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Carve-out prescription drug benefit programs.

Bulletin: CAA Overview Applicable to Group Rx Health Plans

The Consolidated Appropriations Act, 2021 (CAA) was enacted on December 27th, 2020. The CAA contains various components that will become effective through the 2021 to 2023 plan years which are by regulation the responsibility of the employer plan sponsor. A portion of the CAA, called the No Surprises Act (NSA), contains various rules and provisions to mitigate surprise balance billing. In addition, the November 2020 Group Health Plan Transparency Regulations are a separate set of rules which run parallel to the CAA and with similar purposes. Benecard is providing below a summary level overview of only those various CAA, NSA, and Transparency Regulation components that may have some impact on your prescription benefit program and how we may be able to assist.

Please note, we are expecting further regulations and guidance to become available related to many of these components. As of September 23rd, 2021, the Department of Labor (DOL) has released only a modest amount of guidance on the CAA and NSA requirements. However, the DOL did release important new FAQ's on August 20th, 2021. In the FAQs, the DOL delayed some of these components, as we note in more detail below. There are also lawsuits challenging some of the components. The lawsuits seek to have some rules declared invalid or modified. Benecard is closely monitoring these developments and will change its procedures to reflect any modifications to the legal requirements. We expect to publish additional bulletins on these topics as necessary.

Note: *This document is not intended to provide legal advice nor a full description of all components that make up the CAA, NSA, and Transparency Regulations.*

- CMS 9915-F, "Transparency in Coverage", Parts 147 & 158 / CAA Title I NSA Sec 114 "Maintenance of Price Comparison Tool" states that plan sponsors will be required to provide, through a website or application, in-network and out-of-network negotiated rates including an estimate of an individual's cost-sharing liability for covered items or services. The DOL, as part of the August 20th FAQ release, is deferring enforcement to make available a price comparison tool (by internet, website, paper, telephone) until the first plan year which begins on or after January 1st, 2023, to align the CAA enforcement date with CMS 9915-F.

  Additionally, plan sponsors will be required to offer three different machine-readable files addressing in-network provider negotiated rates, historical out-of-network allowed amounts, and drug pricing information. The intent is to create an online tool to help customers understand out-of-pocket costs. The rule was originally set to begin for plan years starting January 1, 2022. However, the August 20th FAQs delayed the first two requirements until the first plan year which begins on or after July 1, 2022. And, the August 20th FAQs delayed the drug pricing information requirement indefinitely, as the DOL intends to undertake a new rule-making process for this requirement.

  Benecard Response: Our drug pricing tool, which is available to members who register on our member portal at www.benecardpbf.com, will allow members access to compare the amount of cost-sharing for a given drug and through different pharmacies. We are on track to provide the drug pricing information via

telephone and paper before the due date of January 1st, 2023, along with the other machine-readable file requirements. We will also continue to monitor the status of any legal action that has been initiated to address the concerns with the requirements of these files.

- CAA Title I NSA Sec 107 "ID Card Requirements" states that, effective for plan years starting on or after January 1st, 2022, member ID cards for healthcare benefits, including prescription benefits, must show the deductible (if applicable) and maximum out-of-pocket (MOOP) amounts set by the plan sponsor. This requirement of the CAA is intended to help members understand how much they may have to pay out of pocket for any medical and prescription services they receive in a given year. The DOL confirmed that they do not intend to issue regulations addressing ID card requirements prior to the effective date of January 1st, 2022. However, the DOL intends to engage in further rulemaking to address complex coverage scenarios and how such information should be represented on the ID cards. Pending future rulemaking, the DOL is advising we make a good faith, reasonable interpretation of the law.

  Benecard Response: We will adapt our standard member ID card template to meet the CAA requirements by January 1st, 2022. For plan sponsors that have a deductible and/or MOOP, the amounts will be identified on the member ID card and updated as needed (MOOP amounts are updated annually by the IRS). These amounts will also be displayed on the digital ID card accessible through the member portal and mobile app, where members can either download to their cell phones or print out a copy for themselves. **A separate bulletin providing more detail will be forthcoming regarding this matter.**

- CAA Title I NSA Sec 111 "Consumer Protections for Fair and Honest Advance Cost Estimate" states that for plan years beginning on or after January 1st, 2022, each plan sponsor shall provide an advance cost estimate, similar to an EOB (explanation of benefits), of the amount of any cost-sharing for which the member would be responsible for such item or service (as of the date of such notification). The advanced cost estimate shall account for any member where a plan has a deductible and out-of-pocket maximum. If the plan has "clinical safeguard techniques", such as step therapy or prior authorization, the advanced cost estimate must also note that those techniques may apply. The DOL has since deferred enforcement of this requirement until further rulemaking and standards under this component have been provided and fully implemented.

