Don’t Be Surprised by the No Surprises Act: Challenges with How it was Enacted in the Final Rule

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February 16, 2023
Disclosures

- I affirm that my current COI disclosure has been accurately reported to the ACR
- I have no disclosures relevant to this presentation
- Outside Activities:
  - Board Member and Finance Chair Hackensack Meridian Health Partners
  - Chief Medical Officer- Neutigers
  - Consultant- VoxelCloud, Guidepoint, AlphaSights
Challenges with Implementation of the No Surprises ACT

• Before the Independent Dispute Resolution (IDR)
• During the Independent Dispute Resolution
• After the Independent Dispute Resolution
• In-network Challenges
Before the IDR

- Eligibility
- Cost
- Wait Times
January 13, 2023

ACR Working with Allies to Fight Surprise Billing Independent Dispute Resolution Fee Increase

The American College of Radiology® (ACR®) is fighting a 600% fee increase to file a No Surprises Act (NSA) Independent Dispute Resolution (IDR) claim. The NSA is a law passed in 2020 to protect patients from surprise medical bills. The NSA includes the IDR process between providers and insurers to dispute contested payments, with no monetary impact on the patient.
During the IDR

- QPA calculation
- QPA Primacy
QPA Calculation

- Ghost Rates
- Physician of different Specialty
- May exclude Risk sharing and incentive payments
- Self-insured plan data can be used
During the IDR

- QPA calculation
  - Audit
- QPA Primacy
  - TMA 2- further delay of disputes after 2/6/23
After the IDR

- Payments not coming on time or in full
In-Network Contracts

- Difficult to get parties to the table
- Contracts being cancelled
November 5, 2021

Re: Necessity to amend rate agreement, response needed before November 21, 2021.

Dear Provider:

You are likely aware of the passage of the federal “No Surprises Act” in December of 2020, with an impending effective date of January 1, 2021. Under this law, payments from Blue Cross Blue Shield of Tennessee to out-of-network providers in many circumstances will be set at the “Qualifying Payment Amount” (QPA) which is generally calculated at the median in-network contracted rate for the same or similar specialty within the applicable geographic area. The law applies with respect to out-of-network emergency services, out-of-network professional services at a visit to an in-network facility, and air ambulance services. It applies to our commercial networks (non-Medicare Advantage, non-Medicaid). The QPA paid by Blue Cross Blue Shield of Tennessee to an out-of-network provider constitutes payment in full unless certain limited exceptions apply for a given QPA. These exceptions include express prior patient disclosure and consent, or successful challenge in arbitration.

This new federal law allows a significant change to Blue Cross and Blue Shield of North Carolina’s contracting approach with emergency service providers, hospital-based providers, and air ambulance services. Where previous state law could result in an obligation to pay at full charges if no contract is in place, the new law sets reasonable limits on payment at the median in-network rate. Where Blue Cross NC may have previously contracted at what we deemed an inflated rate that is at least somewhat lower than charges in order to avoid paying at full charge, we are now able to seek a contract at a more fair rate in line with what we consider to be a reasonable, market rate.

We have identified [redacted] as one of our outlier in-network providers with respect to rates. While the exact final QPAs are not yet available pending upcoming finalization of the Rule to the No Surprises Act, the Interim Final Rule provides sufficient clarity to warrant a significant reduction in your contracted rate with Blue Cross NC. If we are unable to establish in-network rates more in line with a reasonable, market rate, our plan is to terminate your agreement where the resulting out-of-network QPA would reduce medical expenses to the benefit of our customers’ overall premiums.

Our ask of you at this point is as follows. We are seeking an immediate reduction in rates under our commercial agreement, as in interim step to the January 1, 2022 effective date of the No Surprises Act. This interim reduction will buy us breathing room to negotiate the final rates in light of the QPA amounts established in accordance with the upcoming Rules. With the interim reduction in place, we will not need to quickly terminate outlier contracts as a means of avoiding

A MESSAGE FROM Robin Young

We’re taking action to negotiate lower prices with providers.

Recently I wrote to you about the ways we can address your and your employees’ need for affordability. I shared that powerful tools to deliver savings is our provider networks, and I wanted to give you an update on the actions we are taking to keep rates down.

In July, we offered new contracts to several providers who we are paying much higher rates than their peers. These providers provide care at, but aren’t directly employed by, hospitals that participate in our networks—think emergency physicians, anesthesiologists, radiologists, and others. We are asking these providers to accept market rates that bring them in line with similar providers in our networks.

Our new contract offers would deliver an estimated $5 million in annual savings, which directly lower your medical costs for your members. I hope we can offer a new contract that meets your needs.

And most importantly, because these providers work in hospitals that doctors to our networks members don’t have to seek care elsewhere, and we won’t raise costs.

You may be wondering how we got here.

Over the years, providers in these specialties have often threatened to end their contracts with us and our balance bill our members to their profits. Receiving an out-of-network charge for a visit to an in-network facility has been one of the most concerning and frustrating experiences for our members. So to protect our members, we have nationally responded to this trend by agreeing to higher rates than were wanted.

Dear [redacted],

Cigna appreciates the services that you provide to our members. Following the passage of the No Surprises Act, Cigna evaluated contracts for services associated with the Act and is bringing them in line with current market compensation for similar services. Due to the financial challenges impacting our customers and the healthcare environment, Cigna is unable to move forward with the present contract in effect between Cigna and [redacted].

Enclosed is a new agreement effective September 1, 2022. Please review and return via email to [redacted] by August 15, 2022. In the event that we are unable to reach agreement, we will provide you with notice of a new agreement on or before September 15, 2022. If a new agreement cannot be reached, Cigna and [redacted] will terminate the Provider Group Agreement between Cigna HealthCare of Tennessee, Inc. and [redacted]. The termination of the Agreement will be effective October 11, 2022 if no new agreement is reached.

If you have any questions regarding this matter please contact Johnatai Hodges at Johnatai.hodges@cigna.com.

Sincerely,

James Ready
Vice President

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Thank You!

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