RELEASE OF INTERIM FINAL RULES BANNING SURPRISE MEDICAL BILLING

July 7, 2021

BACKGROUND

On Thursday, July 1, 2021, the Biden Administration in tandem with the Department of Health and Human Services (HHS), the Department of Labor (DOL), the Office of Personnel Management, and the Department of Treasury released interim final regulations setting forth new standards relating to "surprise medical billing" (the Regulation). Most provisions of the Regulation will go into effect on January 1, 2022. The Regulation implements the No Surprises Act (Pub. L. 116-260). A summary of some major terms of the Regulation is outlined below.

AFFECTED PARTIES AND SERVICES

The Regulation establishes rights for participants, beneficiaries, and enrollees in group health plans, and group and individual health insurance coverage and establishes obligations for:

(1) nonparticipating providers at participating facilities that render emergency and non-emergency services;
(2) nonparticipating providers that give air ambulance services; and
(3) group health plans and health insurance issuers that offer group or individual health insurance coverage.

More specifically, HHS inserted provisions to regulate hospital emergency departments, independent freestanding emergency departments, and health care providers and facilities.

IMPORTANT RULES AND REQUIREMENTS

The primary stated purpose of the Regulation is to protect individuals from surprise medical bills that stem from emergency services, air ambulance services, and certain other services administered by nonparticipating providers at participating facilities.

For plans that cover emergency services, the Regulation requires regulated health plans to directly pay even non-participating providers for emergency services rendered to the plan beneficiaries. The Regulation requires these services to be paid by the plan without prior authorization and regardless of any other term or condition of the plan or coverage other than the exclusion or coordination of benefits or a permitted affiliation or waiting period. Further, cost-sharing amounts paid by a plan participant in connection with "out-of-network" services must be counted towards deductibles and out-of-pocket plan maximums.

The Regulation also establishes some limitations and burdens on providers, though. Where a provider covered by the Regulation does not participate in a plan, subject to certain exemptions, the provider generally will not be permitted to "balance bill" the patient for items and services covered by the rule.

The cost allocation/cost sharing calculations within the Regulation are complex, but include terms based upon an applicable All-Payer Model Agreement established pursuant to the Social Security Act, amounts specified by state law if no All-Payer Model applies, or the lesser of the billed charge or the plan's median contracted rate.

For balance billing calculations, payments to the provider or facility are limited based on four methods:

(1) the All-Payer Model Agreement;
(2) an amount determined by applicable state law if no All-Payer Model Agreement applies;
(3) an amount agreed by the plan or issuer and the provider or facility; or
(4) an amount determined by an independent dispute resolution (IDR) entity (with regulations to be issued soon relating to IDR entities and this process).

EXEMPTED PARTIES AND SERVICES

The Regulation includes certain limited exemptions for providers and facilities that furnish notice to and obtain consent from the patient regarding out-of-network care and additional costs. The exemptions do not apply, however, to a number of circumstances where "surprise bills" are likely to occur. For example, the exemptions are not intended to apply to out-of-network anesthesiology or radiology services provided at an in-network healthcare facility.

CONCLUSION

The Regulation will certainly have a substantial impact upon plans and providers. Further changes could occur based upon the comment process, but it seems likely that the core parts of the Regulation will remain intact and will be implemented on January 1, 2022.

If you have any question about the Regulation or any other potential surprise medical billing concerns, please contact Hancock Daniel's Reimbursement team.