KAISER PERMANENTE®

Implementation Status: Transparency in Coverage and H.R. 133

March 2022

KAISER PERMANENTE®

Transparency in Pricing

Regulation Overview and Timeline

March 2022

Regulation Overview

The purpose of this document is to provide Kaiser Permanente employer groups and labor trusts with an update as to how Kaiser Permanente is implementing the Transparency in Coverage (TiC) and H.R. 133 requirements in light of the guidance from the U.S. Departments of Health and Human Services, Labor and Treasury (IRS) set forth in FAQs Part 49 issued on August 20, 2021.

This document provides:

1. An overview of the key payer-related requirements of Transparency in Coverage and H.R. 133
2. A high-level analysis of the changes introduced in FAQs Part 49
3. An explanation of KP's current implementation efforts and implementation expectations
4. Updated enforcement date for Pharmacy Reporting per the interim final ruling (IFR) promulgated, November 17, 2021

Note: Information regarding KP's implementation efforts may change without notice

Summary of Requirements

Requirement Name	Overview	Compliance Date
H.R. 133 Gag Clauses	Payers must remove gag clauses on price and quality information in provider contracts.	12/27/2020
H.R. 133 Mental Health Parity	Defined new provisions that strengthen uniformity in mental health and substance use disorder benefits. H.R. 133 codifies agency guidance regarding Non-Quantitative Treatment Limitations (NQTLs)	2/10/2021
H.R. 133 Broker Disclosures (Individual)	Payers must disclose all direct or indirect broker compensation to prospective members seeking individual ACA coverage or short-term limited duration insurance in the individual market.	12/27/2021
H.R. 133 Broker Disclosures (Group)	Brokers must report all direct and indirect compensation received from a health plan or other source to employer groups.	12/27/2021
H.R. 133 ID Cards	Member ID cards must display deductible and out of pocket maximum limits and contact information.	1/1/2022
H.R. 133 Surprise Billing	Requires that emergency services – regardless of where they are provided in an emergency facility – be treated as in-network. Also bans out-of-network charges for ancillary care (e.g., anesthesiologist or assistant surgeon) at in-network facilities and bans surprise billing for air ambulance services	1/1/2022
H.R. 133 Advance EOB	Automatically provide members with an advance EOB upon receiving notification from a provider or facility that a member is scheduled to receive a covered item or service from that provider.	TBD
H.R. 133 Provider Directories	Ensure that provider directories are verified every 90 days, updated within 2 business days upon receipt of updated information, and that members are not billed at out of network rates if they were relying on erroneous directory information.	1/1/2022
H.R. 133 Continuity of Care	Allows members with complex medical condition (including pregnancy) a 90-day period of continued coverage at in-network cost sharing rates to allow for a transition in care when provider changes network status.	1/1/2022
TiC Machine Readable Files (MRF) 1&2	Develop and publicly post machine readable files that disclose (1) In-network rates with contracted providers (2) Out of network allowed amounts	7/1/2022
TiC Cost Estimator	Provide members with a tool that enables them to view their cost-sharing liabilities for healthcare services. First phase must include 500 CMS-Designated services. Second phase must include all healthcare services	1/1/2023 & 1/1/2024
H.R. 133 Pharmacy Reporting	Requires health plans to report information on plan medical costs and prescription drug spending to Government	12/27/2022
TiC Machine Readable Files (MRF) 3	Payers must publicly post a machine-readable file for pharmacy cost and spending. **Requirement deferred indefinitely**	TBD

Regulatory Guidance Update

On Friday, August 20, 2021, the Federal Government issued FAQs Part 49 setting forth guidance on TiC and H.R. 133 that provided for enforcement discretion regarding some requirements and introduced the possibility of changes to other requirements.

The guidance provided deferred enforcement dates for specific provisions. The complexity of implementation and the need to provide further guidance on some provisions was also recognized. Kaiser Permanente has analyzed the FAQ updates and developed the following summary:

Enforcement dates moved:

- MRF 1 and 2 → Jul 1, 2022
- Pharmacy Reporting **

Enforcement dates deferred:

