



FAQs on Implementation of Transparency in Coverage Regulations (ACA Part 61)

The Department of Labor (DOL), the Internal Revenue Service (IRS), and the Department of Health and Human Services (HHS) (collectively, the “Departments”) recently issued FAQ guidance on [Part 61 of the Affordable Care Act \(ACA\)](#), addressing the implementation of the transparency in coverage regulations as well as related transparency provisions in the Consolidated Appropriations Act, 2021.

Transparency in Coverage Rules: A Recap

The Transparency in Coverage (TiC) rules require non-grandfathered health plan and health plan issuers to make cost-sharing information publicly available to plan participants and beneficiaries.

These disclosures must address:

- Applicable rates for in-network providers
- Allowed amounts and billed charges for out-of-network charges
- Prescription drug pricing information

This information must be made available by posting on a publicly available website (or in paper form upon request) using various tools and machine-readable files.

After the TiC regulations were finalized by the agencies, Congress passed the Consolidated Appropriations Act, 2021 (CAA 2021), which included additional transparency rules overlapping with the TiC regulations. Because of this, the enforcement of the machine-readable files requirement regarding prescription drug pricing was indefinitely delayed pending further Departmental guidance.

Additionally, CAA 2021 added a safe harbor to the machine-readable files requirement regarding in-network provider rates where a health plan or issuer finds it challenging to determine the dollar amounts for specific services or items. This safe harbor arose from employers’ potential confusion between the TiC prescription

drug enforcement delay and the reporting requirements about prescription drug and health care spending (RxDC reporting), also falling under the CAA 2021.

Based on the TiC final regulations and the CAA 2021 rules, deadlines for each TiC requirement are:

July 1, 2022	In-network and out-of-network machine-readable files
Jan. 1, 2023	Price Comparison Tool Cost Estimating Tool (disclosing information on the 500 most common shoppable services)
Jan. 1, 2024	Cost Estimating Tool (disclosing information on all remaining shoppable services)
TBD	Prescription drug pricing machine-readable files

ACA Part 61: Additional TiC and CAA, 2021 Guidance

The Sept. 2023 FAQ guidance addressed prescription drug pricing and the in-network provider rates safe harbor.

Prescription Drug Pricing Under the TiC Regulations and CAA 2021

Under this new guidance, the Departments rescinded the enforcement discretion for TiC’s prescription drug machine-readable requirement (initially addressed in [ACA FAQs Part 49](#)). In issuing this guidance, the Departments stated that no “meaningful conflict” existed between the TiC regulations and the RxDC reporting requirements under CAA 2021. However, the Departments intend to release additional guidance for health plans and issuers’ reliance on the prior enforcement delay.

Safe Harbor for In-Network Provider and Service Pricing

In the new guidance, the Departments also rescinded their previous guidance for in-network provider and service rates, stating that for any rates not expressed as a dollar amount, those health plans and issuers should follow existing [technical reporting guidance](#).

The Departments clarified that in issuing this initial guidance ([ACA FAQs Part 53](#)) they did not intend “to provide a categorical exception to enforcement of the requirements of the TiC Final Rules.” Instead, they emphasized that they intend to exercise enforcement discretion on a case-by-case basis without any formal safe harbor.

Next Steps for Employers

- With this additional guidance and clarification from the Departments, employers should connect with the third-party administrators, plan issuers, or other relevant third-party entities, confirming timely compliance with the above rules.

- Additionally, employers should be prepared to enter new or amended agreements with their third-party administrators or plan issuers, addressing the compliance of these rules (such as if a third-party entity posts the required machine-readable files on a public website for the employer, as opposed to the employer's website).

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