

Section 2799B-6 of the Public Health Service Act, referred to in subsec. (f)(1), is classified to section 300gg-136 of Title 42, The Public Health and Welfare.

AMENDMENTS

2020—Subsecs. (c), (d). Pub. L. 116-260, §103(c), added subsec. (c) and redesignated former subsec. (c) as (d).

Subsec. (e). Pub. L. 116-260, §107(c), added subsec. (e).
Subsec. (f). Pub. L. 116-260, §111(b), added subsec. (f).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2020 AMENDMENT

Pub. L. 116-260, div. BB, title I, §107(d), Dec. 27, 2020, 134 Stat. 2859, provided that: “The amendments made by this subsection [probably means “this section”, amending this section, section 1185e of Title 29, Labor, and section 300gg-111 of Title 42, The Public Health and Welfare] shall apply with respect to plan years beginning on or after January 1, 2022.”

EFFECTIVE DATE

Section applicable with respect to plan years beginning on or after Jan. 1, 2022, see section 102(e) of div. BB of Pub. L. 116-260, set out as an Effective Date of 2020 Amendment note under section 8902 of Title 5, Government Organization and Employees.

§ 9817. Ending surprise air ambulance bills

(a) In general

In the case of a participant or beneficiary in a group health plan who receives air ambulance services from a nonparticipating provider (as defined in section 9816(a)(3)(G)) with respect to such plan, if such services would be covered if provided by a participating provider (as defined in such section) with respect to such plan—

(1) the cost-sharing requirement with respect to such services shall be the same requirement that would apply if such services were provided by such a participating provider, and any coinsurance or deductible shall be based on rates that would apply for such services if they were furnished by such a participating provider;

(2) such cost-sharing amounts shall be counted towards the in-network deductible and in-network out-of-pocket maximum amount under the plan for the plan year (and such in-network deductible shall be applied) with respect to such items and services so furnished in the same manner as if such cost-sharing payments were with respect to items and services furnished by a participating provider; and

(3) the group health plan shall—

(A) not later than 30 calendar days after the bill for such services is transmitted by such provider, send to the provider, an initial payment or notice of denial of payment; and

(B) pay a total plan payment, in accordance with, if applicable, subsection (b)(6), directly to such provider furnishing such services to such participant, beneficiary, or enrollee that is, with application of any initial payment under subparagraph (A), equal to the amount by which the out-of-network rate (as defined in section 9816(a)(3)(K)) for such services and year involved exceeds the cost-sharing amount imposed under the plan for such services (as determined in accordance with paragraphs (1) and (2)).

(b) Determination of out-of-network rates to be paid by health plans; independent dispute resolution process

(1) Determination through open negotiation

(A) In general

With respect to air ambulance services furnished in a year by a nonparticipating provider, with respect to a group health plan, and for which a payment is required to be made by the plan pursuant to subsection (a)(3), the provider or plan may, during the 30-day period beginning on the day the provider receives a payment or a statement of denial of payment from the plan regarding a claim for payment for such service, initiate open negotiations under this paragraph between such provider and plan for purposes of determining, during the open negotiation period, an amount agreed on by such provider, and such plan for payment (including any cost-sharing) for such service. For purposes of this subsection, the open negotiation period, with respect to air ambulance services, is the 30-day period beginning on the date of initiation of the negotiations with respect to such services.

(B) Accessing independent dispute resolution process in case of failed negotiations

In the case of open negotiations pursuant to subparagraph (A), with respect to air ambulance services, that do not result in a determination of an amount of payment for such services by the last day of the open negotiation period described in such subparagraph with respect to such services, the provider or group health plan that was party to such negotiations may, during the 4-day period beginning on the day after such open negotiation period, initiate the independent dispute resolution process under paragraph (2) with respect to such services. The independent dispute resolution process shall be initiated by a party pursuant to the previous sentence by submission to the other party and to the Secretary of a notification (containing such information as specified by the Secretary) and for purposes of this subsection, the date of initiation of such process shall be the date of such submission or such other date specified by the Secretary pursuant to regulations that is not later than the date of receipt of such notification by both the other party and the Secretary.

