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pulse

HHS Issues Interim Final Rule on Surprise Medical Bills

The rule implements some provisions of the No Surprises Act, such as banning surprise billing for emergency services and high out-of-network cost-sharing.

The U.S. Department of Health and Human Services (HHS), under the leadership of Biden administration appointee Secretary Xavier Becerra, in July issued an interim final rule to restrict surprise medical bills and balance billing from health care providers.

The rule, "Requirements Related to Surprise Billing; Part I," was also issued in partnership with the U.S. Departments of Labor, Treasury and the Office of Personnel Management (OPM).

It was published in the *Federal Register* July 13 and the opportunity to submit comments is open through Sept. 7, 2021.

According to HHS, the interim final rule "will restrict surprise billing for patients in job-based and individual health plans and who get emergency care, non-emergency care from out-of-network providers at in-network facilities, and air ambulance services from out-of-network providers."

The No Surprises Act federal legislation, designed to ensure protections not covered by various state laws on surprise medical bills, was enacted by Congress in 2020 and will take effect Jan. 1, 2022.

The regulations in the HHS interim final rule implement provisions of the No Surprises Act and "apply to group health plans and health insurance issuers for plan and policy years beginning on or after Jan. 1, 2022. The HHS-only regulations that apply to health care providers, facilities, and providers of air ambulance services are applicable beginning on Jan. 1, 2022."

Regulations from the OPM under the Federal Employees Health Benefit Program will apply to contract years beginning on or after Jan. 1, 2022, according to HHS.

Thirty-three states have enacted laws on balance billing but the scope of the requirements and consumer protections varies, according to research from The Commonwealth Fund.

Surprise billing typically occurs when an insured patient receives emergency care from an out-of-network provider or when an insured patient receives elective non-emergency care at an in-network facility but is inadvertently (and often unknowingly) treated by an out-of-network health care provider.

Balance billing often results from charges to a patient for what their insurance does not pay. It is prohibited in Medicare and Medicaid.

According to a February 2020 study by the Kaiser Family Foundation, two in three adults worry about unexpected health care bills, which is more than the number who said they worry about paying for other medical or household expenses.

More than seven in 10 insured adults aged 18-64 with household incomes of $90,000 or more surveyed said they would pay their health care bill at the time of service or use a credit card and pay it by their next statement due date, according to the Kaiser Family Foundation study. However, results from seven out of 10 adults from that age group with household incomes under $40,000 said they would not be able to afford a $500 unexpected health care bill.

To help curb these expenses, according to HHS, the interim final rule, among other requirements, would:

- Ban surprise billing for emergency services. Emergency services, regardless of where they are provided, must be treated on an in-network basis without requirements for prior authorization.
- Ban high out-of-network cost-sharing for emergency and non-emergency services. Patient cost-sharing, such as co-insurance or a deductible, cannot be higher than if such services were provided by an in-network doctor, and any coinsurance or deductible must be based on in-network provider rates.
- Ban out-of-network charges for ancillary care (like an anesthesiologist or assistant surgeon) at an in-network facility

continued on page 3

Ask the Compliance Officer: What's the Deal with the FCC's Order on Automated Calls?

Compliance can be complicated, especially when it comes to phone calls. ACA International's compliance department has heard from many members who have questions.

In this article, we address a three-part question about the Federal Communications Commission's December 2020 report and order regarding exemptions for automated calls and text messages to residential and wireless numbers under the Telephone Consumer Protection Act.

Q: Is the FCC's December 2020 declaratory order limiting the number of exempt calls to residential landlines to three calls in 30-days currently in effect? Does the FCC's 2008 declaratory order allowing a consumer's prior express consent to a creditor to transfer to a debt collector (i.e., "pass-through consent") apply to automated and pre-recorded messages under the order? Must prerecorded messages provide the consumer with an opt-out option?

A: At the time of this writing, the amended exemptions for automated and prerecorded-message (APRM) calls to landlines had not yet taken effect — and it wasn't clear when they might.

According to the rule as published in the *Federal Register*, the effective date for the amendments to the provisions addressing APRM exemptions for calls to landlines — specifically including the exemption applicable to calls made for commercial purposes but not including or introducing an advertisement or telemarketing (e.g., debt collection calls) — have been "delayed indefinitely." The effective date for amendments regarding the opt-out (i.e., "do not call") requirements for these exemptions have been "delayed indefinitely," too.

