

Vizient Office of Public Policy and Government Relations

Office of Personnel Management; Department of the Treasury; Department of Labor; Department of Health and Human Services: Requirements Related to Air Ambulance Services, Agent and Broker Disclosures, and Provider Enforcement

September 24, 2021

Background & Summary

On September 10, 2021, the Office of Personnel Management (OPM), Department of the Treasury (Treasury), Department of Labor (DoL), and Department of Health and Human Services (HHS) (the Departments) issued a [proposed rule](#), “Requirements Related to Air Ambulance Services, Agent and Broker Disclosures, and Provider Enforcement” (hereinafter “Proposed Rule”). The Proposed Rule aims to implement certain provisions of the Consolidated Appropriations Act, 2021 (CAA), related to surprise medical bills (i.e., the No Surprises Act (NSA)) and transparency.

While the Departments released Part I of the surprise billing regulations earlier this year, this Proposed Rule focuses on the information about air ambulance services, HHS’s process to investigate and enforce violations of certain laws, including the CAA, and transparency-related provisions of the CAA that are applicable primarily to insurers. This summary focuses on the proposals for HHS to investigate and enforce provider and facility violations.

Comments are due October 18, 2021. Additional regulations regarding the surprise billing regulation’s audit and independent dispute resolution (IDR) processes are expected later this year.

CMS Enforcement of Group and Individual Insurance Market and Provider and Facility Requirements

Enforcement Authority

Under the Public Health Service (PHS) Act, generally, states exercise primary enforcement authority over issuers that offer health insurance coverage in the individual or group markets within the state. In some circumstances, HHS has the responsibility to enforce the PHS Act (e.g., the state notifies HHS that it lacks authority to enforce PHS Act requirements or if HHS finds the state is not substantially enforcing PHS Act requirements). HHS has delegated this enforcement authority to the Centers for Medicare and Medicaid Services (CMS). The CAA adds additional PHS Act requirements that apply to group health plans, including non-Federal governmental plans, health insurance issuers, providers, providers of air ambulance services and health care facilities (facilities).

With respect to enforcement of the CAA’s requirements for providers and facilities, the law requires a similar structure to be in place as is for issuers. As a result, to implement the CAA, HHS proposes to expand the scope of CMS’s enforcement authority to include providers and facilities in states that are not substantially enforcing the requirements of the surprise billing provisions included in the CAA.

In the Proposed Rule, HHS indicates that in determining whether a state is failing to substantially enforce PHS Act requirements that apply to providers and facilities, CMS would use already

established processes¹ that are in place for health insurance issuers. CMS also proposes to consider additional sources of information, such as officials responsible for regulating health maintenance organizations (HMOs), directors of public health or any other state department, agency, or board. HHS notes the list of current states in which CMS is directly enforcing one or more PHS Act provisions is available on the [CMS website](#).

Provider and Facility Investigation and Enforcement under the NSA

Regarding who may file a complaint, CMS proposes that any entity or individual² who believes that a right provided under the PHS Act is being, or has been, denied or abridged because of the provider's or facility's action or failure to act may file a complaint. Also, HHS proposes to clarify that CMS may review any information it deems useful to determine if a violation of the PHS Act has occurred (e.g., review of paid and denied claims, summary of benefits and coverage and notifications to enrollees, reference reports from providers and facilities, reports from state insurance departments, state health and medical boards). Under the Proposed Rule, CMS would also be permitted to conduct random or targeted investigations.

Should a potential violation be identified, CMS would give written notice to the provider or facility regarding the potential violation and related information to the potential violation, if applicable. Also, HHS proposes that the notice would include information about enforcement tools (e.g., civil monetary penalties, corrective action plan) and a deadline for the provider's or facility's response (e.g., 14 days). HHS also proposes clarifying that a responsible entity may request an extension when it cannot prepare a response or provide the requested information to CMS by the deadline provided in the notice. In response to a complaint, HHS describes different evidence a provider or facility may submit (e.g., medical bills, notice and consent forms signed by the participant, proof of public disclosure, implementation of internal policies related to surprise billing). Also, HHS notes that it may impose a civil monetary penalty up to \$10,000 per violation of a provider or facility, who would have 30 days from the date of notice of the penalty to request a hearing to appeal the determination. Additionally, HHS proposes that an entity's failure to cooperate with an investigation, including failure to respond, would be considered an aggravating circumstance when determining the aggregate amount of a penalty. HHS proposes it would not take enforcement action unless an alleged violation occurred within six years. HHS seeks comment on these proposals.

What's Next?

The Departments are accepting comments on the Proposed Rule until October 18, 2021, with two additional regulations related to the No Surprises Act anticipated in 2021. The regulations will generally be effective on January 1, 2022.

Vizient's Office of Public Policy and Government Relations looks forward to hearing member feedback on this Proposed Rule. Stakeholder input plays a major role in shaping future changes to policy. We encourage you to reach out to our office if you have any questions or regarding any aspects of this Proposed Rule – both positive reactions and provisions that cause you concern. Please direct your feedback to [Jenna Stern](#), Sr. Regulatory Affairs and Public Policy Director in Vizient's Washington, D.C. office.

¹ See 45 CFR 150.205 which outlines sources of information triggering an investigation of state enforcement. Currently, regulations provide that if information regarding the status of state enforcement of PHS Act requirements comes from state governors and commissioners of insurance, such information may trigger a CMS investigation of whether a state is failing to substantially enforce these requirements.

² Any entity or personal representative acting on that individual's behalf may also file a complaint