(2) Independent dispute resolution process available in case of failed open negotiations

(A) Establishment

Not later than 1 year after the date of the enactment of this subsection, the Secretary, jointly with the Secretary of Health and Human Services and the Secretary of Labor, shall establish by regulation one independent dispute resolution process (referred to in this subsection as the “IDR process”) under which, in the case of air ambulance services with respect to which a provider or group health plan submits a notification under paragraph (1)(B) (in this subsection re-

ferred to as a “qualified IDR air ambulance services”), a certified IDR entity under paragraph (4) determines, subject to subparagraph (B) and in accordance with the succeeding provisions of this subsection, the amount of payment under the plan for such services furnished by such provider.

(B) Authority to continue negotiations

Under the independent dispute resolution process, in the case that the parties to a determination for qualified IDR air ambulance services agree on a payment amount for such services during such process but before the date on which the entity selected with respect to such determination under paragraph (4) makes such determination under paragraph (5), such amount shall be treated for purposes of section 9816(a)(3)(K)(ii) as the amount agreed to by such parties for such services. In the case of an agreement described in the previous sentence, the independent dispute resolution process shall provide for a method to determine how to allocate between the parties to such determination the payment of the compensation of the entity selected with respect to such determination.

(C) Clarification

A nonparticipating provider may not, with respect to an item or service furnished by such provider, submit a notification under paragraph (1)(B) if such provider is exempt from the requirement under subsection (a) of section 2799B-2 of the Public Health Service Act with respect to such item or service pursuant to subsection (b) of such section.

(3) Treatment of batching of services

The provisions of section 9816(c)(3) shall apply with respect to a notification submitted under this subsection with respect to air ambulance services in the same manner and to the same extent such provisions apply with respect to a notification submitted under section 9816(c) with respect to items and services described in such section.

(4) IDR entities

(A) Eligibility

An IDR entity certified under this subsection is an IDR entity certified under section 9816(c)(4).

(B) Selection of certified IDR entity

The provisions of subparagraph (F) of section 9816(c)(4) shall apply with respect to selecting an IDR entity certified pursuant to subparagraph (A) with respect to the determination of the amount of payment under this subsection of air ambulance services in the same manner as such provisions apply with respect to selecting an IDR entity certified under such section with respect to the determination of the amount of payment under section 9816(c) of an item or service. An entity selected pursuant to the previous sentence to make a determination described in such sentence shall be referred to in this subsection as the “certified IDR entity” with respect to such determination.

(5) Payment determination

(A) In general

Not later than 30 days after the date of selection of the certified IDR entity with respect to a determination for qualified IDR ambulance services, the certified IDR entity shall—

(i) taking into account the considerations specified in subparagraph (C), select one of the offers submitted under subparagraph (B) to be the amount of payment for such services determined under this subsection for purposes of subsection (a)(3); and

(ii) notify the provider or facility and the group health plan party to such determination of the offer selected under clause (i).

(B) Submission of offers

Not later than 10 days after the date of selection of the certified IDR entity with respect to a determination for qualified IDR air ambulance services, the provider and the group health plan party to such determination—

(i) shall each submit to the certified IDR entity with respect to such determination—

(I) an offer for a payment amount for such services furnished by such provider; and

(II) such information as requested by the certified IDR entity relating to such offer; and

(ii) may each submit to the certified IDR entity with respect to such determination any information relating to such offer submitted by either party, including information relating to any circumstance described in subparagraph (C)(ii).

(C) Considerations in determination

(i) In general

In determining which offer is the payment to be applied pursuant to this paragraph, the certified IDR entity, with respect to the determination for a qualified IDR air ambulance service shall consider—

(I) the qualifying payment amounts (as defined in section 9816(a)(3)(E)) for the applicable year for items or services that are comparable to the qualified IDR air ambulance service and that are furnished in the same geographic region (as defined by the Secretary for purposes of such subsection) as such qualified IDR air ambulance service; and

(II) subject to clause (iii), information on any circumstance described in clause (ii), such information as requested in subparagraph (B)(i)(II), and any additional information provided in subparagraph (B)(ii).

