January 3, 2019

Health Policy in Transit

A Purchaser Viewpoint

National Alliance of Healthcare Purchaser Coalitions is a national, non-profit, membership association of employer led coalitions across the country collectively serving 12,000 purchasers and 45 million Americans.

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

Legislation Proposed to Congress to Curb the Issue of Surprise Billing

Over the last decade, "surprise" balance billing by out-of-network providers has become an increasingly prevalent problem for group health plans, health insurance issuers, and most importantly, the employees and dependents covered under those plans. The disputes that can arise from this billing practice impose financial and psychological burdens on participants and their families, and can present significant challenges for group health plans and insurers. Congress is considering legislative proposals that would limit or prohibit balance billing of covered individuals and mandate payment methodologies for certain out-of-network services.

Historically, neither federal nor state laws addressed the issue of surprise balance billing, as it was not covered by ERISA, the Public Health Service Act (PHSA), nor by state insurance laws. Rather, balance billing was subject to state contract law, and disputes were resolved between the provider and the patient. More recently, insurers and self-funded group health plans have become involved, as out-of-network providers have sought payment through ERISA and the PHSA's appeals processes, arguing that a larger payment should have been made under the plan's usual, customary, and reasonable calculation for out-of-network services. Many plans and insurers have sought to hold their participants harmless from these surprise balance bills. However, this has exposed plans and insurers to both increased costs for out-of-network services and significant costs in negotiating such bills with providers.

Federal legislators have begun discussions around legislative language intended to address surprise balance billing for both insured and self-funded group health coverage. The federal effort is currently focused on a discussion draft of a bill released by a bipartisan Senate health care price transparency working group led by Senator Bill Cassidy, M.D. (R-LA). Employers who operate in multiple states would generally prefer a uniform national approach as opposed to navigating different state laws or regulations. While Congress considers its options, some states (for example, California and New Jersey) have already enacted laws, resulting in some interesting implications for employers and their plans.

The Cassidy proposal addresses balance billing by first requiring plans and issuers to pay the difference between cost-sharing for in-network benefits under the plan and billed charges. The primary innovation of the Cassidy proposal is that it would prevent covered service providers from balance billing the patient beyond the amount collected as cost-share. Despite the mandate that the plan or issuer pay the difference between cost-share and billed charges, those amounts are limited to an amount determined under state law (if applicable), or if no state law applies, the greater of: (1) the median in-network rate, or (2) the usual, customary, and reasonable charge for the service. The Cassidy proposal specifies that the usual, customary, and reasonable fees are determined as 125 percent of the average allowed amount for all private health plans and issuers for the geographic service area, as determined by the state insurance regulator or the U.S. Secretary of Health and Human Services.

In addition to the Cassidy proposal, Senator Maggie Hassan (D-NH) has introduced a bill, which similarly protects patients by restricting out-of-network providers from charging the patient more than in-network cost-sharing. The bill applies to employer-sponsored health plans and takes a different approach for determining payment for certain out-of-network services than the Cassidy draft bill. Instead of prescribing a minimum payment, the Hassan bill establishes a binding arbitration process to determine payment to providers where the plan and provider are unable to reach a resolution on their own. Also, Senator Jeanne Shaheen (D-NH) has introduced a bill which would cap the amount that out-of network providers could charge uninsured patients and patients who have individual market coverage.

These efforts to curb surprise balance billing present two primary benefits for plan sponsors.

1. If structured properly, they could potentially reduce the financial and psychological burden imposed on plan participants through aggressive billed charges by out-of network providers.
2. By streamlining the negotiating between plans and out-of network providers, they create incentives for providers to bill charges consistent with either objective usual, customary, and reasonable standards or in-network negotiated rates.

The National Alliance is participating in a stakeholder coalition led by AHIP and including organizations like ERIC, the American Benefits Council, and NBGH to attempt to influence how these various legislative proposals take shape.