  Benecard Response: Our in-place solution of our drug pricing tool, which is available to our members who register on our member portal at www.benecardpbf.com, meets this requirement now. However, this component applies to the written notification of a good faith estimate for a service and/or item from either a health care provider and/or health care facility to the patient who has scheduled an appointment in advance at such location. Benecard expects the release of additional rules to clarify whether this requirement applies to prescription drug plans and, if so, how.

- CAA Title I NSA Sec 116 "Protecting Patients and Improving the Accuracy of Provider Directory Information" states that, for plan years beginning on or after January 1st, 2022, a plan sponsor must have available on its website a database that contains a list of all health care providers and health care facilities with which the plan has a direct or indirect contractual relationship for furnishing such services. Members must be able to access the provider directory information via a web-based platform through the plan or

may request such information through a phone call to the plan sponsor listed on the back of the member's ID card. The DOL states that rulemaking on this component will not be issued until after January 1st, 2022 and, therefore, plan sponsors are expected to implement these provisions using a good faith, reasonable interpretation of the statute.

Benecard Response: Our in-place solution of our pharmacy directory locator, which is available to our members who register on our member portal at www.benecardpbf.com, meets this requirement now. However, pharmacies are not specifically defined as a "provider" under the CAA and therefore this requirement does not appear to be applicable to the pharmacy drug benefit or pharmacy directories.

- CAA Title II Transparency Sec 203 "Strengthening Parity in Mental Health (MH) and Substance Use Disorder (SUD) Benefits" states that a plan sponsor covering both medical/surgical benefits and mental health/substance use disorder benefits must identify the nonquantitative treatment limitations (NQTLs) under the plan, such as prior authorization, formulary setup, and/or step therapy; then, in certain situations, provide a written analysis of those NQTLs. That written analysis must be provided to certain entities upon request (including the U.S. Department of Labor, some state regulators, and enrollees in ERISA-covered plans).

  Benecard Response: We have created a template for the comparative analysis of NQTLs to demonstrate your plan's compliance using the DOL's tool as a guide. The template, which will include full discussion and evidence customized to the actual plan, is intended to provide a complete comparative analysis of your prescription benefits program. Plan sponsors will need to obtain similar information from the medical carrier. In addition to the NQTL template, Benecard has enhanced existing data reporting for the analysis of quantitative treatment limitations (QTLs). The report will help demonstrate parity in the treatment of mental health drugs as compared to other drug categories in any given plan's benefit setup.

  The comparative analysis Benecard provides will focus on prescription benefits only. It will demonstrate what processes, strategies, evidentiary standards, and other factors used in the application of NQTLs to MH/SUD prescription drug benefits are comparable to and applied no more stringently than processes, strategies, evidentiary standards, and other factors used in the application of NQTLs to other prescription drug benefits. This report will be furnished to the plan sponsor in cases where the plan sponsor has been requested by one of the federal agencies, state regulators, or enrolled members to furnish this information. Benecard will provide this information at no additional cost to the plan sponsor when based on one of these requests.

- CAA Title I NSA Sec 204 "Reporting on Pharmacy Benefits and Drug Cost" states that as of December 27th, 2021 and not later than June 1st of each year thereafter, a plan sponsor offering group health insurance coverage (except for a church plan) shall submit to the federal government various prescription benefit and drug cost information. The DOL has since stated their intention to issue regulations pertaining to the pharmacy drug cost reporting. As such the DOL is deferring the enforcement of the reporting until December 27th, 2022.

Benecard Response: We are in the process of building specific reporting reflective of the CAA requirements and expect to be in compliance with the CAA by the December 27th, 2022 deadline for the first reporting to be sent to the federal government. However, as noted above, we are waiting for further regulations to be provided in order to move forward with this request. As a way to simplify the process for our plan sponsors, Benecard will provide this information directly to the federal agencies, so that plan sponsors need not incur the expense and burden of gathering the raw data and compiling it into a detailed reporting format.

We anticipate that reporting related to any type of collective arrangement we administer for our business partners will operate in a similar manner, with Benecard directly reporting the information for the entire collective to the federal government.

Plan sponsors generally must be in compliance with the CAA as of the plan's anniversary/renewal effective date beginning in 2022, unless the federal agencies provide some relief from these deadlines.

Please contact your Benecard Services Client Relations Manager at (609) 219-0400 or via email should you have any questions on the above bulletin.

Disclaimer: This bulletin is not legal, tax, or accounting advice. Consult with your attorney or accountant about the impact these federal healthcare reform laws have on your health benefit plans.

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