Transparency and Fiduciary Responsibility

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At a recent meeting, we asked an audience of self-insured employers and brokers which of these two pieces of legislation will have the greatest impact in five years: Healthcare Transparency in Coverage (TiC) rule and No Surprises Act (NSA). While participants leaned heavily toward NSA, we believe gains in transparency will have a lasting effect on how health plans deliver care to members. Data are foundational to informing better decisions about everything a health plan does – from how to expand networks, select high-quality and low-cost providers, and navigate members across the healthcare journey to how claims are paid.

At Certus Management Group, we are a champion for greater transparency as it is foundational to the health plan's fiduciary responsibility to lower overall medical costs and deliver better health outcomes and experiences for members.

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WHAT IS TRANSPARENCY IN HEALTHCARE, AND WHY IS IT NECESSARY?

Since January of 2022, there has been a lot of conversation about the TiC rule and NSA. The new legislation was designed to protect consumers from surprise medical bills by requiring both providers and health plans to make certain information publicly available so consumers understand the cost of care before services are rendered.

The industry as a whole is making good headway. Health plans now have searchable tools members use to access information to find a provider and get details on covered care, and hospitals are publishing pricing on their websites. Unfortunately, members still have a difficult time understanding the total cost of their care prior to service delivery. Fortunately, health plans are fully committed to making full transparency possible for their members.

WHAT DOES FIDUCIARY RESPONSIBILITY MEAN AND WHY IS IT IMPORTANT?

In fact, health plans have a fiduciary responsibility – a legal obligation to act in the best financial interest of the group or person that you're serving. In a self-funded plan, fiduciary responsibility means paying the appropriate price for the appropriate service on behalf of every eligible participant. According to the Department of Labor (DOL) "...as a fiduciary, plan sponsors must:

- prove they have a process that is working in the best interest of the participant and beneficiary,
- carry out duties prudently,
- follow the terms of the plan documents consistent with ERISA,
- hold any plan assets in a trust,
- pay only reasonable plan expenses."

Read this booklet from the DOL to learn more about fiduciary responsibility.

The DOL further explains that fiduciary responsibility requires a self-funded plan "pay only reasonable plan expenses." Many PPO network contracts, if not most, include language designed to protect the provider from scrutiny of billed charges or the "reasonableness" of the contracted allowable amount. Furthermore, many PPO network contracts are designed to prevent the plan from performing bill audits or code editing, which are standard in the claim adjudication process.

HOW ARE FIDUCIARY RESPONSIBILITY AND TRANSPARENCY CONNECTED?

Transparency is essential to the ability of the health plan to carry out its fiduciary responsibility. Without data and information on what services should cost, it is impossible to know if one is paying the right amount. A self-funded plan must pay only reasonable plan expenses, so transparency in healthcare provides the necessary financial information for a plan to evaluate all claims received. Additionally, it provides plans with the ability to help their members proactively find affordable care.

WHAT DOES OUR GOVERNMENT'S LEGISLATION HAVE TO SAY ABOUT THIS?

The NSA, in part, increases transparency by removing "gag" clauses on price and quality information. Section 201 "bans gag clauses in contracts between providers and health plans that directly or indirectly restrict data from another party and therefore prevent enrollees, plan sponsors, or referring providers from seeing cost and quality data on providers." "Gag" clauses are very common in many national, regional, and even local PPO contracts, and often sound something like this: "Itemized statements cannot be requested prior to prepayment of a claim." Statements like these are now unlawful because they prevent plans from having all the information they need to audit claims, and therefore prohibit plans from fulfilling their fiduciary responsibility. A plan is now supported by law to ask more questions and obtain more information about any and all claims to ensure they are upholding their fiduciary responsibility to all members.

WHAT CAN CERTUS MANAGEMENT GROUP DO FOR YOU?

Your best cost-containment strategy begins with being proactive and diligent while continuously exercising your fiduciary responsibility. As the stop loss provider, Certus Management Group sees examples of effective and ineffective fiduciary oversight on a daily basis. Certus has learned from those examples and serves as a resource for our customers as they exercise their fiduciary oversight. With as many as 80 percent of all hospital bills containing errors, it is critically important for the plan sponsor to mitigate such errors and understand how the plan's fiduciary responsibility prohibits the plan from reimbursing charges resulting from errors or abusive charges. Should a plan abdicate the adjudication of claims to the provider network, the plan is likely breaching its fiduciary responsibility.