The Final TiC Regulations: Initial Takeaways

Changes from the Proposed to Final Regulations

- ***Moving Up the Effective Date***: The final regulations will become effective 5 months following the date of publication, or March 6, 2027. Originally, the Federal Departments proposed an effective date of 12 months following the date of publication, which would have been October 6, 2027.

- ***Prescription Drug File Requirements***: Back in 2019, the Federal Departments released a regulation requiring insurance carriers and self-insured plans to – in addition to the In-Network Rate and Out-of-Network Allowed Amount Files – produce and publicly disclose a Prescription Drug File. A lawsuit was filed to invalidate the Prescription Drug File, effectively forcing the Departments to put the Prescription Drug File on hold. The proposed regulations were silent on the Prescription Drug File, but these final regulations re-institute the requirement for producing and publicly disclosing a Prescription Drug File. Of particular importance is the public disclosure of the "historical net price" of a particular prescription drug reflected as a dollar amount, with a corresponding National Drug Code (NDC) and the National Provider Identifier (NPI), Tax Information Number (TIN), and Place of Service Code for each in-network pharmacy.

- ***New Attestation of Accuracy to Require Accountability***: Currently, there is no accountability for the completeness and the accuracy of the pricing information set forth in the TiC Files. This lack of accountability has resulted in the production of inaccurate and incomplete Files, primarily by insurance carriers producing their own TiC Files, but also when these insurance carriers produce TiC Files for self-insured health plans. In the case of the Hospital Transparency Rule, those regulations require the CEO or other senior official of a hospital to "attest" to the completeness and accuracy of this hospital's price transparency File. However, there is NO corresponding attestation requirement for insurance carriers and self-insured plans to ensure the completeness and accuracy of the TiC Files. The proposed regulations were silent on a TiC attestation requirement, but the final regulations will now require the CEO or other senior official of an insurance carrier and a self-insured plan to "attest" that the pricing information included in the TiC Files are – to best of their knowledge and belief – complete and accurate and in compliance with the TiC requirements. This attestation requirement applies to all of the required TiC Files (including the In-Network Rate File, Out-of-Network Allowed Amount File, Prescription Drug File, and the Utilization, Taxonomy, and Text Files), and is a much-needed mechanism to enforce compliance.

- ***Permission to Contract With Insurance Carriers and TPAs To "Attest" on Behalf of a Self-Insured Plan***: In cases where a self-insured plan relies a on a third-party to produce the TiC Files for the self-insured plan (e.g., in cases where an insurance carrier "rents" their provider network to the self-insured plan or an independent TPA acts as an intermediary between the carrier and the plan), the final regulations allow the plan to enter into a written agreement with this third-party (often times referred to as the "owner of the provider network") wherein this owner of the provider network agrees to make an attestation that the plan's Files are complete and accurate. Here, the owner of the provider network's CEO or other senior official will agree to "attest" to the completeness and accuracy of the Files produced on behalf of the self-insured plan.

- ***But Liability for Non-Compliance Still Falls on the Self-Insured Health Plan***: Despite the much-needed attestation requirement for the TiC Files, if the attestation made by the owner of the provider network's CEO or other senior official is incorrect – because the Files that the owner of the provider network produced on behalf of the self-insured plan are NOT accurate or complete – the self-insured plan remains liable for such non-compliance.

The Final Regulations Primarily Track the Proposed Regulations

Except for the bullet points noted above, the final regulations primarily track much of what we saw in the proposed regulations, including:

Changes to the In-Network Rate Machine-Readable Files ("INN Rate Files")

- ***Eliminating "Ghost Rates"***: The final regulations endeavor to eliminate the public disclosure of "ghost rates" (which are medical prices that are listed for items and services that consumers never utilize, and medical providers never furnish) by requiring insurance carriers and self-insured plans to exclude from their INN Rate Files provider-rate combinations for items or services that are unlikely to be reimbursed based on the provider's specialty according to either (1) the carrier's or plan's internal provider taxonomy or (2) other internal rules used to determine if the carrier or plan should deny reimbursement for an item or service based on the provider's specialty during the claims adjudication process.

