NSA Implementation Issues Are Failing Patients & Providers

The NSA's Eligibility Problem is a Transparency Problem

Background

Blue Cross Blue Shield Association (BCBSA) and AHIP recently released survey findings, claiming 39% of all No Surprises Act (NSA) Independent Dispute Resolution (IDR) disputes were ineligible under the law. While the number's veracity is in doubt, there is no debate claim eligibility is a problem. In fact, providers began expressing concerns about claim eligibility in 2021.

More Transparency Is Needed!

To ensure transparency of claim eligibility, QPAs, and payment delays, CMS should publish audits and mandate compliance with the law.

However, BCBSA and AHIP get the reason 100% wrong: as CMS and the GAO have noted, the problem is largely due to insurers' failure to disclose eligibility. As a result, **greater transparency is necessary throughout the IDR process**, including claim eligibility. As we have previously written, there are meaningful concerns about qualifying payment amount (QPA) miscalculations and the need for regular QPA audits. Additionally, there are recurrent problems with insurers' failure to pay providers fully and on time after IDR, as required by the No Surprises Act. Even in their survey, insurers concede they fail to pay within the statutorily mandated timeframe more than 25% of the time. **The message to providers and insurers should be the same: enhanced transparency from CMS with penalties for failure to follow the law.**

Why Action Is Needed

Based on the experience of the more than 70,000 physicians and advanced practice clinicians which AFHC is proud to represent, insurers contribute to difficulties determining claim eligibility and reduce system efficiency:

- **Providers regularly receive claims from insurers that misidentify the plan type.**
- **Insurers use the generic N830 code rather than specific N859, N883 and N858 codes.**
- **Insurers routinely include no commercial remittance remark on NSA-eligible claims.**
- **Insurers regularly kick out providers' fully compliant claims citing mere technicalities.**
- **Insurers obfuscate eligibility information and limit access to their web portals.**

Washington Has the Power to Fix the NSA's Eligibility Problem

We ask Congress and the Departments to prioritize the following improvements to realize the NSA's objectives and remove unwarranted complexities from the process of determining claim eligibility:

- Finalize the NSA Operations Rule, requiring use of eligibility-specific Remittance Advice Remark Codes (RARCs) and Claim Adjustment Reason Codes (CARCs).
- Issue guidance to make the application of batching, cooling off periods, and other rules consistent.
- Improve the CMS portal to greatly improve consistency in the application of the NSA's guidance.
- Enhance transparency around QPA calculations and payment times with regular audits.
- Impose non-compliance penalties to ensure all parties abide by the law's mandates.