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Insurers to get a break on price transparency, surprise billing

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Modern Healthcare Illustration / Getty Images

Experts have long been skeptical that insurers would be ready to follow the transparency rule by the start of 2022. The Biden administration is giving them more time, according to new guidance.

Health plans will have more time to get ready for several requirements under the [insurer price transparency rule](#) and [the ban on surprise billing](#), according to federal [guidance](#) published last week.

The Biden administration won't crack down on insurers for failing to publish [machine-readable files](#) of provider rates until July 1, even though the requirement takes effect at the start of next year. But that doesn't mean they're going away.

"The administration and Congress have indicated broad support for policies that provide more transparency into healthcare costs," said Myra Simon, a consultant at Avalere Health.

The guidance also indefinitely delayed enforcement of a similar requirement for prescription drug pricing. The Biden administration is reconsidering whether the policy still makes sense in light of the new prescription drug reporting requirements that Congress included in its end-of-year spending package last December.

Health plans were supposed to start reporting that information at the end of the year, but regulators are giving health plans a break. There's no firm deadline for reporting data on [prescription drug prices](#). But the Biden administration will probably ask for both 2020 and 2021 data in December 2022, McDermott Will & Emery partner Kate McDonald said.

Coordinating the Trump-era transparency rule with the new mandates from Congress would make it easier and less costly for insurers to report the prescription drug pricing information. But it shouldn't harm transparency, Simon said.

The Biden administration said it would propose a new rule clarifying that insurers can create a single consumer shopping tool to satisfy the price comparison tool [requirements under the No Surprises Act](#) and the self-service tool requirements in the transparency rule. The guidance also delays enforcement of the online and telephone price comparison tool requirements until January 2023, despite the rule taking effect at the beginning of next year.

Insurers and providers will also get more leeway on other surprise billing regulations. The administration indefinitely delayed enforcement of new requirements that health plans provide their enrollees with an advanced explanation of benefits. Regulators also won't immediately go after providers that don't provide good faith estimates at the time of scheduling, according to the guidance. Both rules take effect in January.

Experts have long been skeptical that insurers would be ready to follow the transparency rule by the start of 2022, given the technical and operational complexity of complying with it.

"I'm not surprised. The timeline was very aggressive," McDonald said.

Still, the delays may not make much of a difference, said Dan O'Neil, an independent healthcare consultant.

"To the extent they end up dropping this or watering it down, I think that could have more material consequences for the healthcare system," he said.

Insurers have been pushing patients and providers to make cost-conscious decisions about healthcare through high-deductible health plans, value-based insurance design, prior authorization, prescription drug tiering and other means, O'Neil said.

"But really have to be pushed to actually give people the information they would need to take action on those incentives, which is crazy if you think about it, right?" he said.

The U.S. Chamber of Commerce and the Pharmaceutical Care Management Association each [sued the Biden administration earlier this month](#). They allege that the federal government didn't have the power to force insurers to disclose prescription drug prices in a machine-readable format and that regulators didn't allow the healthcare industry to comment on critical provisions of the Transparency in Coverage rule. They also said the rule would expose trade secrets, driving up costs for insurers and giving their competitors an edge.

But at the same time, insurers and [pharmacy benefit managers](#) insist it's too complicated for them to report information about provider rates and prescription drugs.

"If you don't know what a procedure costs or the price is of a particular drug that you've negotiated, how do you know you're getting a good deal?" O'Neil said.

The reality of the situation could be much simpler than the healthcare industry's legal arguments make it appear.

"I get the sense this is more about avoiding duplicative reporting requirements and maybe being a little more lenient on the health plan requirements given the quick timeline on all the requirements under the No Surprises Act," said Loren Adler, associate director of the USC-Brookings Schaeffer Initiative for Health Policy.

Inline Play

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