Compliance Alert

March 23, 2021

No Surprises Act

Overview

This *Compliance Alert* addresses the No Surprises Act found within the Consolidated Appropriations Act 2021 (CAA). The No Surprises Act (the "Act") is a legislative effort aimed to prevent surprise medical bills. Surprise medical bills occur when a patient receives a bill for the difference between the out-of-network (OON) provider's fee and the amount covered by the patient's health insurance, after co-pays and deductible. This situation could arise in an emergency when the patient has no ability to select the emergency room, treating physicians, or ambulance providers. Surprise medical bills might also arise when a patient receives planned care from an in-network (INN) provider (often, a hospital or ambulatory care facility), but other treating providers brought in to participate in the patient's care are not in the same network. These can include anesthesiologists, radiologists, pathologists, surgical assistants, and others.

The Act applies to all group health medical benefit plans (including both self-funded grandfathered and non-grandfathered plans) and health insurance issuers in the individual and group markets. It also applies to applicable health care providers, i.e. those billing for OON. The Department of Labor (DOL) will regulate self-funded plans' compliance and the states will regulate fully-insured plans and providers.

Payment Amounts

The Act protects patients from surprise medical bills by only requiring payment at the "INN Cost Share Amount". This payment formula is yet to be established by Health and Human Services (HHS) and may be based on the median INN payment under the plan for same or similar services.

Emergency Services Requirements

- Patients pay only INN Cost Share Amount for:
  - OON emergency services provided at an OON facility (including any facility fees) or at an INN facility by an OON emergency physician or other provider.
- Protections cover the patient from the point of evaluation and treatment until the patient is stabilized and can consent to being transferred to an INN facility.
- Protections include air ambulance but **do not extend to ground ambulance**.

Coverage of Non-Emergency Services Performed by Nonparticipating Providers

- Patients pay only INN Cost Share Amount for:
  - Non-Emergency services provided at an INN facility but by an OON provider i.e. ancillary services such as anesthesia and radiology
- There are exceptions for Non-Emergency Services:
  - If the OON provider provides written notice to the patient 72 hours in advance of the services being performed (notice must include a cost estimate and list of INN providers), and the patient knowingly and voluntarily chooses and provides a consent waiver to be treated by the OON provider at the OON rate, then the patient will be billed the OON rate and this may result in a balanced bill.
  - Patient consent waivers are only allowed for Non-Emergency services. Ancillary services and providers such as anesthesiologist, radiologist and pathologist cannot issue notice and consent forms.

Appeals of Adverse Benefit Determination on Surprise Bills

If the claim related to a surprise bill is denied in whole or in part, the member may appeal and request external review.

Independent Dispute Resolution

The Act does not establish a benchmark payment standard for payment to OON providers. If the provider does not accept the plan's payment amount (the "INN Cost Share Amount"), the plan and the provider must try to resolve payment disputes on their own. If that fails, the parties can turn to arbitration.

- The plan and providers have 30 days to engage in private, voluntary negotiations to try to resolve a payment dispute.
- If negotiations fail, either party may, within 4 days, request arbitration through independent dispute resolution (IDR).
- The arbitration process will be administered by independent dispute resolution entities.
- The Federal Government will establish the IDR process, including a list of entities available to take cases.
- The losing party is required to pay all fees of the IDR process.

Timeline

- Protections go into effect for plan years beginning on or after January 1, 2022.
- The Federal Government is required to issue further regulations/guidance under several provisions within the CAA:
  - Qualifying payment amount methodology to establish the INN Cost Share Amount: No later than 7/01/2021.
  - Regulations to establish an audit process to ensure that plans are applying the qualifying payment amount for emergency services: No later than 10/01/2021.
  - Independent dispute resolution process and federally authorized IDR entities: No later than 12/27/2021.
  - Formalized complaint process for providers: No later than 1/1/2022.

HPI's Actions

Surprise billing has been a known concern within the healthcare industry for some time. HPI is assessing current surprise billing incident volume and reaching out to our external vendor partners that work in payer/provider negotiations and price OON claims for our clients' plans. These partners have proposed solutions to the new requirements in order for HPI to administer your plan in compliance with the Act, with the goal to reach resolution on a payment dispute to avoid IDR. We will update you as we work through these solutions.

HPI will also continue to update you as new or evolving guidance is issued. If you have any questions, please feel free to reach out to your HPI Account Services Team.