



# ILLINOIS AAHAM 2021 LEGAL DEVELOPMENT UPDATE

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# NATIONAL AAHAM AMICUS PROGRAM

- SUCCESS IN LEGISLATIVE LOBBYING
- COURT SYSTEM TO FURTHER PROTECT INTERESTS OF PROVIDERS
- NATIONAL PRESENCE

# 2021 LEGAL UPDATE

- HUNSTEIN CASE-SLIPPERY SLOPE RE COLLECTION CHAIN
- FRENCH V CENTURA – DOUBLE SHOTS OF LOVE-PREDATORY TPS'S AND THE STRUGGLE OF CUSTOMARY, REASONABLE AND USUAL
- MEDICAL DEBT COLLECTION RELIEF ACT S.B.355-COVID INDUCED ACTIONS
- NO SURPRISES ACT-DISPUTE RESOLUTION PROCESS

# LEGAL UPDATE-HUNSTEIN

- FACTS-HOSP-COLLECTION VENDOR- TO LETTER VENDER
- VIOL FED FAIR DEBT COLL PRACTICES ACT- PRIVACY ISSUES
- SHORTCOMINGS IN ANALYSIS-HIPPA? TRANSUNION (NO PUBLICATION BECAUSE NOT DEFAMATION)?
- 11<sup>TH</sup> CIRCUIT STUBBORNESS-DOES NOT HAVE TO BE IDENTICAL TO DEFAMATION
- STANDING BASED ON DAMAGES IS QUESTIONABLE –TRANS UNION US SUPREME CT
- AAHAM ACTION-CURRENT STATUS

# Meanwhile back in Colorado



# FRENCH V CENTURA

- FRENCH V CENTURA –
- PREDATORY TPA'S AND THE STRUGGLE OF DETERMINING CUSTOMARY, REASONABLE AND USUAL PRICING (PRE NO SURPRISES ISSUES)

# COURT DEVELOPMENTS

## FRENCH V CENTURA

- COLORADO SUPREME COURT CASE-INFLUENCE?
- PREDATORY TPA LIKE CREATURES
- USE OF REASONABLE AND CUSTOMARY ANALYSIS
- CHARGEMASTER RATES PREVIOUS STANDARD
- DIFFICULT JURY TRIAL ISSUES

# FRENCH V CENTURA

- PREDATORY TPA'S
  - CHRISTIAN MINISTRIES
  - LOW BALL PAYMENTS
  - FORCE LITIGATION
  - PRETEND THEY ARE NOT PLANS
  - ACT AS TPA'S
  - SUE HOSPITAL FOR FRAUD

# FRENCH V CENTURA

- ANYONE UNDERSTAND R&C PRICING?

# LEGAL UPDATE-FRENCH

- CUSTOMARY,USUAL,REASONABLE (R&C)
  - FAIR MARKET VALUE OF SERVICES
  - NON-CONTRACTED
  - FORCED SALE
  - IMPACTING FACTORS
    - GOULD COMPARATIVE FACTORS
    - CHILDREN'S HOSPITAL PAID CLAIMS DATA APPROACH
      - NOT COST
      - LOA'S
      - WRITE OFFS

# FRENCH

- AMICUS BRIEF
- CALIFORNIA DIFFERS
- KAISER APPROACH TO R&C
- EXPENSE
- APPELLATE IMPACT OF TRIAL COURT DECISIONS

# LEGAL UPDATE- COVID RELATED LEGISLATIVE ACTS

- S.355 MEDICAL DEBT COLLECTION RELIEF ACT
  - SIGNIFICANT MORATORIUM ON PATIENT DEBT COLLECTION
  - DELAY IN CONTACT
  - DELAY IN FINANCIAL COUNSELING

# S.355 MEDICAL DEBT COLLECTION RELIEF ACT

- SUSPENDS EXTRAORDINARY COLLECTION ACTIONS (LIENS, SELLING DEBT TO THIRD PARTY COLLECTOR, GARNISHMENT) FOR DEBT INCURRED FEBRUARY 1, 2020 THROUGH 18 MONTHS AFTER ENACTMENT OF THE ACT.
- EXTENDS CONSUMER PROTECTIONS FOR COVID RELATED DEBTS INCURRED 2/1/20 TO 60 DAYS AFTER COVID PUBLIC HEALTH EMERGENCY ENDS.
- SUSPENDS EXISTING PAYMENT PLANS
- ONE YEAR EXTENSION OF FEDERAL AND STATE INSURANCE APPEAL DEADLINES
- HOLD HEALTHCARE PROVIDERS LIABLE FOR FAILURE TO COMPLY

# NO SURPRISES ACT

- OON CLINICIANS PROVIDING SERVICES AT NETWORK FACILITIES.
- OON SERVICES
- PATIENT PROTECTION AGAINST BALANCE BILLING/SURPRISE BILLING
- SOME GOOD THINGS FOR PROVIDERS
  - NO PUBLIC BASED PRICING ELEMENT
  - **NO PAYMENT ROUTING DIRECTLY TO PATIENT**
- SOME NOT SO GOOD
  - NO USE OF CHARGEMASTER PRICING

# NO SURPRISES ACT

- PAYMENT STRUCTURE
  - STATE PROCESS
  - IF NO STATE PROCESS- STATUTORY PROCESS:
    - ACCEPT INITIAL PAYMENT KEYED TO IN NETWORK RATES
    - 30 DAYS TO NEGOTIATE A RATE
    - IDR ( INDEPENDENT DISPUTE RESOLUTION).

# NO SURPRISES ACT

- Independent Dispute Resolution-A TRAGIC-COMEDY
  - 30 DAYS TO AGREE ON RATE-
  - IF NO AGREEMENT-4 DAYS TO TRIGGER IDR
  - 3 BUSINESS DAYS TO SELECT AN IDR ENTITY
  - IF CANNOT AGREE-HHS SECRETARY HAS THREE BUSINESS DAYS TO SELECT FOR YOU
  - 10 DAYS OF IDR SELECTION, EACH SIDE SUBMITS AN OFFER FOR REIMBURSEMENT WITH SUPPORTING DOCUMENTATION. (BASEBALL ARBITRATION)
  - IDR MUST SELECT ONE OF THE OFFERS WITHIN 30 DAYS OF SELECTION.

# NO SURPRISES ACT

- COOLING OFF PERIOD
- LIMITED BATCHING OF CLAIMS
- FEES-LOSER PAYS
- VIABILITY OF IDR?
  - TIME PERIODS AND COST BURDEN DISCOURAGE USE AND ENCOURAGE AGREEMENT.
  - ENCOURAGE CONTRACTING- IDR CAN CONSIDER GOOD FAITH ATTEMPTS AT CONTRACTING IN MAKING DECISION.

# NO SURPRISES ACT

- FACTORS FOR CONSIDERATION BY IDR
- OFFER AMOUNT AND QUALIFYING PAYMENT AMOUNT (LESSER OF TBC AND MEDIAN NETWORK PAYMENT)
- ADDITIONAL CIRCUMSTANCES
  - TRAINING, EXPERIENCE, OUTCOME MEASUREMENTS OF PROVIDER
  - MARKET SHARE OF OON PROVIDER /PLAN IN GEO AREA
  - COMPLEXITY OF SERVICE PROVIDED
  - TEACHING STTAUS, CASE MIX, SCOPE OF SERVICES OFFERED
  - GOOD FAITH EFFORTS TO CONTRACT/CONTRACT RATES BETWEEN PARTIES FOR PAST 4 YEARS
  - INFO REQUESTED/OFFERED



THANK YOU