(ii) Additional circumstances

For purposes of clause (i)(II), the circumstances described in this clause are, with respect to air ambulance services included in the notification submitted under paragraph (1)(B) of a nonparticipating provider, or group health plan the following:

(I) The quality and outcomes measurements of the provider that furnished such services.

(II) The acuity of the individual receiving such services or the complexity of furnishing such services to such individual.

(III) The training, experience, and quality of the medical personnel that furnished such services.

(IV) Ambulance vehicle type, including the clinical capability level of such vehicle.

(V) Population density of the pick up location (such as urban, suburban, rural, or frontier).

(VI) Demonstrations of good faith efforts (or lack of good faith efforts) made by the nonparticipating provider or nonparticipating facility or the plan to enter into network agreements and, if applicable, contracted rates between the provider and the plan during the previous 4 plan years.

(iii) Prohibition on consideration of certain factors

In determining which offer is the payment amount to be applied with respect to qualified IDR air ambulance services furnished by a provider, the certified IDR entity with respect to such determination shall not consider usual and customary charges, the amount that would have been billed by such provider with respect to such services had the provisions of section 2799B-5 of the Public Health Service Act not applied, or the payment or reimbursement rate for such services furnished by such provider payable by a public payor, including under the Medicare program under title XVIII of the Social Security Act, under the Medicaid program under title XIX of such Act, under the Children's Health Insurance Program under title XXI of such Act, under the TRICARE program under chapter 55 of title 10, United States Code, or under chapter 17 of title 38, United States Code.

(D) Effects of determination

The provisions of section 9816(c)(5)(E)¹ shall apply with respect to a determination of a certified IDR entity under subparagraph (A), the notification submitted with respect to such determination, the services with respect to such notification, and the parties to such notification in the same manner as such provisions apply with respect to a determination of a certified IDR entity under section 9816(c)(5)(E), the notification submitted with respect to such determination, the items and services with respect to such notification, and the parties to such notification.

(E) Costs of independent dispute resolution process

The provisions of section 9816(c)(5)(F) shall apply to a notification made under this subsection, the parties to such notification, and a determination under subparagraph (A) in the same manner and to the same extent

such provisions apply to a notification under section 9816(c), the parties to such notification and a determination made under section 9816(c)(5)(A).

(6) Timing of payment

The total plan payment required pursuant to subsection (a)(3), with respect to qualified IDR air ambulance services for which a determination is made under paragraph (5)(A) or with respect to air ambulance services for which a payment amount is determined under open negotiations under paragraph (1), shall be made directly to the nonparticipating provider not later than 30 days after the date on which such determination is made.

(7) Publication of information relating to the IDR process

(A) In general

For each calendar quarter in 2022 and each calendar quarter in a subsequent year, the Secretary shall publish on the public website of the Department of the Treasury—

(i) the number of notifications submitted under the IDR process during such calendar quarter;

(ii) the number of such notifications with respect to which a final determination was made under paragraph (5)(A);

(iii) the information described in subparagraph (B) with respect to each notification with respect to which such a determination was so made.²

(iv) the number of times the payment amount determined (or agreed to) under this subsection exceeds the qualifying payment amount;

(v) the amount of expenditures made by the Secretary during such calendar quarter to carry out the IDR process;

(vi) the total amount of fees paid under paragraph (8) during such calendar quarter; and

(vii) the total amount of compensation paid to certified IDR entities under paragraph (5)(E) during such calendar quarter.

(B) Information with respect to requests

For purposes of subparagraph (A), the information described in this subparagraph is, with respect to a notification under the IDR process of a nonparticipating provider, or group health plan—

(i) a description of each air ambulance service included in such notification;

(ii) the geography in which the services included in such notification were provided;

(iii) the amount of the offer submitted under paragraph (2) by the group health plan and by the nonparticipating provider expressed as a percentage of the qualifying payment amount;

(iv) whether the offer selected by the certified IDR entity under paragraph (5) to be the payment applied was the offer submitted by such plan or issuer (as applicable) or by such provider and the amount of such offer so selected expressed as a per-

¹ So in original.