- MRF 3
- Advance EOB
- Price Comparison Tool → January 1, 2023 *

Regulatory updates forthcoming; reasonable, good faith interpretation

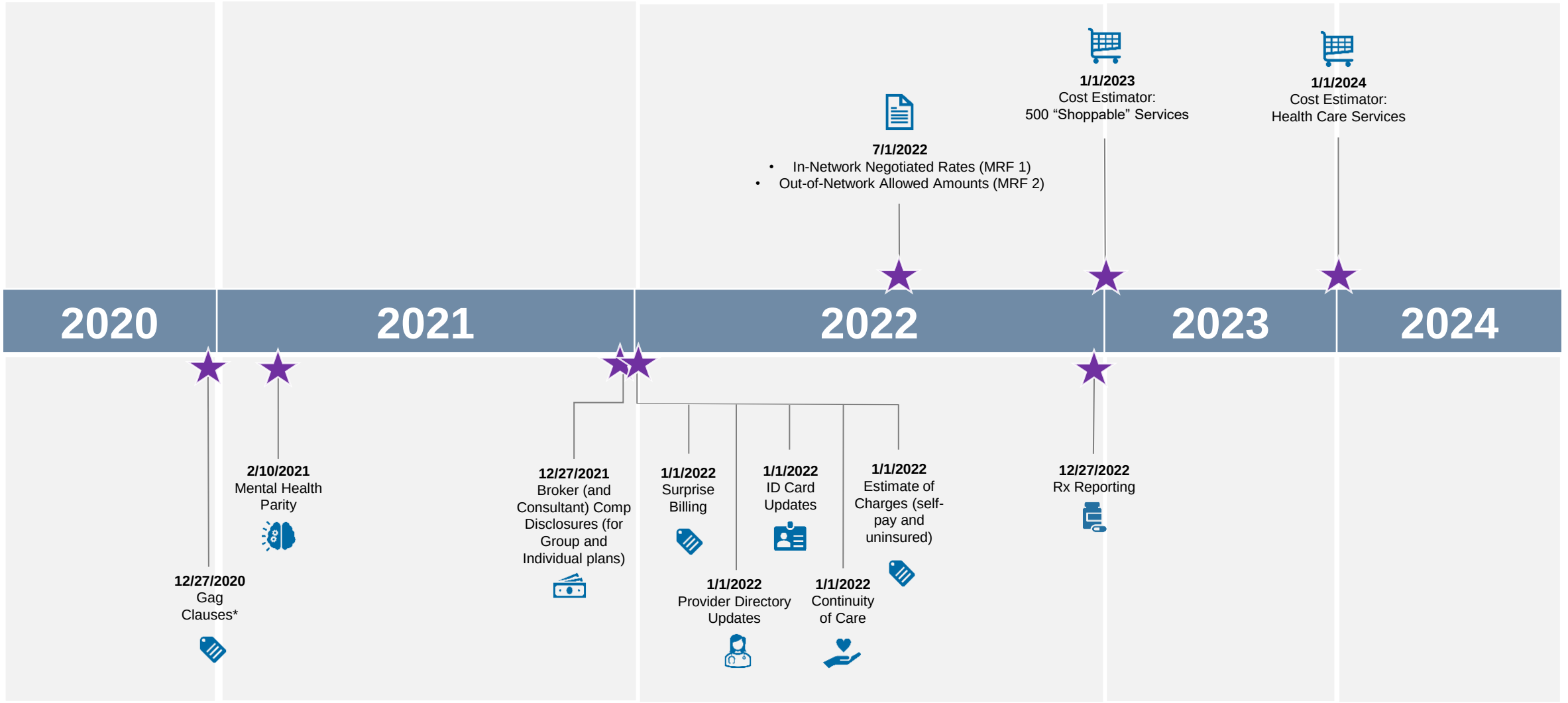
- ID Card Updates
- Provider Directory Updates
- Continuity of Care
- Gag Clauses

Not addressed in FAQ

- Broker Compensation Disclosures
- Mental Health Parity
- Surprise Billing
- Air Ambulance
- Choice of Provider
- Cost Estimator Tool

* Requirements likely to be aligned with Cost Estimator Tool and regulatory timeline
** The federal government has put forth an enforcement date of 12/27/2022

Current Regulatory Timeline



Acronyms:

- CAA – Consolidated Appropriations Act
- MRF – Machine Readable File
- TiC – Transparency in Coverage

*** NOTE: Enforcement dates are pending on the following:**

CAA – Gag Clauses (attestation date)
CAA – Advanced EOB

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Transparency in Pricing

Status Details

March 2022

Regulation Components & Status: Transparency in Coverage

RULE COMPONENTS

Machine Readable File: In-network negotiated rates (MRF 1)

Enforcement: 7/1/2022

Kaiser Permanente is in the process of developing the required in-network rate files for each region. KP is on track to meet the July 1, 2022 deadline to publicly post these files.

Machine Readable File: Out-of-network allowed amounts (MRF 2)

Enforcement: 7/1/2022

Kaiser Permanente is in the process of developing the required out-of-network allowed amount files. KP is on track to meet the July 1, 2022 deadline to publicly post these files.

Cost Estimator: 500 shoppable services

Enforcement: 1/1/2023

Kaiser Permanente has a tool in place that provides members with some of the functionality required by the Transparency in Coverage tool. KP is in the process of expanding the scope and functionality of the existing tool to meet the CMS requirements for the 500 shoppable services and plans to deploy the enhanced tool by January 1, 2023.

Cost Estimator: All services

Enforcement: 1/1/2024

Following expansion of KP's existing tool to include the 500 shoppable services (see left), the project team will commence work to expand the tool to provide all covered medical services. Anticipated go live will be January 1, 2024.