As to the issue of "pass-through" consent, the FCC's December 2020 order does speak directly to that question. At this time, however, we have no reason to believe that the FCC's prior guidance and courts' prior interpretations of pass-through consent under the TCPA would not continue to apply in this context.

The FCC's 1992 report and order effectively "created" the concept of passthrough consent, and the commission has frequently cited that order over the years for the proposition that "persons who knowingly release their phone numbers" for a particular purpose "have in effect given their invitation or permission to be called at the number" for that purpose "absent instructions to the contrary."

In 2008, in response to a petition filed by ACA, the FCC issued a "clarification that addressed APRMs to wireless numbers provided by a called party to a creditor and made in connection with an existing debt. This 2008 clarification essentially extended the concept of pass-through consent established by the 1992 order to the wireless context. The December 2020 order does not walk back any of this prior guidance, nor does it address what constitutes consent; rather, it merely sets new rules for when a caller must have consent.

Finally, if adopted as written, Section 64.1200(a)(3)(iii) of the TCPA would require that exempted calls made to residential landlines for commercial purposes that do not constitute telemarketing must honor opt-out requests. The December 2020 order would essentially extend the

continued on page 3

FCC Adopts Order for Reporting Unlawful Robocalls

Hospitals that contact consumers will have access to an online portal to report suspected robocall and caller ID violations to the FCC's Consumer and Governmental Affairs Bureau.

The Federal Communications Commission unanimously approved a report and order under Section 10a of the Telephone Robocall Abuse Criminal Enforcement and Deterrence (TRACED) Act to implement a streamlined process for private entities to report calls that may be unlawful and callers who are using legitimate businesses' caller IDs.

"The new online portal will allow such entities to alert agency investigators of concerning incidents, including floods of robocalls like those that have been known to clog up hospital phone lines," according to a news release from the FCC.

When a private entity submits a report through the online portal, it will collect their contact information and details about the robocall campaign they are concerned about, according to the FCC. The Consumer and Governmental Affairs Bureau may then initiate an investigation to stop the robocalls and may work with federal and/or state partners to address the issue.

The report and order also requires private entities using the portal to submit certain minimum information including, but not necessarily limited to, the name of the reporting private entity; contact information, including at least one individual name and means of contacting the entity (e.g., a phone number); the caller ID information displayed; the phone number(s) called; the date(s) and time(s) of the relevant calls or texts; the name of the reporting private entity's service provider and a description of the problematic calls or texts.

The new process will not affect the current informal complaint process that the Consumer and Governmental Affairs Bureau manages, according to the FCC.

The bureau will implement the portal once it receives the requisite approvals from the Office of Management and Budget. At press time, the report and order will take effect 30 days after it is published in the *Federal Register*.

HHS Issues Interim Final Rule cont. from page 1

in all circumstances.

» Ban other out-of-network charges without advance notice. Health care providers and facilities must provide patients with a plain-language consumer notice explaining that patient consent is required to receive care on an out-of-network basis before that provider can bill at the higher out-of-network rate.

HHS is seeking comments from stakeholders on implementing these requirements in the No Surprises Act.

How to file comments on the interim final rule by Sept. 7, 2021:

Written comments may be submitted to the addresses below. Any comment that is submitted will be shared among HHS, the Treasury and Labor Departments and OPM.

» Submit electronic comments on this regulation at **https://www.regulations.gov** by entering the file code file code **CMS-9909-IFC** in the search window and then clicking on "Comment."

» Mail written comments to: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-9909-IFC, P.O. Box 8016, Baltimore, MD 21244-8016.

» Send written comments by express or overnight mail to: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-9909-IFC, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850

See statistics on states with balance billing laws in Data Watch.

Ask the Compliance Officer cont. from page 2

opt-out requirements that previously applied only to telemarketing calls to all exempted calls, including commercial non-telemarketing calls to residential landlines. If adopted as proposed, this opt-out provision would require a caller that places only non-commercial calls using a prerecorded voice message to include in each call the opt-out mechanism required under Section 64.1200(b) and (d), although this opt-out requirement would not apply to "artificial or prerecorded voice message calls that are made ... with the prior express consent of the called party because such calls are not made pursuant to an exemption adopted under section 227(b)(2)(B)."