- ***Reducing Duplicative Data***: Insurance carriers and self-insured plans often times share the same medical provider network for patients covered under multiple policies and health plans offered by these carriers and plan sponsors (e.g., when a carrier "rents" their provider network to the self-insured plan). The final regulations now require carriers and plans to prepare 1 File for the provider network that is shared by all of these different health plans and policies, instead preparing multiple Files for each particular policy or plan that includes pricing data for the same provider network.

- ***Real Dollar Amounts***: The final regulations confirm that the INN Rate Files must include in-network rates reflected in dollar amounts, with one narrow exception: when the rate is reflected as a percentage of billed charges. This exception recognizes situations where a precise dollar amount cannot be determined in advance, and requires the actual disclosure of the percentage number of the billed charge.

Changes to the Out-of-Network Allowed Amount Machine-Readable Files ("OON Allowed Amount Files")

- ***Addressing the Problem of Insufficient Data***: Self-insured plan sponsors and their service providers have discovered that prices for out-of-network services are rarely publicly disclosed in the OON Allowed Amount Files. In an attempt to address this problem, the final regulations:

    - Require more disclosures of the prices for out-of-network services by lowering the number of claims that must be incurred before the public disclosure requirement is triggered (from 20 claims to 11 claims), and also, increasing the period over which out-of-network claims must be captured and analyzed (i.e., increasing the reporting period from 90 days to 6 months).

    - Require listing out in the OON Allowed Amount File all of the prices for out-of-network services with claims above the 11-claim disclosure threshold furnished in each market type (e.g., the fully-insured large group, small group, individual, or the self-insured market).

Additional Contextual Files

The Federal Departments determined that additional information relating to the publicly disclosed pricing data is necessary to promote a fuller understanding of pricing dynamics. In response, the Departments are now requiring insurance carriers and self-insured plans to develop and publicly disclose 3 new Files to provide what the Departments are calling "additional context" to the INN Rate File. These new – and separate and distinct – Files include a:

- ***Utilization File***: The "Utilization File" will document all items and services covered under the plans or policies represented in the INN Rate File for which a claim has been submitted and reimbursed. The Utilization File must also include each INN provider – identified by NPI, TIN, and Place of Service Code – who was reimbursed for a claim for each covered item or service included in the INN Rate File.

    - Note: The final regulations do NOT require the Utilization File to disclose the "volume of claims" for a particular medial item or service. In other words, the final regulations do NOT require the disclosure of the number of times that any given provider submitted a claim. Instead, the final regulations only require the disclosure of when a given provider submitted at least 1 claim and was reimbursed for that 1 claim. The Federal Departments justified their decision of only requiring this "binary indicator of utilization," explaining that such an approach reduces the potential burden of publishing large volumes of information in the Files, and also, limits the potential of identifying individual patients who are obtaining sensitive medical services.

- ***Taxonomy File***: The "Taxonomy File" must include an insurance carrier's and self-insured plan's internal provider taxonomy, which maps items and services (represented by a billing code) to provider specialties (represented by specialty code as established by the National Uniform Claim Committee (NUCC)) to determine if the carrier or plan should deny reimbursement for an item or service because it was not furnished by a provider in an appropriate specialty. This Taxonomy File is intended to, among other things, help carriers and plans eliminate "ghost rates," while also serving as a way for the Federal Departments and the public to hold carriers and plans accountable for the accuracy of the provider-rate exclusions in the carriers' and plans' INN Rate Files.

- ***Text File***: The website of an insurance carrier, a self-insured plan, or a service provider on behalf of a self-insured plan (i.e., a TPA) must prominently display a Text File that includes a web link to the internet website that hosts the INN Rate File and the OON Allowed Amount File. The Text File must also include point-of-contact information including an up-to-date email address so an individual or group who works for the carrier, plan, or service provider can respond to questions related to these Files. The point-of-contact information must also be prominently displayed on the same website that hosts the INN Rate File and the OON Allowed Amount File, whether that website is the carrier's, the plan's, or the service provider's on behalf of the plan.

