ALSTON & BIRD




Health Legislative Update

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Annual Meeting
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The Diplomat
Hollywood, FL

Surprise!!

Surprise Medical Bills

- Out of network (OON) emergency services
- OON services at in-network facility

Scope of the Problem

- 66% of Americans are worried about surprise medical bills.
  - KFF Health Tracking Poll (Aug. 2018)
- About 1 in 6 insured patients get a surprise medical bill for OON care
- 18% of emergency room visits resulted in bills from an OON provider
- 16% of in-network in-patient admissions resulted in a bill from an OON provider
  - Source: Peterson-Kaiser Health System Tracking Brief: An examination of surprise medical bills and proposals to protect consumers from them (June 20, 2019) Based on data from large, self-funded employer plans (2017 data)
- Size of the OON bills vary from as low as $500 to hundreds of thousands

States take action

- 27 states have balance billing protections
- Considerable variation between the laws
- Commonwealth Fund classifies 13 state laws and “comprehensive” and 14 as “limited”

Biggest issue with state laws

- Cannot reach largest segment of health plans
- Self-funded plans covered by ERISA

Goal of Federal Legislation: Protect Patients

- Targeted at situations where consent is not possible or meaningful
  - OON emergency services
  - OON charges at in-network hospitals/facilities
- Patient obligation limited to in-network cost-sharing
- OON provider/facility cannot balance bill patient
- Increased transparency and consent requirements when balance billing is permitted

Payers:
Benchmark

Providers:
Arbitration

Network Development
Cost Control

Where are we now?

- Senate HELP bill: "Lower Health Care Costs (LHCC) Act"
  - Benchmark approach, based on median in-network payments for service in same geographic area
  - BUT, Sen. Cassidy and others want arbitration; Approach may change before Senate floor action.
- House
  - Energy and Commerce bill "No Surprises Act"
    - Compromise adopted in Committee is benchmark, with arbitration, aka independent dispute resolution (IDR) process
    - Bills over $1,250, determined using median in-network approach; billed charges cannot be considered by the IDR reviewer
    - Base ball style
  - Ways and Means Committee -- no action yet
  - Education and Labor Committee – no action yet

Revenue Implications: CBO/JCT Estimate of E&C "No Surprises Act"

- $21 billion reduction in federal deficit over 10 years (2019-2029)
  - Limiting payments to providers reduces costs and will lower premiums overtime
  - Lower premiums reduce federal premium tax subsidies
  - Lower premiums reduce the amount of tax-favored employer-provided health coverage and increases taxable wages
- The IDR/arbitration provision causes the revenue gain to be 25% less than a benchmark
- Implications
  - Congress wants to use the savings to pay for a number of Medicare expiring provisions
  - Need/desire for revenue may have some policy impact

$30 million ad campaign against limits on provider payments

- ***Mystery Solved: Private-Equity-Backed Firms Are Behind Ad Blitz on 'Surprise Billing'***
  - *The New York Times (Sept. 13, 2019)*

- ***Pallone And Walden Launch Bipartisan Investigation Into Private Equity Firms' Role In Surprise Billing Practices***
  - ENERGY AND COMMERCE COMMITTEE NEWS RELEASE, SEPT. 16, 2019

"We are concerned about the increasing role that private equity firms appear to be playing in physician staffing in our nation's hospitals, and the potential impact these firms are having on our rising health care costs."

Americans want Congress to Act

- 78% of Americans support protecting patients from surprise medical bills
  - 84% among Democrats
  - 78% independents
  - 71% Republicans

- Even after hearing critics' arguments that doctors and hospitals would be paid less
  - 57% still supported passing legislation

Source: KFF Health Tracking Poll, Sept. 2019

Help Committee bill applies to air ambulance services

Energy and Commerce bill requires only new reporting for air ambulance services

No bill yet addresses ground ambulances

Pelosi Bill –Released September 19, 2019

- Federal government to negotiate drug prices for Medicare
- 250 highest cost brand name drugs
- Drugs to be prioritized for negotiation taking into account the drugs for which the greatest savings to taxpayers, patients, and all payers may be achieved
- Prices to be negotiated for as many drugs as possible, with a minimum of 25 annually.
- ***Manufacturers must offer the negotiated price to group health plans and group and individual health insurance***
- Same bill introduced by Chairmen of Ways and Means, Energy and Commerce, and Education and Labor
- Fairly quick House action expected

Senator Grassley/Senate Finance Proposal

- Would cap drug prices for Medicare based on inflation
- Passed the Senate Finance Committee, mostly by Democratic votes
- Vote was 19-9, with only 4 Republicans voting in favor of the bill
- Concerned that this is too much like price setting

Thank YOU!
QUESTIONS?