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NEW GUIDANCE ON THE FEDERAL SURPRISE BILLING PROCESS

The new federal prohibition on surprise billing first went into effect on January 1, 2022 (and applies to plan years beginning on or after that date). The new rules prohibit providers from charging "out-of-network" rates for emergency care, air ambulance services, and all care by an "out-of-network" provider in an "in-network" facility. Any differences between what a provider charges in these circumstances and what a plan is willing to pay must be resolved between the provider and the health plan. If payment details cannot be settled on within 30 days of billing, either party may start the independent dispute resolution (IDR) process that utilizes a web-based portal maintained by the federal government. A new FAQ published last week by the Departments of Health and Human Services, Labor, and Treasury details how that process will work. Included below are several key points from the FAQs.

- Plans and issuers seeking to use the federal IDR process to resolve a surprise bill are required to start a 30-day open negotiation period before initiating the IDR through the federal portal.
- The federal portal for IDR requests was launched on January 1, 2022. As of this writing, it is available for uninsured (or self-pay) individuals. Over the next few weeks, the system will go "live" for plans, issuers, providers, facilities, and air ambulance services. Certified IDR entities will also be able to use the portal at that time.
- Model notices are now available for both payers and providers to use during the fee negotiation process. Almost all actions by the IDR entity and parties need to be completed through the federal IDR portal.
- The initial list of certified IDR entities is currently available online. The list will be updated on an ongoing basis, and newly certified entities will be added as approved.
- The initiating party selects a certified IDR entity from the list on the federal IDR portal. The non-initiating party may then accept or reject the proposed certified IDR entity. Federal officials will randomly select a certified IDR entity when the parties cannot agree.
- There are two fee types related to the IDR process. An administrative fee of $50 (for 2022) that each participating party must pay, and the IDR entity's arbitration fee (which must be paid by the losing party). An IDR entity is permitted to charge between $200 to $500 for a single case, and can charge between $268 to $670 for batched determinations. Federal approval is needed if an IDR entity wants to charge more for a particular case.

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- Multiple claims can be batched together, but each included claim must meet the criteria for claims batching. Importantly, claims from different plans may not be batched together. Thus, for example, a TPA may not include claims related to different self-funded medical plans in a "batch" of claims.

- Each party must pay the IDR entity fees upfront. The fee will be refunded to the prevailing party within 30 business days after the settling of the dispute. When determinations are batched, the party with the lowest number of findings in its favor is determined to be the non-prevailing party. The certified IDR entity fee will be split evenly if each party prevails in an equal number of determinations within a batched case.

- If a settlement is reached by the parties after a certified IDR entity has been selected and started its review, each party must pay half of the IDR entity's fee (unless the parties agree otherwise). The administrative fee paid by the parties will not be refunded.

- The federal IDR process is a document-based review. Both parties will submit all required information and supporting documents to their IDR entity, and the arbitrator will make their determination based on those materials alone.

- The information that must be submitted to the IDR entity includes the final offer of payment expressed as both a dollar amount and a percentage of the qualifying payment amount (QPA). The QPA for the applicable year for the same/similar items or services must also be submitted. Providers or facilities need to include the size of their practice or facility, their specialty, and their coverage area. Plans and issuers must include the coverage area of the plan or issuer, the relevant geographic region for purposes of the QPA, and whether the coverage is fully insured or self-funded.

- Certified IDR entities have 30 business days after selection to settle the dispute. The external review process for coverage disputes between individuals and plans or issuers remains in place. The federal IDR process involves disputes regarding payment amounts between providers, facilities, or providers of air ambulance services and plans or issuers. No coverage determinations are made by IDR entities.

Fully insured groups will generally rely on their health insurance carrier to handle surprise billing issues. It is important to review all contracts to ensure this division of responsibility is reflected. Self-funded group plans should develop parameters with their third-party administrators regarding the negotiation process, a strategy for proposed fee payments, and how an IDR claim is to be handled. Groups with January 1 plan years are beginning to see affected claims. These details should be resolved soon and likely need to be reflected in an amendment to the group's administrative services agreement.

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