

# Group Health Plan Transparency Compliance for 2023 and Beyond

Gallagher | February 2023



**Gallagher**

Insurance | Risk Management | Consulting

# Compliance Update

## Agenda

- What is “Transparency?”
- Transparency Implementation Timeline
- ACA Transparency in Coverage
- CAA Transparency Provisions
- Sneak Peak: Other Compliance Topics

# Compliance Update

## What is “Transparency?”

### Patient Protection and Affordable Care Act (ACA – 2010)

Regulations (2020)

Machine-readable files

Personalized cost-sharing  
information

### Consolidated Appropriations Act of 2021 (CAA – 2020)

FAQ Guidance (2021 – 2022)

Pharmacy Benefits and Drug  
Cost Reporting

Prohibition Against Gag  
Clauses

Mental Health Parity NQTL  
Documentation

No Surprises Act...

# Compliance Update

## What is “Transparency?”

### No Surprises Act

Balance billing protections

Identification card requirements

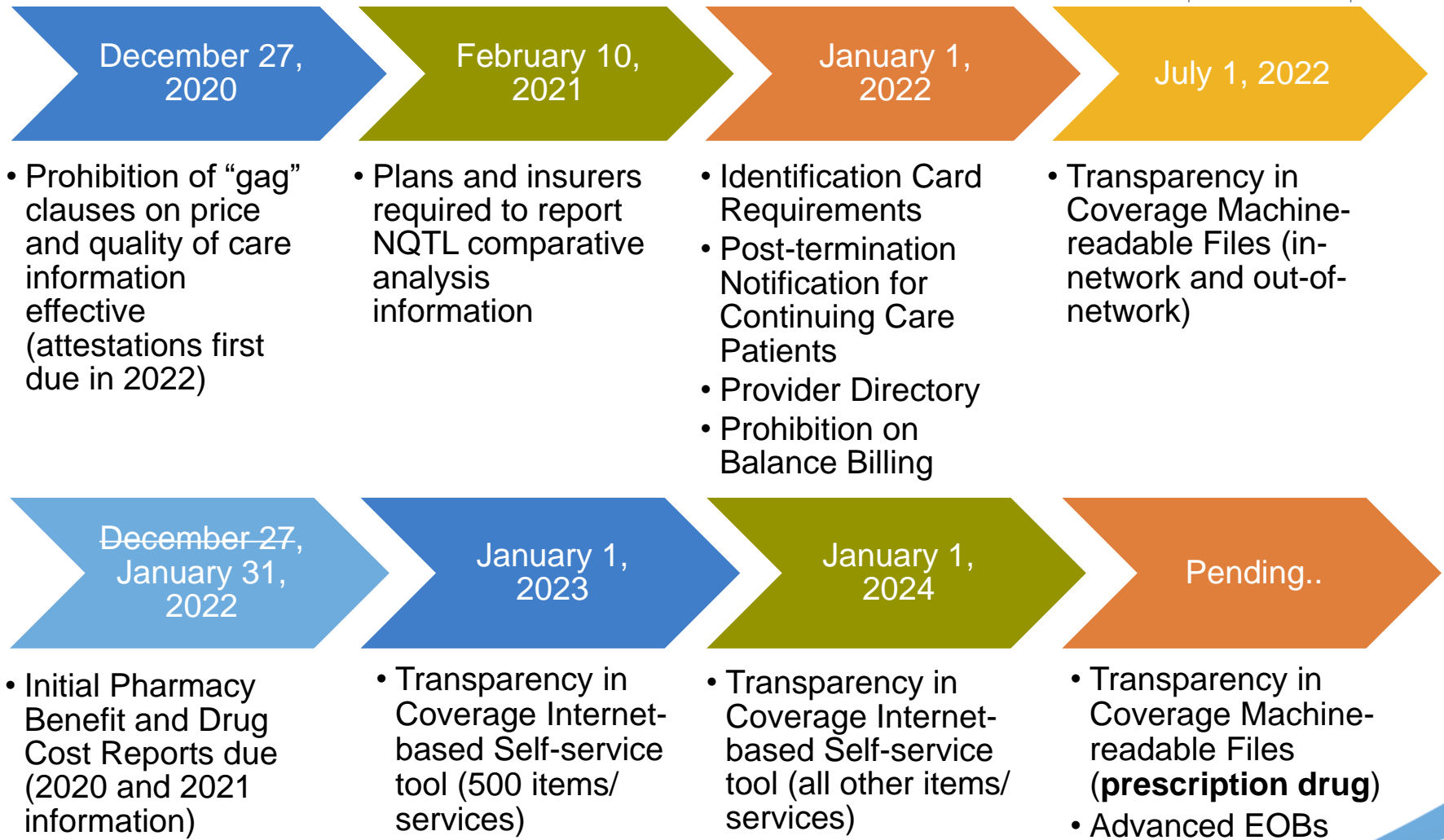
Advanced explanations of benefits

Accuracy of provider directory

Provider contract termination



# Implementation Timeline





# ACA Transparency in Coverage

## ACA Transparency in Coverage Regulations



### Public Disclosure

- Three machine-readable files
  - In-network negotiated rates
  - Out-of-network allowed amounts
  - Prescription drug negotiated and historical costs
- Effective 7/1/22 (in-network and out-of-network)
- *Prescription drug costs delayed pending future guidance*



### Personalized Cost-sharing Information

- Internet-based self-service tool Phased-in effective dates
- 500 specified items and services
- Effective 1/1/2023



### Personalized Cost-sharing Information

- Internet-based self-service tool Phased-in effective dates
- All covered items and services
- Effective 1/1/2024

**Employer Action Step:** Confirm compliance responsibilities with TPA/insurer and revise contracts/agreements as necessary.

# CAA Pharmacy Benefits and Drug Cost Reporting

## New reporting on pharmacy benefits and drug costs must include:

- The beginning and end dates of the plan year, number of participants and beneficiaries, and the states in which coverage is offered
- The 50 brand prescription drugs most frequently dispensed by pharmacies for the plan or coverage and total number of paid claims for each drug
- The 50 most costly prescription drugs by total annual spend and the amount spent for each drug under the plan or coverage for each drug
