September 19, 2022

Final Rule on Surprise Billing Impacts Arbitration

On August 19, the U.S. departments of Health & Human Services, Labor and the Treasury released long-anticipated final rules titled "Requirements Related to Surprise Billing: Final Rules." The final rules address and finalize several areas of the federal No Surprises Act (NSA), but most importantly, they attempt to address the ongoing legal battles related to the standard for independent dispute resolution. The final rules clarify what an arbitrator must consider in resolving billing disputes for out-of-network emergency care and for treatment by out-of-network providers performing services or procedures at facilities in a patient's network. The final rules change the default assumption that the qualified payment amount (QPA), which is based on the median contract rate identified by the insurer, was the correct amount, and now they stipulate that the median contract rate must be the starting point for resolving payment disputes but the arbitrator "must consider all additional permissible information submitted by each party to determine which offer best reflects the appropriate out-of-network rate," as explained in the rules fact sheet.

It is yet to be seen how this change will help or add to the backlog of the thousands of pending disputes under the NSA. Day Pitney attorneys are knowledgeable in both the Connecticut No Surprise Billing laws and the federal NSA (and the interplay between them) and are available to assist clients with compliance in these areas.

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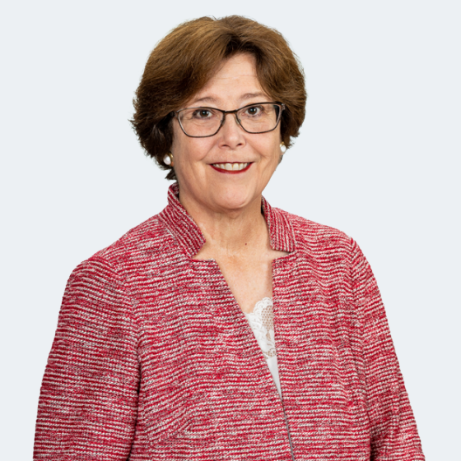

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