Consolidated Appropriations Act

Questions for TPA/Carrier Administrators of Self-Funded Plans

Health plans must comply with a variety of transparency regulations under federal laws, primarily the Consolidated Appropriations Act of 2021, Tri-Agency Issued FAQs and more recently issued regulations.

On the next page are a series of questions that brokers with self-funded and level funded health plans should be asking the TPA and/or Carrier Administrator, that way they can advise their clients on the best options for administering the health plan.

1. Will the TPA/Carrier Administrator (TPA) be performing the required Non-Quantitative Treatment Limitation tests that were enhanced by the Consolidated Appropriations Act (CAA) 2021 and further described in the July 25, 2023, proposed rules?

IF YES:

- What is the price to perform the tests?
- Will the testing automatically be performed, or will the client need to request the tests be completed?
- How frequently will the testing be performed?
- The proposed rules solidify that health plans have 10 business days to respond to a request by the DOL or other entity with test results. Will the TPA be able to respond within that time frame?
- What, if anything, will the employer be required to provide i.e., data, signed contract, service agreement, or BAA for the TPA to be able to complete the testing?
- What is the exact scope of employer involvement in NQTL testing?

IF NO:

- Does the TPA have a preferred NQTL testing vendor?
- Will there be a charge to provide the data that a NQTL testing vendor will need?
- Will the TPA work with or accept requests from an outside vendor?
- Once a request is received from an outside vendor, what is the estimated time to provide the requested information?

2. Will the TPA or Pharmacy Benefit Manager (PBM) be creating, posting and updating on a monthly basis the In-Network, Out-of-Network and In-Network negotiated prescription rate machine readable files required under the CAA 2021?

IF YES:

- What is the price to provide these files or is it included in the base fees?
- Will the TPA or PBM provide the client with a link to the TPA's website for the files?
- Will the TPA or PBM provide the files to the client with the expectation that they host the files?

- Will the TPA or PBM prepare a website for the client that will host the files?
- What if anything will the employer be required to provide i.e., data, signed contract, service agreement or BAA for the TPA or PBM to be able to host the files?
- Is the TPA or PBM going to provide the prescription drug machine readable files that were temporarily suspended but will be a required posting in 2024?

IF NO:

- What support will the TPA or the PBM provide to the client regarding creating and updating the files?
- What is the price to provide this support?

3.

Will the TPA or the PBM be creating and posting the Prescription Drug Data Collection (RxDC) files required to be filed annually through the CMS web portal by June 1 for the prior calendar year?

IF YES:

- Will it be the TPA or the PBM or both that is preparing and updating the files?
- What is the price to provide these files?
- With the TPA or PBM need additional information from the client, such as percent of premium plan costs paid by the employer and the employee or other data, prior reporting?
- Will the TPA or PBM provide the files to the client with the expectation that submit the files?
- What if anything will the employer be required to provide i.e., data, signed contract, service agreement or BAA for the TPA to be able to complete the testing?

IF NO:

- What support will the TPA or PBM provide to the client regarding creating and updating the files?
- What is the price to provide this support?

4. The CAA 2021 amended the Public Health Service Act so that in certain circumstances the health plan and providers (including hospitals, facilities, individual practitioners and air ambulance providers) are prohibited from billing patients more than in-network cost-sharing amounts. This prohibition applies to both emergency care and certain non-emergency situations when patients are unable to choose an in-network provider.

It is common practice for a TPA/Carrier Administrator to charge the health plan a percentage fee based on negotiated discounts with providers.

- Will the TPA/Carrier Administrator be charging the health plan a fee equal to a percentage of the difference between a provider's billed charges for the covered service and the Qualified Payment Amount (QPA) paid to the provider?
- How much will the TPA/Carrier Administrator be charging the health plan to update the Plan Document to include these required changes?

5. The CAA 2021 and FAQ Part 57 require health plans to attest that all gag clause language has been removed from contracts between providers, health plans, carriers, PBMs and network administrators. The first attestation was due on the CMS hosted web portal by December 31, 2023, and will need to be updated annually.

Will the TPA/Carrier Administrator or the PBM be submitting the gag clause attestation via the CMS web portal on behalf of the health plan?

IF YES:

- What is the price to submit the attestation?
- What if anything will the employer be required to provide i.e., data, signed contract, service agreement or BAA for the TPA to be able to complete the attestation?

IF NO:

- Will the TPA or PBM provide information to the employer for them to submit the attestation?
- Will there be a charge to provide the information?
- When, prior to the annual deadline, is the information expected to be released?