- The 50 prescription drugs with the greatest increase in plan expenditures over the preceding plan year with the increase amount for each drug
- Total spending on health care services by the group health plan or coverage

**6/1 Annually**  
Reports due



**1/31/2023**

First report was due  
(2020/2021 information)

**Employer Action Step:** Coordinate with carrier/TPA and other service providers to ensure that procedures are in place to gather/report the required information.



# Mental Health Parity

## CAA NQTL Documentation

### Mental Health Parity and Addiction Equity Act

MHPAEA requires group health plans to have **parity** between mental health/substance use disorder benefits, and medical/surgical benefits

Includes financial requirements and quantitative treatment and **nonquantitative treatment limitations (NQTLs)**





# Mental Health Parity

## CAA NQTL Documentation

### Mental Health Parity and Addiction Equity Act

CAA requires insurers and group health plans to **document** their comparative analyses related to the **processes, strategies, evidentiary standards, and other factors** used to apply NQTLs to mental health or substance use disorder benefits

Must show that the application of NQTLs is comparable to, and not more stringently applied than, limitations for medical / surgical benefits

Documentation to be made available by **February 10, 2021**

**Employer Action Step:** Discuss with carrier/TPA what documentation/data on processes, strategies, evidentiary standards, and other factors were used to design and apply NQTLs.



# CAA Gag Clauses

## Contract cannot be written to restrict plan from:

Providing provider-specific cost or quality of care information or data, through a consumer engagement tool or any other means, to referring providers, the plan sponsor, enrollees, or individuals eligible to become enrollees of the plan **or** coverage;



Electronically accessing de-identified claims and encounter information or data for each enrollee in the plan or coverage, upon request and consistent with the Health Insurance Portability and Accountability Act (HIPAA) privacy regulations, Genetic Information Nondiscrimination Act (GINA), and the Americans with Disabilities Act (ADA); **or**



Sharing information or data described previously, or directing that such data be shared, with a business associate (as defined under HIPAA) consistent with the HIPAA privacy regulations, GINA, and the ADA.



