Thursday, September 30, the Departments of Health & Human Services (HHS) and Labor (DOL), Treasury ("Tri-Departments"), and the Office of Personnel Management (OPM), released a second interim final rule (IFR Part 2) with a comment period implementing provisions of the No Surprises Act (NSA).

IFR Part 2 implements provisions related to the independent dispute resolution (IDR) (Federal IDR) process. Unfortunately, the regulation places a greater emphasis on the "qualifying payment amount" (QPA) - defined as the median in-network rate (determined by the health plan based on their internal data) as of 1/31/2019 inflation adjusted - than it does on other factors that the entities can submit in the IDR process—creating a rebuttable presumption that the QPA is the appropriate out of network (OON) rate.

- This rule appears to be problematic for clinicians because the certified IDR entity must select the offer closest to the QPA, unless there is credible information submitted by the clinician that clearly demonstrates that the QPA is materially different from the appropriate OON rate.
- The QPA is determined by the health plan, and most patient encounters will have multiple QPAs at the CPT code level. The QPA is also used to determine the patient cost sharing. These QPAs are specific to the Metropolitan Statistical Area (MSA) for the same/similar services, ensuring that there will be many challenges to billing the patient.
- Additionally, the rule requires "good faith" cost estimates for uninsured (or self-pay) individuals, expands circumstances for individuals to dispute payment denials, and establishes monthly reporting requirements for certified IDR entities to inform quarterly public reports on payment determinations.

The policies in these rules are scheduled to take effective Jan. 1, 2022. Comments are due 60 days following the publishing of the rule in the Federal Register, which is scheduled for Oct. 7, 2021.

- On Oct. 4, 2021, the U.S. House Ways and Means Committee Chair and the ranking minority member have objected in writing to the IFR Part 2 to the U.S. Depts. of HHS, Treasury and Labor, the "Tri-Depts.", who issued the IFR Part 2, as inappropriately interpreting Congressional intent that all IFR factors be treated equally.
- We anticipate that there may be litigation barring further revisions or suspensions of the IFR Part 2.

- We will review the rule in detail, engage in lobbying, and ask that you be ready to TAKE ACTION as we prepare for a call to action and provide additional information in the coming weeks, and keep you apprised of any future developments.

Additional information can be provided in the CMS resources below:

- Press release
- Fact sheet
- "What you need to know"
- CY 2022 Fee Guidance for the Federal IDR Process
- New Surprise Billing Resource Webpage