tool.** Plans and Issuers must make price comparison information available to participants, beneficiaries, or enrollees through an internet-based, self-service tool (Price Comparison Tool) and in paper form, upon request; see 45 CFR § 147.211. This tool will provide consumers with real-time estimates of their cost-sharing liability from different providers for covered items and services.

There are seven disclosure content requirements: estimated cost-sharing liability, accumulated amounts, in-network rates, out-of-network allowed amount, items and services content list, notification of prerequisites to coverage, and notice language.

The Price Comparison Tool must be made available by the following phased-in deadlines:

840 Helena Avenue, Helena, Montana 59601
(main fax) 406.444.3497 | (securities fax) 406.444.5558
(policyholder services fax) 406.444.1980 | (legal fax) 406.444.3499
(phone) 800.332.6148 or 406.444.2040 | (email) csi@mt.gov | (web) www.csimt.gov

<p>2023 Plan Years</p>	<p>For plan years (in the individual market, policy years) beginning on or after January 1, 2023, Plans and Issuers must make price comparison information available for 500 covered items and services listed on CMS' Transparency in Coverage website.</p>
<p>2024 Plan Years</p>	<p>For plan or policy years beginning on or after January 1, 2024, Plans and Issuers must make price comparison information available for <u>all</u> covered items and services.</p>

(2) **Machine Readable Files (MRFs).** Plans and Issuers must disclose on a public website certain information, as described below, in three separate machine-readable files; See 45 CFR § 147.212:

- In-Network Provider Rates for Covered Items and Services
- Out-of-Network Allowed Amounts and Billed Charges for Covered Items and Services
- Negotiated Rates and Historical Net Prices for Covered Prescription Drugs

The MRFs must follow the required methods for disclosing and formatting the information pursuant to 45 CFR § 147.212(b)(2), including updating the MRFs monthly to ensure they remain accurate. A step-by-step guide for Plans and Issuers on how to build their MRFs can be found [here](#), and additional technical assistance can be reached through CMS's [website](#).

The MRF requirements of the TiC Final Rules are applicable for plan/policy years beginning on or after January 1, 2022. However, as an exercise of their enforcement discretion, the Departments deferred enforcement of the three separate MRFs, as follows:

<p>Machine-Readable File</p>	<p>Deferred Enforcement</p>
<p>In-Network Provider Rates and Out-of-Network Allowed Amounts and Billed Charges</p>	<p>In recognition of the considerable time and effort required to make the MRFs available in the required form and manner, the Departments deferred enforcement of the requirements to make public the machine-readable files for In-Network Rates and Out-of-Network Allowed Amounts and Billed Charges, until July 1, 2022.</p>
<p>Negotiated Rates and Historical Net Prices for Covered Prescription Drugs</p>	<p>The Departments deferred enforcement of the requirement to make public the machine-readable files for Prescription Drugs while they consider, through notice-and-comment rulemaking, whether the Prescription Drug MRF remains appropriate.</p>

STATE-BASED ENFORCEMENT AND GUIDANCE

On October 11, 2022, CMS sought additional information from states' departments of insurance, including the CSI, regarding the enforcement of the TiC Final Rules.

CSI informed CMS that, at this time, CSI will not enforce the Price Comparison Tool requirements described at 45 CFR § 147.211 or the MRF requirements described at § 147.122, either directly or through a collaborative enforcement agreement, with CMS. Because CSI will not be enforcing these requirements at this time, CMS will be responsible for enforcement under its statutory obligations under Sections 2723 and 2799B-4 of the PHS Act. CSI will notify Plans and Issuers through an addendum to this Advisory Memorandum if CSI decides to enter into a collaborative enforcement agreement with CMS.

This advisory memorandum provides summary information only and does not enlarge, delimit, or otherwise modify any requirements of applicable law or in any way limit the authority of CSI under applicable law. CSI encourages interested persons to consult with independent legal counsel for guidance on the application of the TiC Final Rules to their circumstances.