

Proposed Rules Address Transparency in Health Coverage

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In response to a recent Executive Order, the Departments of Treasury, Health and Human Services and Labor have issued proposed regulations requiring group health plans and health insurance issuers to provide greater transparency in pricing and coverage by disclosing cost-sharing information to participants (or their authorized representatives) through an internet-based tool (or paper), including an estimate of an individual's cost-sharing liability for covered items or services furnished by a particular provider.

The proposed rules would also require health plans and issuers to disclose in-network provider negotiated rates, and historical out-of-network allowed amounts on the internet, allowing the public to have greater access to health insurance coverage and pricing information. The proposed rules also propose amendments to the Medical Loss Ratio methodology to reward insurers for developing shared savings resulting from benefit designs that encourage consumers to shop for lower-cost, higher-value providers.

Highlights of the proposed rule include requiring group health plans and issuers to provide:

- EOB-like cost-estimates to participants before they receive covered items and services including actual negotiated rates, out-of-network allowed amounts, and individual-specific, real-time accumulated amounts towards deductibles, out-of-pocket maximums and treatment limitations to enable participants to better predict their true out-of-pocket costs. The rules do not, however, require the disclosure of balance billing amounts for out-of-network providers, or so-called surprise billing, which is the source of much of the financial burden on participants.
- Items and services content list for bundled payments.
- Notice of prerequisites for coverage, such as concurrent review, prior authorization, and step therapy or fail-first protocols tailored to the individual.
- Disclaimer notice that out-of-network providers may bill participants for balance billing, that actual charges may differ from the estimate and that the cost-sharing estimate is not a guarantee that coverage will be provided for those items and services.

Much of this information is already disclosed in general terms by employers in ERISA required documents, such as the summary plan description, summary of benefits and coverage and pre-service and post-service benefit claim

determinations. However, the proposed rules would take these disclosure requirements a step further by requiring individually tailored cost-estimates *prior* to the receipt of services. While transparency in health care pricing is generally welcomed by employers, they may object to the increased administrative burden and cost of compliance. For example, employers may balk at the cost of preparing the on-line or mobile app-based cost-estimator tools, or purchasing such tools from vendors, and may prefer to develop and tailor their own tools to measure health cost, quality, and outcomes. Further, much of the information required to be disclosed is specific to the participant and the benefit option in which the participant is enrolled which will require greater coordination among employers and third-party administrators, pharmacy benefit managers, disease management, behavioral health, utilization review, and other specialty vendors and will require amendments to existing agreements.

On the same day the proposed rules were issued, the Administration also issued a final rule that requires hospitals to publish on the internet standard charges, including negotiated rates with providers. While these rules are effective January 1, 2021, hospital industry groups have already signaled that they intend to file a lawsuit challenging the final rules.

Please contact a member of the Winston EBEC group for more information if you would like to submit comments on the proposed rules.

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