Overview of Part II of the Surprise Billing Interim Final Rule

October 1, 2021

Hospitals lost the regulatory battle over Surprise Billing. That's how the DC media is playing this issue today. Click here and here for those reports. The for-profit hospital association blasted the regs, click here. AHA's response was more muted, click here. The leading health insurance lobby, AHIP, praised the regs, click here.

As you know, the federal agencies released Part II of the requirements related to Surprise Billing as in Interim Final Rule (IFR) with a 60-day comment period. This IFR includes the Independent Dispute Resolution (IDR) process and timeframes, the good faith estimates required for uninsured or self-pay patients and the patient-provider dispute resolution process.

Click here for the HHS Press release, here for the fact sheet on the rule, here for the Biden Administration's fact sheet on efforts to prevent surprise billing and here for the 521-page Interim Final Rule. The Executive Summary begins on page 15 of the IFR; the text of the regulation begins on page 341.

We will have more analysis, but here are our initial assessments based on a quick review:

- The Independent Dispute Resolution (IDR) entity must begin with the presumption that the Qualifying Payment Amount (QPA) is the appropriation out of network amount. If a party submits additional information, the IDR must consider it if credible. For the IDR to deviate from the offer closest to the QPA, any information submitted must clearly demonstrate that the value of the item or service is materially different from the QPA. This is more restrictive than the statute required. The IDR process begins on page 369. Note that IDR for air ambulances is also included.

- While the agencies previously announced they are deferring the good faith estimates required for insured patients until later rulemaking (click here), in this IFR they include the good faith estimates required for uninsured or self-pay patients. Discussion begins on page 109 of the IFR. However, HHS will exercise enforcement discretion in certain situations to allow providers and facilities additional time to develop systems and processes for providing and receiving the required information from each other. We will drill down on this and have more for you.

- The patient-provider dispute resolution process (select dispute resolution SDR) is established whereby the uninsured or self-pay patient may dispute a bill that is "substantially in excess" of the good faith estimate – "substantially in excess" is defined as $400. The patient would pay $25 for the dispute resolution process. Discussion begins on page 144 of the IFR.

The fact sheet also sets forth a chart of the speedy IDR timeline, as well as details on the fee schedules for IDR and the process.

We will have more information for you next week. You may wish to join the HHS Office of Intergovernmental and External Affairs, in partnership with Centers for Medicare & Medicaid Services (CMS) on **Monday, October 4 at 2:00 PM ET for a Stakeholder Briefing**.

The Stakeholder Briefing will include remarks from:

- Deputy Director for Policy of the Center for Consumer Information and Insurance Oversight (CCIIO), Jeff Wu
- Director for the Office of Health Plan Standards and Compliance Assistance, Employee Benefit Security Administration (DOL), Amber Rivers
- HHS Director of the Office of Intergovernmental and External Affairs, Marvin Figueroa

Please register for the Stakeholder Briefing at this link:

https://www.zoomgov.com/webinar/register/WN_0FJDhx0JSLGa1y5e2D3FrQ

For additional information, please contact our General Counsel Diane Turpin at diane.turpin@shcare.net or 202-578-5444