    - Note: The proposed regulations would have required insurance carriers and self-insured plans to also produce a "Change Log File" which was intended to show any changes made to the pricing information in the corresponding INN Rate File since the immediately preceding publication of that INN Rate File. The Departments did NOT finalize this proposal.

Timing for Updating the Files

- ***INN Rate and OON Allowed Amount Files***: The final regulations change the cadence for updating both Files from monthly to quarterly.

- ***Prescription Drug File***: The final regulations maintain the monthly update requirement for this File.

- ***Contextual Files***: The Utilization File must be updated annually, while the Taxonomy File must be updated quarterly, and the Text File must be updated not later than 7 calendar days following a change in the point-of-contact information or the URL links.

Other Important Things to Know

- ***File Format for TiC Files***: The format in which the TiC Files must take is the JSON format. The Federal Departments justified this decision, explaining that JSON best supports the current structure and exchange of TiC data and aligns with existing market implementation. For example, JSON is currently the predominant format used in the market, with over 90 percent of insurance carriers and self-insured plans having chosen JSON for their TiC Files, and thus, because the overwhelming majority of carriers and plans already publish their TiC Files in JSON – and because downstream users have built significant ingestion and validation tools around the existing JSON ecosystem – requiring a different format now would likely create significant transition costs for carriers, service providers, and File users.

- ***No Penalties for Non-Compliance***: We were all hopeful that the Federal Departments would increase enforcement of the TiC regulations by imposing penalties for non-compliance. However, there are no enforcement provisions (other than the attestation requirement) and no penalties for non-compliance.

- ***Permission to Contract With Insurance Carriers and TPAs To Produce the TiC Files on Behalf of a Self-Insured Health Plan***: In the case of a self-insured plan, the plan may enter into a written agreement with an insurance carrier or independent TPA under which the carrier or TPA agrees to produce – on behalf of the plan – the TiC Files.

    - Under this agreement, the plan may also permit the carrier or TPA to produce 1 INN Rate File that is also used by other self-insured plans and a carrier's fully-insured policies if all of the plans and policies use the same provider network.

    - In addition, the plan may also permit the carrier or TPA to produce the Utilization and Taxonomy Files for this same INN Rate File (because all of the plans and policies are using the same provider network, and also, the same claims adjudication processes and determinations). This written agreement can also permit the carrier or TPA to post the Text File and its contents.

    - And, if a self-insured plan sponsor enters into a written agreement with an insurance carrier or TPA to produce the OON Allowed Amount File on behalf of the plan, the plan may permit this carrier or TPA to produce 1 OON Rate File for more than 1 self-insured health plan that the carrier or TPA also provides claims adjudication services for.

- ***But Liability for Non-Compliance Still Falls on the Self-Insured Health Plan***: IMPORTANTLY, despite the ability to enter into a written agreement with an insurance carrier or TPA to produce the TiC Files on behalf of a self-insured health plan, if the carrier or TPA produces an incomplete or inaccurate INN Rate File, or Utilization File, or Taxonomy File, or Text File, or OON Allowed Amount File on behalf of the plan, the self-insured plan STILL remains liable for any non-compliance and/or inaccurate or incomplete Files.

    - Note: These regulatory requirements do not prevent a self-insured plan from contractually requiring the insurance carrier or TPA to assume the plan's liability if and when the carrier or TPA produces an inaccurate or incomplete File. But, that is NOT easy for a self-insured plan to accomplish through the contracting process. The fact that the self-insured plan STILL remains liable for non-compliance and/or inaccurate or incomplete Files – especially in cases where the self-insured plan does NOT possess and control the pricing information or data, and therefore, does NOT produce the plan's TiC Files – must be changed in future guidance or through legislation.