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No Surprises Act & Healthcare Transparency Updates

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No Surprises Act

Prohibition on Balance Billing

No Surprises Act Prohibition on Balance Billing Background & Overview

Background

- The Consolidated Appropriations Act (CAA) COVID-19 relief bill was signed into law on December 27, 2020
- It included many healthcare related provisions including changes to:
  - Surprise Billing
  - Healthcare Transparency
- On July 1, 2021, the Department of Labor, Department of Health and Human Services, and Treasury Department jointly released interim final regulations on the No Surprises Act
- On August 20, 2021, the Department of Labor, Department of Health and Human Services, and Treasury Department jointly released FAQs on CAA implementation addressing No Surprises Act health care transparency

No Surprises Act Prohibition on Balance Billing Background & Overview

Overview

- The No Surprises Act (NSA) provides protections against balance billing in these situations:
  - Emergency services provided at non-participating/out-of-network (OON) facilities or by non-participating providers
  - Non-emergency services provided at participating/in-network (IN) facilities by non-participating providers
  - Air ambulance services by non-participating providers

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Emergency Services

- Coverage for emergency services must be provided without regard to any other term or condition of coverage with a few exceptions such as coordination of benefits matters and waiting periods
- Coverage must be provided regardless of provider/facility network affiliation and without any prior authorization
- Coverage must be provided at a cost not greater than the IN amount
- Post Stabilization services will generally be treated as an emergency service unless certain conditions are met

Non-Emergency Services provided by an OON Provider at an IN Facility

- Unless the provider has satisfied the notice and consent requirements the plan/issuers must not impose cost sharing that is greater than that of an IN provider

Air Ambulance Services

- Plans/issuers must not impose cost sharing that is greater than that of an IN provider

No Surprises Act Prohibition on Balance Billing Background & Overview

Notice & Consent

- In limited situations a provider may receive notice and consent from a participant to be balance billed
  - Certain non-emergency services or post-stabilization services only
  - For notice and consent to be permitted for post-stabilization services certain conditions must apply:
    - Written notice to the individual
    - Notice must be provided no later than 72 hours prior to the date of service (with limited exceptions)
    - Voluntary consent given by the individual or the individual's authorized representative
    - Signed copy of the notice given to the individual for their records

No Surprises Act Prohibition on Balance Billing Background & Overview

Payment Calculation – Plan Participant

- Plan participants will be responsible for no more than the IN cost-sharing amount which is based on the OON "Recognized Amount."
- The recognized amount is determined in the following order:
  - An All-Payer Model Agreement
  - An amount determined by the applicable state law or
  - The lesser of the billed charge and the "Qualified Payment Amount"
    - The Qualified Payment Amount is the median contracted rate for the same or similar items/services in the same insurance market by a provider in the same specialty and provided in the same geographic region, adjusted for inflation.
- Cost sharing is applied against the IN deductible and out-of-pocket maximum limit

No Surprises Act Prohibition on Balance Billing Background & Overview

Payment Calculation – Group Health Plan/ Issuer

- The "initial payment amount" is the amount that the plan/issuer sends to the provider after receiving the bill
  - There is no required initial payment amount
  - Must be received no later than 30 days after receiving a "clean claim"
- The OON rate is determined in the following order:
  - An All-Payer Model Agreement
  - An amount determined by the applicable state law
  - An amount agreed upon by the parties or
  - An amount determined through independent dispute resolution (IDR)
- Group health plans and issuers will be responsible for making total payment equal to the out-of-network (OON) rate less the plan participant cost-sharing and "initial payment amount."

- Note: an OON total payment applied before a deductible is met will not cause a qualified HDHP to become HSA ineligible

No Surprises Act Prohibition on Balance Billing Notice Requirements

Notice Requirement

- Plans and issuers must provide certain disclosures to plan participants
- The agencies provided a model notice for plans and issuers to use to satisfy notice requirements
  - Must be made publicly available on a website of the plan or issuer and provided in EOBs
  - Using the model notice provided is considered good faith compliance
- Disclosure requirements effective January 1, 2022

No Surprises Act Prohibition on Balance Billing Employer Responsibilities

Fully Insured Plan Responsibilities

- When a plan is fully insured the law technically applies to the employer, but the responsibility falls on the issuer
- Plans that are in states with balance billing laws will follow the state laws and plans in states without balance billing laws will follow the federal guidance