Machine Readable File: Rx drug prices (MRF 3)

Enforcement: TBD

CMS has indefinitely deferred this requirement until further examination and determination as to the appropriateness and feasibility of this requirement. Given the uncertainties surrounding MRF 3, KP has suspended work on this initiative pending more regulatory clarity.

Regulation Components & Status: Consolidated Appropriations Act

RULE COMPONENTS				
Gag Clauses*	**Mental Health Parity**	**Broker Compensation Disclosures**	**Surprise Billing***	**ID Card Updates***
Enforcement: 12/27/2020	**Enforcement**: 2/10/2021	**Enforcement**: 12/27/2021	**Enforcement:** 1/1/2022	**Enforcement:** 1/1/2022
CURRENT STATE				
Kaiser Permanente has completed review of its provider contracts and will be prepared to demonstrate its compliance with this regulation by attestation when required by the regulators.	Kaiser Permanente continues to implement its multi-step comparative analysis on the four NQTL areas prioritized by the DOL in FAQ 45 and will respond to regulators and employers upon request. Kaiser Permanente is monitoring all additional guidance as issued by the Federal Government.	Kaiser Permanente is prepared to assist brokers and consultants as they report all direct and indirect compensation as required by the regulation to employer groups and to prospective or renewing members seeking individual Affordable Care Act (ACA) coverage or short-term limited-duration insurance in the individual marketplace.	Kaiser Permanente will calculate itself, or use third-party vendors to calculate, the QPA on a “market basis” when the federal No Surprises Act applies to the plan, provider, and service/item. Claims will be reviewed-upon receipt to ensure that (1) the claim is clean and (2) the calculation of the member’s cost-sharing, if any, and/or the initial payment is completed and verified. Kaiser Permanente or its vendor may engage in active negotiation and, if necessary, the IDR process. KP has posted Model Disclosure Notice on its website (kp.org) and will transmit the Model Disclosure Notice when an EOB is generated.	Physical and digital (electronic) member ID cards now include information about any out-of-pocket maximum (OOPM) limitation(s) and deductible(s). In addition, ID cards display the kp.org website address and telephone number.

Regulation Components and Status: Consolidated Appropriations Act (cont...)

RULE COMPONENTS

Provider Directory Updates*

Impacts: Payers, Providers

Timing: 1/1/2022

Continuity of Care*

Impacts: Payers

Timing: 1/1/2022

Rx Reporting

Impacts: Payers

Timing: 12/27/2022

Price Comparison Tool*

Impacts: Payers

Timing: 1/1/2023

Advanced EOBs & Estimate of Charges*

Impacts: Payers, Providers

Timing: TBD (*1/1/2022 for self-pay and uninsured)

CURRENT STATE

Kaiser Permanente has a provider directory available on kp.org and continuously works to improve data quality and accuracy. Kaiser Permanente's provider data management process integrates multiple sources of provider information to ensure data quality and regular touchpoints with in-network physicians.

Kaiser Permanente's online provider directory includes all required information. Kaiser Permanente will make sure that provider information is kept up to date, respond to any member inquiry within 1 business day or provide information over a phone call, and process claims as In-Network in the event that the network status of the provider was incorrect in the directory at the time of the member's verification.

Some states already have mandated continuity of care requirements that are similar to the federal continuity of care requirements. Kaiser has completed a gap analysis and has implemented processes & procedures to support compliance including providing notice to impacted members.

On November 17, 2021, the Departments of HHS, Labor, and Treasury, and the Office of Personnel Management (OPM, released an interim final rule with request for comments (IFC) to implement the prescription drug reporting requirements for health plans that was passed in the Consolidated Appropriations Act (CAA).
Kaiser Permanente is currently reviewing this rule to determine implementation requirements. The first reporting is due on or before December 27, 2022 (for 2020 and 2021), and Kaiser anticipates that it will report on time. Subsequent reports will be due no later than June 1 annually.

Kaiser Permanente already provides a cost estimation tool that furnishes our members with estimates of the costs for their scheduled services from Kaiser Permanente providers. Estimates are available for a wide range of common exams, tests, services, and treatments. Kaiser is in the process of upgrading the tool's capabilities to align with the established requirements under the Transparency in Coverage regulation and the H.R.133 legislation.

Kaiser plans to upgrade the tool's capabilities to cover the 500 specific shoppable services as of January 1, 2023 and then for all covered items and services as of January 1, 2024.

Federal agencies have delayed enforcement of the advanced explanation of benefit requirement until new data transfer standards can be adopted. As additional guidance is provided, Kaiser will articulate its approach to the complete and final set of requirements.
Kaiser Permanente is implementing a plan and the capabilities to expand upon our current pre-service estimate generation process. We will continue to roll out new functionality to further automate this through 2022. Where needed, we have reinforced existing processes and provided training to address inadvertent patient impact.

* Part of No Surprises Act