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Federal Surprise Billing Legislation – The Rundown on the No Surprises Act

Surprise bills, or balance billing, has continued to be a hot-button issue in politics and healthcare for the past few years. Recently, Congress passed an omnibus spending bill package as part of the COVID-19 relief stimulus, which also included a portion dedicated to eliminating surprise billing. Deemed the No Surprises Act, this bill attempts to comprehensively protect patients from surprise bills on the national level. This bipartisan bill comes as the culmination of years-long debates as to how best to protect patients while avoiding undue harm to the healthcare industry and the providers whose reimbursement rates will almost certainly go down as a result of this legislation. The bill outlines methods for determining and limiting reimbursement rates as well as allowing for arbitration to solve any reimbursement disputes that may arise. Additionally, this bill is anticipated to save the federal government approximately $18 billion, which will then be used to fund community health centers and other primary care programs. Though signed into law by President Trump on December 27th, 2020, this bill will not officially go into effect until January 1st, 2022.

What's in the Bill?

This bill addresses all the major concerns that comprise the various forms of state-level protection in previously passed legislation, including the following:

Cost

Patients will not be required to share the cost of healthcare with their insurance carrier beyond in-network rates. In the event where patients are responsible for out-of-network (OON) rates, informed consent, good-faith estimates, and other requirements will be necessary beforehand.

Transparency

Providers will be required to provide an Advanced Explanation of Benefits which comprises a good-faith estimate of cost, identifies providers as in- or out-of-network, and shows how to find in-network providers. Insurers will also need to provide price comparisons to the patients.

Emergency Services

Patients will not be charged for services over which they have no control, including emergency services. Once the patient is stabilized, their consent will be required before they can be held liable for OON expenses. This also applies to air ambulances (though not ground ambulances), as these situations often result in particularly high medical bills.

Non-Emergency Services

The new bill protects patients from surprise bills from OON providers at in-network facilities, but it requires written and informed consent from the patient before they can be charged additional fees for OON services. Generally speaking, written patient consent must occur at least 72 hours before the services are provided and must include a good-faith estimate of cost and identify in-network alternatives.

Payment
The No Surprises Act does not identify standard payment amounts, but instead expects insurers and providers to come to an agreed upon rate for services rendered. If fair payment cannot be reached, the bill allows for arbitration to determine rates. Most importantly, all parties involved agree the patient should not be placed in the middle of such disputes.

The arbitration process allows 30 days for insurers and providers to negotiate payment. If negotiations fail, an independent dispute resolution entity will administer the "baseball style" arbitration process: both parties offer a payment amount and the arbitrator selects one or the other (i.e., no splitting the difference). The losing party will be responsible for paying the cost of arbitration and no party can initiate the arbitration process for the same service or similar claims for 90 days following the decision.

State Laws
As mentioned in previous white papers, there is a wide variety of state laws that attempt to address surprise billing concerns on a state-by-state basis. The No Surprises Act defers to the state laws regarding payment amounts and allows for states to pass more surprise billing legislation in the future.

As far as enforcement is concerned, the No Surprises Act operates similarly to the ACA and HIPAA—that is, the states are the primary regulators of fully insured health insurance products. The states are also responsible for enforcing the other new standards included in the No Surprises Act; if the states do so insufficiently, the federal government may become involved to ensure standards are being met. This may involve monetary penalties of up to $10,000 per violation against providers who are not meeting federal standards.

Final Thoughts
Given the broad scope and relative complexity of the issue, it is likely there will be complications along the way as the federal and state governments attempt to implement all the provisions outlined in the No Surprises Act, as well as the various state laws that apply to surprise billing. We encourage you to stay up-to-date on the situation and monitor how this legislation may impact your practice. For our part, APS will continue to monitor any progress and developments that may affect your practice's compliance and reimbursement. If you have further questions on your state's regulation of surprise billing, please contact your Practice Manager.