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Health Policy in Transit

A Purchaser Viewpoint

National Alliance of Healthcare Purchaser Coalitions
Driving Health, Equity and Value

Health Policy in Transit – Surprise Billing Final Regulations

On August 19, 2022, the U.S. Departments of Health and Human Services, Labor, and the Treasury (the Departments) released final rules titled "Requirements Related to Surprise Billing: Final Rules." The rules finalize certain requirements under the July 2021 and October 2021 interim final rules relating to Qualifying Payment Amount (QPA) determinations and the independent dispute resolution (IDR) process. The QPA is generally the median of contracted rates for a specific service in the same geographic region. *These updated regulations were also in response to a United States District Court for the Eastern District of Texas decision, which vacated portions of the October 2021 interim final rules related to payment determinations under the IDR process.*

These final rules clarify and officially finalize the requirements in the interim final rules regarding written decisions from IDR entities.

Certified IDR entities must explain their payment determinations and underlying rationale in a written decision submitted to the parties and the Departments. The written decision must include an explanation of the information that demonstrated that the selected offer is the rate that best represents the value of the item or service. This includes the weight given to the QPA and any additional credible information regarding other relevant factors. If the certified IDR entity relies on additional information or circumstances when selecting an offer, its written decision must include an explanation of why the certified IDR entity concluded the information was not already reflected in the QPA (i.e. not double-counted).

The Coalition Against Surprise Medical Billing (CASMB), of which the National Alliance is a member, issued this statement following publication of the rules. While we are glad to see implementation of the No Surprises Act moving forward, we are concerned that the Departments efforts to appease provider demands regarding the IDR process may make it easier to abuse that process. However, we are encouraged to see the importance placed on transparency in IDR decisions, and hope the Departments use this information to ensure the IDR process is not abused to the point it increases overall health care costs.

There are two particular policy topics in these final rules that are intended to clarify aspects of how the QPA and IDR processes should work.

- Downcoding: In response to comments from stakeholders, the Departments required that plans and issuers disclose information if they downcode a billed claim. The final rules define the term "downcode" to mean the alteration by a plan or issuer of the service code to another service code or the alteration, addition, or removal by a plan or issuer of a modifier if the changed code or modifier is associated with a lower QPA than the service code or modifier billed by the provider.

- QPAs and IDR factors: Initially, the October 2021 interim final rules required that certified IDR entities select the offer closest to the QPA unless the certified IDR entity determined that any additional credible information submitted by the parties demonstrated that the QPA was materially different from the appropriate out-of-network rate. *The District Court vacated this requirement in rulings in February and July 2022.* These final rules remove those provisions and instead specify that certified IDR entities should select the offer that best represents the value of the item or service under dispute after considering the QPA and all permissible information submitted by the parties. The certified IDR entity should also evaluate that information to avoid double counting information that is already accounted for by the QPA or by any of the other information submitted by the parties.

National Alliance is a nonprofit, purchaser-led organization whose members represent private and public sector, nonprofit, and Taft-Hartley organizations, and more than 45 million Americans spending over $300 billion annually on healthcare.