Self-Funded Plan Responsibilities

- When a plan is self-funded the obligation to comply falls on the employer, but practically speaking the TPA will have to assist with compliance
  - Employers should ask the TPA for an action plan for compliance
  - Review TPA agreements
    - TPAs may request fee increases due to new IDR obligations and added administrative burden
- Check with the TPA about providing the model notice on their website
- Provide the notice or highlights of the notice in your legal notice packet/ open enrollment materials
- Review TPA agreements with your broker
- Review updated provisions for the SPD/Plan Document

No Surprises Act Prohibition on Balance Billing Carrier/TPA Responsibilities

Fully Insured Plan Responsibilities

- The carrier will be primarily responsible for compliance
- Provide the model notice on the carrier's website and provide in the EOBs

Self-Funded Plan Responsibilities

- The plan sponsor/employer will be liable for failure to comply but the TPAs will need to assist with compliance
- TPAs should provide the model notice on their websites and in EOBs
- Employers will not have access to the data required to provide disclosures necessary to comply with certain rules such as the Qualified Payment Amount disclosure
    - Plans or issuers must provide a statement for each item/service certifying the plan has determined the QPA and providing specifics on the IDR process and deadlines
    - Self-funded plans will need to rely on their TPA to satisfy these requirements which could cause TPA contract issues

No Surprises Act & Healthcare Transparency

Additional Requirements

No Surprises Act
Additional Requirements & Next Steps

On August 20, 2021, the DOL, HHS, and Treasury jointly released FAQs addressing several components of the No Surprises Act that were not addressed in the July 1, 2021, guidance.

Transparency in Coverage (TiC) Machine-Readable Files

- Departments will defer enforcement of machine-readable files for prescription drug pricing pending further rule making
- Departments will defer enforcement of the requirement to publish machine-readable files until July 1, 2022

Price Comparison Tools

- Departments concede that these requirements under CAA are similar to those under the TiC
- Departments will defer enforcement of price comparison tools until January 1, 2023, to align with the deadline to comply with the TiC

Identification Cards

- Effective January 1, 2022, plans and issuers are expected to use a good faith reasonable effort to comply with these requirements
- Plans and issuers may use various reasonable methods to comply

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Good Faith Estimate

- Departments will defer enforcement of this rule until rulemaking is available

Advanced EOBs

- Departments will defer enforcement of this rule until after a comment period has been completed, rulemaking available, and plans/issuers establish appropriate data transfer standards

Prohibition on Gag Clauses

- Plans/issuers are expected to implement the attestation requirement effective January 1, 2022, using a good faith reasonable interpretation of the statute
- Additional rule making is expected in early 2022

Provider Directories

- Plans and issuers are expected to comply with the requirements effective January 1, 2022, using a good faith reasonable interpretation of the rule

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Continuity of Care

- Additional rule making will include a prospective applicability date with a reasonable amount of time to comply
- Until additional rule making is provided plans and issuers are expected to implement the requirements using a good faith reasonable interpretation of the rule

Grandfathered Health Plans

- The CAA does not include an exception for grandfathered health plans

Reporting on Pharmacy Benefits and Costs

- The Departments intend to issue regulations that will address these new requirements
- Departments will defer enforcement of the requirement to report on pharmacy and drug costs pending additional rule making
- The most likely date of compliance will be December 27, 2022

No Surprises Act
Additional Requirements & Next Steps

Action Plan

- Fully Insured Plans
  - Carriers will be responsible for compliance with the CAA and TiC requirements
  - Employers should reach out to carriers to determine that they will be ready to comply with requirements by the effective dates
- Self-Funded Plans
  - Employers will be responsible for compliance with the CAA and TiC requirements but will need to lean heavily on the TPA for assistance
  - Employers should reach out to TPAs to determine that they will be ready to comply with requirements and be able to assist with employer requirements by the effective dates
  - Employers should review carrier service agreements to determine what if any services need to be stipulated to in agreements and if additional/increased fees will be added
  - Review updated provisions for the SPD/Plan Document

Watch for EPIC Compliance Matters updates and insights for more information on legislation updates

Questions?