Effective:  
**December 27, 2020**

**Employer Action Step:** Review contracts/agreements and modify if necessary.



# CAA No Surprises Act

## Balance Billing

Rules for plans/insurers and  
medical providers

Out-of-network emergency services

Out-of-network services provided at  
an in-network facility

Out-of-network air ambulance services

Effective: plan years  
beginning on or after  
**January 1, 2022**



# CAA No Surprises Act

## Balance Billing

- Limits participant cost-sharing for certain out of network services
- Sets forth process for determining what a plan/insurer must pay for out-of-network services
  - Detailed rules defining “qualifying payment amount” for plan payment and participant cost-sharing limits
  - Binding arbitration to settle disputes
- Requires certain notices to providers and participants

**Employer Action Step:** Review process for determining non-network claims with insurer/TPA and how administration and payment of non-network provider claims will change.



# CAA No Surprises Act

## Identification Cards

Plan identification cards issued to participants and beneficiaries must include:

Any deductible applicable to such plan or coverage

Any out-of-pocket maximum limitation applicable to such plan or coverage

A phone number and website for individuals to get more information.

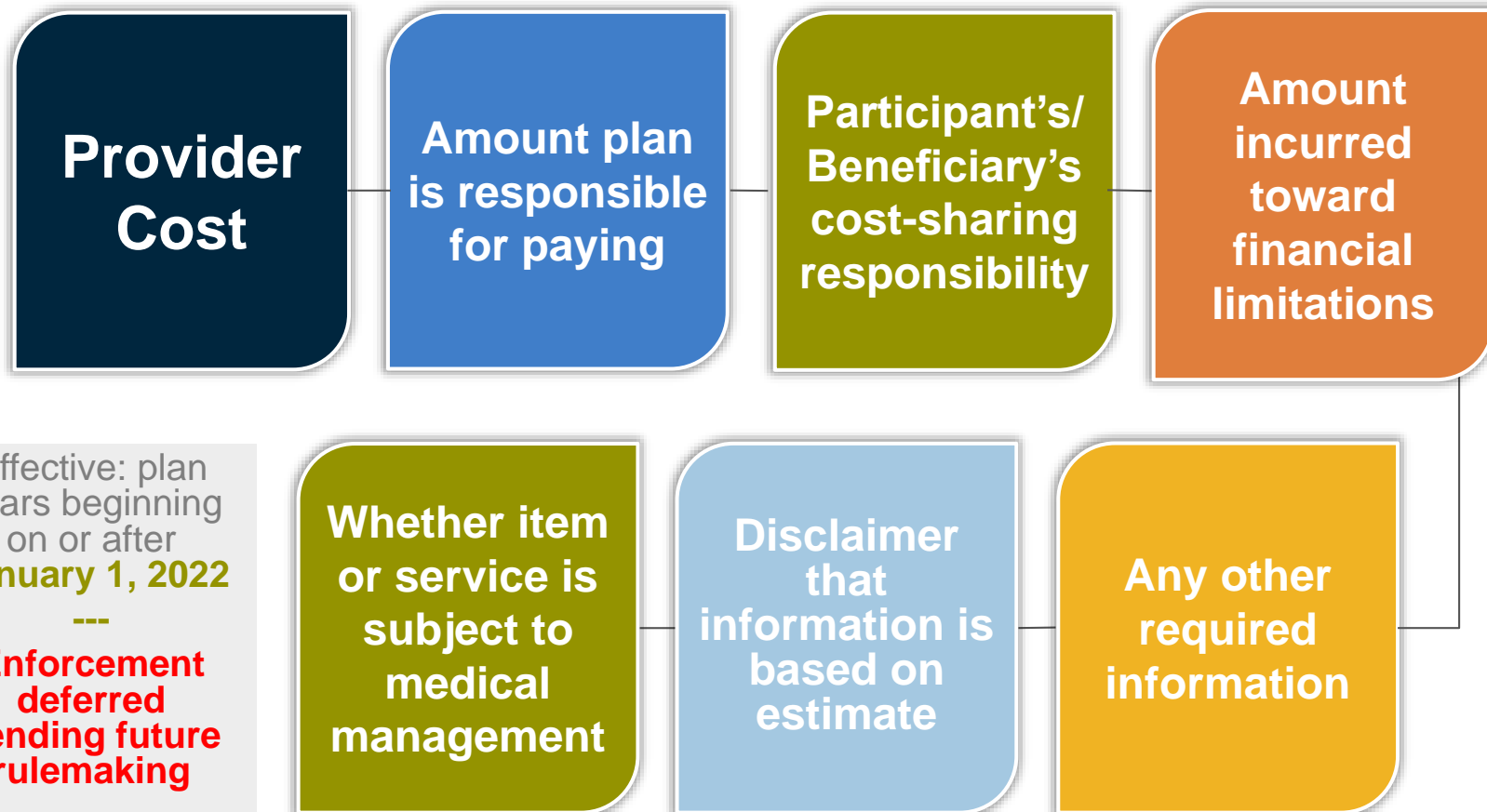
Effective: plan years beginning on or after **January 1, 2022**

