THE STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT

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Bulletin

Docket No: INS 21-103-AB

To: All Health Insurers

From: Christopher R. Nicolopoulos, Esq., Commissioner C.R.N.

Date: December 9, 2021

Re: Federal No Surprises Act and State Balance Billing Protections

In 2018, New Hampshire enacted legislation to protect consumers from balance billing or surprise medical bills. As part of the Consolidated Appropriations Act of 2021, the U.S. Congress enacted legislation, the federal No Surprises Act (NSA), which contains additional provisions to help protect consumers from surprise bills starting January 1, 2022. The purpose of this Bulletin is to provide information on the new requirements and their interaction with existing requirements.

Balance Billing Prohibition

Current state law prohibits anesthesiologists, radiologists, pathologists, and emergency medicine providers from billing covered individuals, other than copayments, deductibles, or coinsurance, when a covered individual receives treatment at an in-network hospital or ambulatory surgery center regardless of whether such provider contracts with the patient's insurance carrier. RSA 329:31-b. The NSA expands these protections by prohibiting balance billing for out-of-network emergency services, non-emergency services provided by out-of-network providers at in-network health care facilities, and out-of-network air ambulance providers. 42 USC § 300gg-131, 132, and 135.

Payment and Dispute Resolution

In situations where the New Hampshire law prevents balance billing, required payment by the insurer to the provider is limited to the commercially reasonable value. RSA 329:31-b, II. In the event of a dispute regarding the commercially reasonable rate, the commissioner has exclusive jurisdiction to determine whether a fee is commercially reasonable. RSA 329:31-b, III; see also RSA 420-J:8-e.

In all other instances where balance billing is prohibited by operation of the federal NSA, payment by the insurer is limited to the out-of-network rate as defined in the NSA. 42 USC § 300gg-111. In the event the parties cannot agree on the out-of-network rate, the parties must use the federal independent dispute resolution process. *Id.* Carriers should refer to the federal website https://www.cms.gov/nosurprises for additional guidance.

Continuing Care

Under New Hampshire law, covered individuals have the right to continue care with a provider or facility for 60 days after the contract between the health carrier and provider terminates. RSA 420-J:8, XI. The NSA expands this protection by allowing certain qualifying individuals undergoing a course of treatment to continue treatment with their provider or facility for up to an additional 30 days by providing a 90-day period of continuing care after the contract has been terminated. 42 USC § 300gg-113.

Other Requirements

Beginning January 1, 2022, health insurance identification cards must include any deductible and out-of-pocket maximum limits applicable to the plan and must include a telephone number and web address through which individuals may seek additional information regarding their coverage. 42 USC § 300gg-111(e).

The NSA also requires health carriers to provide price comparison guidance by telephone and make a price comparison tool available online. 42 USC § 300gg-114. The online price comparison tool must allow plan participants to compare the amount of cost-sharing an individual would be responsible for paying with respect to a specific item or service furnished by any participating provider. *Id.*

Health insurers must also work in coordination with health care providers and facilities to provide covered individuals with advanced notification of cost estimates of items and services. 42 USC § 300gg-111(f). Such notifications must include the following: whether the provider or facility is in-network; information about how to locate in-network providers if the provider is out-of-network; the contracted rate for anticipated items or services; a good faith estimate of the amount the plan will pay and the amount of any cost sharing the covered individual would be responsible for based on the procedure codes received by the provider; a good faith estimate of the amounts the covered individual has incurred towards any plan limits; whether the services are subject to any medical management techniques; and a disclaimer that the notification is only an estimate. *Id.*