At the time of issuance, the provisions of the December 2020 report and order were expected to go into effect six months after publication in the *Federal Register*, i.e., six months after Feb. 25, 2021. But as published in the *Federal Register* on that date, the report and order become "[e]ffective March 29, 2021 except for the amendments to Sec. 64.1200(a)(3)(ii) through (v), (b)(2) and (b)(3), and (d), which are delayed indefinitely." According to that entry in the *Federal Register*, the FCC plans to "publish a document in the *Federal Register* announcing the effective date of these [delayed] amendments."

ACA members who have a question for the compliance officer of the day can email compliance@acainternational.org. Please note that it may take up to five business days to receive an answer. Also, ACA cannot interpret the law or provide advice on a specific fact scenario, we can only provide the relevant statutory/ regulatory requirement. For stronger guidance, you should contact your own attorney.

NEWS & NOTES

25th Anniversary of HIPAA

The Health Insurance Portability and Accountability Act (HIPAA) was enacted in August 1996, making this month the 25th anniversary of the law. The Department of Health and Human Services is reviewing changes to the HIPAA Privacy Rule. Comments on the Notice of Proposed Rulemaking closed in May. The proposed changes include improving consumers' rights to access their own health information and reducing administrative burdens on HIPAA covered health care providers and health plans. https://bit.ly/hipaaprivacyrule

Health Insurance Costs Reduced Under American Rescue Plan

Options for health insurance cost reductions through the American Rescue Plan started July 1, according to the Centers for Medicare & Medicaid Services. The options are primarily available to "consumers who received or are approved to receive unemployment compensation for any week beginning in 2021 may be able to find even lower cost plans and save extra money on out-of-pocket expenses through HealthCare.gov." https://go.cms.gov/3hRLZ5h

We Want to Hear From You

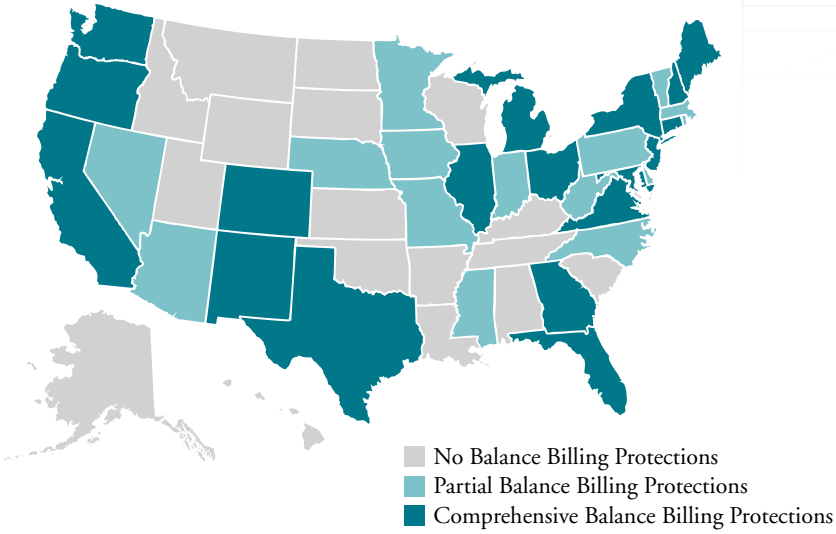
Pulse is published for ACA International health care collection agencies to provide current industry information for health care providers. ACA welcomes article ideas and submissions for consideration in Pulse to the Communications Department at comm@acainternational.org.

For more health care collections news, visit ACA's Health Care Collections page at www.acainternational.org/pulse.

datawatch

Balance Billing Protections by State

The federal No Surprises Act, which takes effect Jan. 1, 2022, is aimed at protecting consumers when state laws on balance billing and surprise medical bills do not apply. Currently, 33 states have laws with balance billing protections that vary in scope, shown on the map below.



Source: M. Kona, et al, Center on Health Insurance Reforms, Health Policy Institute, Georgetown University. https://bit.ly/balancebilling

pulse is a monthly bulletin that contains information important to health care credit and collection personnel. Readers are invited to send comments and contributions to:

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