**Employer Action Step:** Discuss requirement with TPA/carrier



# CAA No Surprises Act

## Advanced Explanations of Benefits



**Employer Action Step:** Discuss requirement with TPA/insurer and stay tuned...



# CAA No Surprises Act

## Improved Network Provider Directory Information

### Requirements for plans/issuers:

- Process to verify/update directory at least every 90 days
- Protocol to respond to inquiries within one business day
- Establish database of provider/facility directory information
- Include date directory information was last verified in printed documents

Effective: plan years beginning on or after **January 1, 2022\***

**Good faith interpretation until regulations are issued**

If individual is furnished an item or service by non-participating provider/facility due to inaccurate information, no cost-sharing greater than what would apply in-network

**Employer Action Steps:**  
Communicate with carrier/TPA  
*and stay tuned...*



# CAA No Surprises Act

## Provider Contract Termination – Patient Notification

Participant notification is required if provider will be removed from network due to contract termination (other than for fraud or failure to meet quality standards).

Effective: plan years beginning on or after **January 1, 2022\***

**Good faith interpretation until regulations are issued**



**Employer Action Steps:**  
Communicate with carrier/TPA  
*and stay tuned...*

Only to continuing care patients:

- ✓ Undergoing a course of treatment for a serious and complex condition, or
- ✓ Undergoing a course of institutional or inpatient care, or
- ✓ Scheduled to undergo non-elective surgery, or
- ✓ Pregnant and undergoing a course of treatment for the pregnancy, or
- ✓ Determined to be terminally ill





# Transparency

## Action Steps

---

Confirm carrier or TPA will handle transparency requirement compliance

Amend contracts where needed

---

Includes PBM for prescription drug reporting

---

Mental health parity documentation may require an outside vendor

---

Stay tuned for guidance on pending requirements



# Compliance Update

## Other Compliance Items to Watch...

COVID-19 emergencies ending	National Emergency – Outbreak Period
	Public Health Emergency – COVID-19 testing and vaccination
Telemedicine	HSA compatibility
Reproductive health	ACA preventive services contraception proposed rule
	Abortion
Agency enforcement	ACA
	MHPAEA
	HIPAA
State law	Paid family/medical leave
	New commuter requirements
	Individual mandate reporting
	Abortion



**Gallagher**

Insurance | Risk Management | Consulting

# Questions?

[Jack\\_Standbridge@ajg.com](mailto:Jack_Standbridge@ajg.com)

[Mandy\\_Bartoshesky@ajg.com](mailto:Mandy_Bartoshesky@ajg.com)



*The intent of this presentation is to provide you with general information regarding the status of, and/or potential concerns related to, your current employee benefits issue. It does not necessarily fully address all your specific issues. It should not be construed as, nor is it intended to provide, legal or tax advice. Questions regarding specific issues should be addressed by your organization's general counsel, tax advisor, or an attorney who specializes in this practice area.*