



Surprise Billing – Two Regs On the Horizon

June 23, 2022

We expect both a final rule and a proposed rule implementing provisions of the No Surprises Act to be released this summer – the final rule may be released any day. Here’s what we expect to see:

Final Rule on Part II

The surprise billing regulations were proposed last year as interim final rules with comment – Part I and Part II – which covered the main of the provisions of the No Surprises Act. Pending at OMB and expected to be released in June, is the final rule on Part II which includes the sections related to:

- the Independent Dispute Resolution (IDR) process,
- the good faith estimates for the uninsured and self-pay patients, and
- the patient-provider dispute resolution process.

Click [here](#) for the OMB notice and [here](#) and [here](#) for our earlier memos on Part II. Note that we expect this final rule to incorporate the changes to the factors to be considered during the IDR process due to the litigation won by the Texas Medical Association over the use of the Qualifying Payment Amount. (Click [here](#) for the CMS memo following the ruling.)

Proposed Rule on Good Faith Estimates/Advanced Explanation of Benefits for Insured Patients

HHS also sent a notice of proposed rulemaking to OMB yesterday on sections of the law that include good faith estimates and advanced explanations of benefits for insured patients. (Click [here](#).) Last August, CMS issued a FAQ stating that enforcement of these provisions would be deferred until further rulemaking due to the “complexities of developing the technical infrastructure for transmission of the necessary data from providers and facilities to plans and issuers.” (Click [here](#) for our memo on the FAQ). The FAQ did not set a date certain for enforcing these procedures.

Provider organizations have been raising the alarm about the technology challenges that remain. Click [here](#) for the AHA letter requesting that CMS delay enforcement beyond January 1, 2023; click [here](#) for the AMGA letter explaining the problems that have arisen in providing estimates for the uninsured and self-pay patients and asking for additional enforcement discretion.

The proposed rule will require scrutiny and comment. We will keep you updated with new developments.

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