UNRAVELING FAQ PART 31

EMPOWERING PLANS

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MAIN TYPES OF RBP

Types of RBP Plans:

The **first** type of plan uses a preferred-provider organization (PPO) network and reference prices for certain, discrete services. (Goes unnoticed until it's a balance billing situation)

The **second** type of plan is a carve-out, applying RBP only to specific types of care and identifying in their literature that said services are not part of the standard schedule of benefits. (Like the first, but without the surprise)

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MAIN TYPES OF RBP

Types of RBP Plans:

The **third** type of plan only pays healthcare providers a reference price for all healthcare goods and services; "Pure RBP." (Everyone notices; require expert plan drafting, literature, and education)

The **fourth** type of plan uses a hybrid approach and combines a physician-only PPO network with reference pricing for facility claims. (Most claims are physician claims; so it goes unnoticed... for a while)

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WHAT DOES THE FAQ SAY?

Q7: If a non-grandfathered large group market or self-insured group health plan has a pricing structure in which the plan pays a fixed amount (sometimes called a reference price) for a particular procedure, **but the plan does not ensure that participants have adequate access to quality providers that will accept the reference price as payment in full**, is the plan required to count an individual's out-of-pocket expenses for providers who do not accept the reference price **toward the individual's MOOP limit?**

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WHAT DOES THE FAQ SAY?

YES.

"A plan that merely **establishes a reference price without using a reasonable method to ensure adequate access to quality providers at the reference price** will not be considered to have established a network for purposes of PHS Act section 2707(b)."

"…a non-grandfathered plan that utilizes **reference-based pricing (or similar network design)** may treat providers that accept the reference based-price as **the only in-network providers** for purposes of determining what counts towards an individual's MOOP limit as long as the non-grandfathered plan uses a reasonable method to ensure that it provides **adequate access to quality providers at the reference-based price**."

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WHAT DOES THE FAQ *MEAN*?

- Tends to reinforce the idea that the FAQ is directed at CalPERS-type plans
  - RBP "*or similar network design*"
  - What exactly is a "network design?"
- Some ambiguity regarding to which type of RBP the FAQ is directed
  - "*a pricing structure in which the plan pays a fixed amount (sometimes called a reference price) for a particular procedure*"

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WHAT DOES THE FAQ *MEAN*?

- Under the most anti-RBP interpretation, patient balance-billing is limited to the plan's OOP limitation
  - Then, liability for the balance-bill reverts back to the plan
    1. Provider bills the plan
    2. Plan pays its RBP amount to the provider
    3. Provider balance-bills the patient
    4. Patient pays up to MOOP to the provider (varies by plan but maximum is in general $6,850)

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WHAT DOES THE FAQ *MEAN*?

Recent VA case: *Glen Michael Dennis v. PHC-Martinsville, Inc.*

- Out-of-network hospital billed $111,115.37
- RBP plan paid $27,254.95
  - (for argument's sake, assume the plan failed to meet "network adequacy" criteria)
- Hospital billed the patient for the balance of $83,860.42
- According to the court, though, the entire balance should have only been $523.89

Moral of the story: Even if the balance-billed amount counts toward the MOOP, if the balance-billed amount is zero or close to it, there's no problem for the plan.

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ACCEPTING THE REFERENCE PRICE

- "...an adequate number of providers that accept the reference price..."
  - Accepting from *this* plan vs. accepting from *some plan*
  - Medicare is a "plan" too
- Accepting reference price vs. accepting a negotiated rate
- What's the underlying goal?

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ACCEPTING THE REFERENCE PRICE

- Example:
  - $50,000 charge
  - Plan allowable of $20,000, less $5,000 member OOP
  - How does the plan treat the $30,000 balance?
- Example:
  - $10,000 charge
  - Plan allowable of $4,000 (and member owes 5,000 OOP)
  - Plan negotiates an extra $1,000 to settle = $5,000 total
  - Can the plan count the $1,000 toward the patient's OOP?

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WHAT METHODS ARE REASONABLE?

The regulators will consider:

- Type of Service
- Reasonable Access
- Quality Standards
- Exceptions Process
- Disclosure

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WHAT METHODS ARE REASONABLE?

Type of Service

- Generally refers to informed choice of providers (for non-emergent care) and access to providers for emergent care
- Patient advocacy programs help ensure this
- For ER: ACA requires providers to accept the greater of (1) the medial payment to in-network providers, (2) typical out-of-network payment, or (3) Medicare rates

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WHAT METHODS ARE REASONABLE?

Reasonable Access

- RBP plans typically allow patients to visit any provider for the same coinsurance amounts
- Patient advocacy programs can help steer patients to the best and most reasonable providers

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WHAT METHODS ARE REASONABLE?

Quality Standards

- Huge amount of public data to use when advising patients
- Medicare uses Total Performance Score (for renal dialysis facilities) and Merit Based Incentive Payment System (for physicians)

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WHAT METHODS ARE REASONABLE?

Exceptions Process

- Plan Documents should allow the discretion to negotiate
- Plan should always prioritize payment of any negotiated rate over the "standard" reference price

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WHAT METHODS ARE REASONABLE?

Disclosure

- Again, comes down to *patient advocacy*
  - Member education
  - Up-front disclosure of the plan's payment
  - List of covered benefits
  - Description of how the plan works
  - List of safe-harbor providers

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