² So in original. The period probably should be a semicolon.

centage of the qualifying payment amount;

(v) ambulance vehicle type, including the clinical capability level of such vehicle;

(vi) the identity of the group health plan or health insurance issuer or air ambulance provider with respect to such notification;

(vii) the length of time in making each determination;

(viii) the compensation paid to the certified IDR entity with respect to the settlement or determination; and

(ix) any other information specified by the Secretary.

(C) IDR entity requirements

For 2022 and each subsequent year, an IDR entity, as a condition of certification as an IDR entity, shall submit to the Secretary such information as the Secretary determines necessary for the Secretary to carry out the provisions of this paragraph.

(D) Clarification

The Secretary shall ensure the public reporting under this paragraph does not contain information that would disclose privileged or confidential information of a group health plan or health insurance issuer offering group or individual health insurance coverage or of a provider or facility.

(8) Administrative fee

(A) In general

Each party to a determination under paragraph (5) to which an entity is selected under paragraph (4) in a year shall pay to the Secretary, at such time and in such manner as specified by the Secretary, a fee for participating in the IDR process with respect to such determination in an amount described in subparagraph (B) for such year.

(B) Amount of fee

The amount described in this subparagraph for a year is an amount established by the Secretary in a manner such that the total amount of fees paid under this paragraph for such year is estimated to be equal to the amount of expenditures estimated to be made by the Secretary for such year in carrying out the IDR process.

(9) Waiver authority

The Secretary may modify any deadline or other timing requirement specified under this subsection (other than the establishment date for the IDR process under paragraph (2)(A) and other than under paragraph (6)) in cases of extenuating circumstances, as specified by the Secretary, or to ensure that all claims that occur during a 90-day period applied through paragraph (5)(D), but with respect to which a notification is not permitted by reason of such paragraph to be submitted under paragraph (1)(B) during such period, are eligible for the IDR process.

(c) Definitions

For purposes of this section:

(1) Air ambulance services

The term “air ambulance service” means medical transport by helicopter or airplane for patients.

(2) Qualifying payment amount

The term “qualifying payment amount” has the meaning given such term in section 9816(a)(3).

(3) Nonparticipating provider

The term “nonparticipating provider” has the meaning given such term in section 9816(a)(3).

(Added Pub. L. 116-260, div. BB, title I, § 105(a)(3)(A), Dec. 27, 2020, 134 Stat. 2844.)

Editorial Notes

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (b)(2)(A), is the date of enactment of Pub. L. 116-260, which was approved Dec. 27, 2020.

Section 2799B-2 of the Public Health Service Act, referred to in subsec. (b)(2)(C), is classified to section 300gg-132 of Title 42, The Public Health and Welfare.

Section 2799B-5 of the Public Health Service Act, referred to in subsec. (b)(5)(C)(iii), is classified to section 300gg-135 of Title 42, The Public Health and Welfare.

The Social Security Act, referred to in subsec. (b)(5)(C)(iii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Titles XVIII, XIX, and XXI of the Act are classified generally to subchapters XVIII (§ 1395 et seq.), XIX (§ 1396 et seq.), and XXI (§ 1397aa et seq.), respectively, of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 116-260, div. BB, title I, § 105(a)(4), Dec. 27, 2020, 134 Stat. 2851, provided that: “The amendments made by this subsection [enacting this section, section 1185f of Title 29, Labor, and section 300gg-112 of Title 42, The Public Health and Welfare] shall apply with respect to plan years beginning on or after January 1, 2022.”

§ 9818. Continuity of care

(a) Ensuring continuity of care with respect to terminations of certain contractual relationships resulting in changes in provider network status

(1) In general

In the case of an individual with benefits under a group health plan and with respect to a health care provider or facility that has a contractual relationship with such plan for furnishing items and services under such plan, if, while such individual is a continuing care patient (as defined in subsection (b)) with respect to such provider or facility—

(A) such contractual relationship is terminated (as defined in paragraph (b));

(B) benefits provided under such plan with respect to such provider or facility are terminated because of a change in the terms of the participation of such provider or facility in such plan; or

(C) a contract between such group health plan and a health insurance issuer offering health insurance coverage in connection