NO SURPRISES ACT CREATES ADVANTAGES FOR CAPTIVES

Written By Caroline McDonald

While The No Surprises Act—which went into effect in January 2022—may not have an initial impact on health care captives, the ramifications of the act still need to be carefully considered.

"The primary beneficiaries of the legislation are individuals," said Matthew Drakeley, vice president, specialty markets at QBE. "They were getting the surprise billing, some getting a five-figure bill from a provider. If this protects consumers going forward, that's a benefit."

Because many of those with health insurance get coverage through their employer, the employer has a managerial obligation, "to make sure their third-party administrator is capable of handling the responsibilities for the payer under the No Surprises Act," Drakeley explained.

The hidden issue for payers and captives is the longer-term impact of the legislation. "Hospitals are already struggling with the increase of general inflation and labor costs in order to run their operations and provide services," he said.

Over the last 30 years hospitals have had to find new ways to obtain revenue consistent with their expenses, Drakeley explained. The No Surprises Act, however, reduces a revenue source they had counted on to run their business. When balance billing gets reduced, hospitals' revenues are also reduced.

"Coupling that with their increased expenses, it will probably impact hospitals that are renegotiating their contracts with networks, by raising their overall reimbursement," he said. "So, we may see an increase in medical inflation as a result."

When you add the general inflation in the economy, "that's where it will impact payers and in some cases captives because both have a responsibility for paying claim liability," Drakeley said.

THE ROLE OF CAPTIVES

"It's an interesting time for captives, because the captive participant, the employer, is a certain type of employer who wants to gain as much control over their health care financing as they have of their overall balance sheet," said Phil Holowka, chief operating officer at Complete Captive Management Services LLC. "That's the common bond amongst captive members."

This is also what is exciting for the captive community, "because they are not necessarily shopping for the lowest cost insurance policy, they are looking for a long-term solution to their financing risk," he explained.

What will emerge from this, Holowka said, is the necessity for employers to look for resolutions, "which may not include accessing managed care."

Captives, he said, can collaborate and hire service providers to spotlight opportunities for savings, such as using lower cost hospital facilities. The service provider, he said, "can notify employers that, within a 20-mile radius, these are the top five hospitals you should encourage employees to visit."

He added that while the NSA will likely be a short-term disruption, "ultimately, in three to five years when these managed care contracts are renegotiated, the only loss would be an opportunity savings cost that was lost," if knowledge about lower cost facilities wasn't passed on to employees, as well as providing incentives to utilize them, Holowka said.

IMPACT ON CAPTIVE MARKET

The initial impact is that more and more groups and companies are wanting to self-insure, said Chris Zirke, general counsel at Roundstone.

The effect of the NSA , he said, will be increased transparency for health plans. "Transparency is key, because it gives employer groups the power to understand their spend and reduce spend through cost containment programs," he said. "As a captive that works with self-insured groups, we support that, because transparency drives knowledge."

The situation is leading more people to self-insurance as a solution, "because you don't get a lot of transparency when you're fully insured," he said. "So, on a high level we're seeing more groups wanting to self-insure because of the transparency in understanding their claims spend."

These are employers that typically had fully insured health plans and are paying one large monthly premium, but with very little understanding of where their claim is going, he said.

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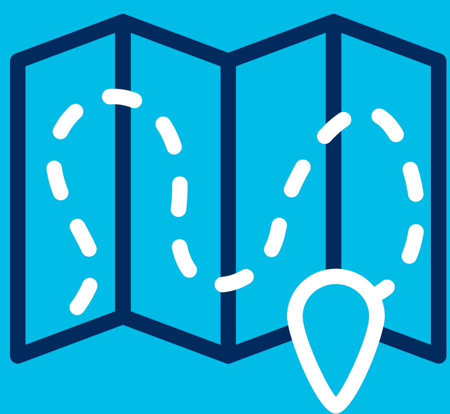

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Since being a captive member is more about controlling costs in the long term, "What will come out of this is, employers will look for better solutions, which may not include accessing managed care," he said.

A captive attracts an employer who is generally more sophisticated and will have a desire to know everything they are paying for regarding health insurance, he said, "So, I would suggest that the no surprises act is really going to accelerate an employer that participates in a captive to rethink their membership in a managed care program."

Part of the appeal of the captive solution is that these employers are not on their own. In a group captive, a number of parties work together. "In the captive we are the captive manager and the managing general underwriter, and there is also the third-party administrator," Zirke said.

NSA requirements apply to all healthcare insurers, whether fully or self-insured. "When you're fully insured these requirements fall upon the insurance carrier, but you are your own insurance carrier," he said. "The benefits of NSA impact self-insured groups because of transparency, so you understand your spend," he said.

Zirke added that most of their captive participants have health care advisors or brokers running their captive. "We as a captive get together with them a couple of times a year to discuss various topics," he said. "We're meeting in January, and we'll have a meeting in May, so we are in constant communication with these groups' advisors."■

What exactly is the No Surprises Act?

The No Surprises Act went into effect Jan. 1, 2022. It was written to protect consumers from unexpected out-of-network medicals bills and balance billing, often associated with emergency hospital visits. The Peterson Kaiser Family Foundation Health System Tracker states that of those with large employer coverage, 18 percent of all emergency visits and 16 percent of in-network hospital stays resulted in at least one out-of-network charge.

"The NSA applies to most private health plans offered by employers, as well as non-group health insurance policies offered through and outside of the marketplace. The new law contains other related provisions, including a requirement for health plans to keep network provider directories up to date," according to Peterson KFF.

"This is a big topic these days for a number of different reasons," said Chris Zirke, general counsel at Roundstone. "Part of it is the implications that Congress isn't always clear, and part of it is that we're all figuring it out and deadlines change, so it's really interesting."

Transparency rules help individuals and groups by reducing balance billing, he said. The reason this happens is that it isn't always clear who is in and who is out of network, "especially at a hospital," he said. A hospital, for example, "might be in network, but your doctor or provider might not, so part of it is covered by insurance and part is not," Zirke explained. "You, as a patient might receive a large bill, which is a surprise because you thought it would be covered by insurance."

This also happens in non-emergency situations, when patients at in-network hospitals or other facilities receive care from supplementary providers, such as anesthesiologists, who are not in-network and not chosen by the patient.

The No Surprises Act was put in place to end this practice, which is a direct benefit to the consumer. "There are also several other pieces to the NSA, part of which is a drug benefit to consumers. We support this because it drives down claims," Zirke said. "Part of the benefit is to the employer, which is what makes up our captives. It all goes to help reduce claims spend and we help groups understand that."

Zirke noted that what captives can be doing now is educating themselves about the act and planning how to cover all their bases.

Caroline McDonald is an award-winning journalist who has reported on a wide variety of insurance topics. Her beat has included in-depth coverage of risk management and captives.