Insights, News & Events

# REFERENCE-BASED PRICING: ANOTHER SELF-INSURED OPTION FOR EMPLOYERS

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As health care costs increase, employers have been exploring new types of health coverage options, one of which is reference-based pricing (RBP). This method typically does not involve a traditional insurance carrier or provider network negotiating covered services for the plan. Instead, employers will set a fixed limit on the amount a plan will pay for certain healthcare services.

## HOW DOES REFERENCE-BASED PRICING WORK?

The fixed limit is often based upon a percentage or multiplier of what Medicare would pay the provider. The question then becomes whether the healthcare provider will be willing to accept these fixed limits, which can be much less than what a traditional insurance carrier or provider network would pay. Here is an illustrative example:

Let's say that a participant needs a certain kind of surgery, and a hospital would expect to be paid $2,500 for it even if some insurance carriers may have contracted to pay less than that. The Medicare rate is $500, and the reference-based pricing plan's fixed limit is 200 percent of the Medicare price, which comes out to $1,000.

## Service Focus

**Employee Benefits and Tax**

With RBP, the hospital may perform the service and expect to receive $2,500. Once the hospital is only paid $1,000 from the employer, it may seek the $1,500 balance from the patient. This concept is referred to as "balance billing." The patient, the employer, or a third-party administrator may then help negotiate down the amount of the balance billing. Of course, there are varying degrees of success for these negotiations.

From the employee's perspective, however, this situation may not be ideal—they may feel uncertain about the amount they will end up paying out of pocket for a procedure, and figuring out the cost ahead of time may require significant research. For RBPs to have cost savings, employees must be well-informed consumers.

## RBP AND THE AFFORDABLE CARE ACT

The Affordable Care Act (ACA) limits the amount of an individual's out-of-pocket expenses for in-network health care costs. RBPs do not have traditional networks, so government agencies issued guidance on the subject to ensure employers did not use RBPs to circumvent out-of-pocket maximums.

The agencies agreed that, in general, a plan could treat any health care provider who accepts RBP negotiated prices as an in-network provider, and all other healthcare providers can be considered out-of-network, as long as participants have access to quality healthcare. When determining whether quality healthcare is available, the agencies will evaluate:

- The types of services that are subject to RBPs. For example, RBP will not typically work for emergency services since the employee does not have an opportunity to select or shop for a service provider.
- Whether the plan offers reasonable access to an adequate number of providers. This can be a particular challenge in rural areas where provider options may be limited.

- Whether the providers meet reasonable quality standards.
- Whether the plan has an easily accessible exceptions process for participants who have special circumstances.
- Whether the plan has adequately disclosed information to participants regarding the RBP, such as providing a list of services and pricing.

## RBP LITIGATION

While there certainly have been payment disputes between employers, participants and healthcare providers over RBP, there has been little litigation over the matter. Disagreements over these issues are typically resolved via negotiation, and employers will often cover any balance billing. There is, however, a lawsuit before a federal appeals court over a reference-based pricing dispute. If the hospital prevails, RBP may become more difficult to implement because providers may start to seek the entirety of the balance billing, rather than engage in extensive negotiations.

In the case at issue, the employer used an RBP and did not have a negotiated contract with the hospital. The employee went to the hospital for a heart attack and received a bill of nearly $100,000. The employee and the plan paid approximately 25 percent of the bill and encouraged the hospital to accept the payment in full, in part, because the hospital had accepted that amount as full payment for other uninsured patients.  The hospital, however, continued to seek payment for the balance. The hospital has argued that the employee signed an agreement consenting to the full price of the services, so the patient should be contractually required to pay the full amount despite the fact that the hospital accepted lesser amounts from other uninsured patients.

## CONCLUSION

Regardless of the outcome of this case, employers who are intrigued by reference-based pricing should do their research to learn more about how RBP will work for their employees. Employers should pay particular attention to employee education and communications regarding RBP, since a surprise six-figure balance bill could quickly become a significant employee relations issue.

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