

Federal Law Challenges Surprise Medical Bills

No Surprises Act, which takes effect in 2022, targets balance billing, could affect 10 million bills per year.

According to The Commonwealth Fund, 33 states have adopted some protections against balance billing, or a bill sent to an insured patient for the difference between a medical provider's charge and the insurance company's allowed amount. This patchwork system of state laws will soon be strengthened with the implementation of the federal No Surprises Act (NSA), which will spread a blanket of protection for insured consumers across the country as it takes effect on Jan. 1, 2022.

This federal law will challenge surprise medical bills that arise when an insured patient "inadvertently receives care from out-of-network hospitals, doctors, or other providers they did not choose," said a Kaiser Health News report. According to the report, these surprise bills occur after about 1 in 5 emergency room visits. They pose significant financial burdens for consumers.

A federal government estimate said the NSA would eliminate 10 million out-of-network surprise bills each year. The new law will require private health plans — both job-based and non-group plans, including grandfathered plans — to cover out-of-network claims and apply in-network cost-sharing. It will also prohibit doctors, hospitals, and other covered providers from billing patients more than the in-network cost-sharing amount for surprise bills.

Among its other provisions, the NSA also "establishes a process for determining the payment amount for surprise, out-of-network medical bills, starting with negotiations between plans and providers," said the Kaiser report. If those negotiations are unsuccessful, an independent dispute resolution process begins.

The new federal protections will apply to most emergency services, post-emergency stabilization services, and non-emergency services provided at in-network facilities. Providers who bill patients more than the applicable in-network cost-sharing amount could be penalized up to \$10,000 for each violation.

The NSA will bring numerous changes to the healthcare industry, including new processes for billing. Providers and health plans must identify bills protected by the new law, and they must notify consumers of their protections. Providers may ask patients to give prior written consent to waive their NSA rights and be billed more by out-of-network providers. However, providers cannot do so for emergency services or certain other non-emergency services, such as diagnostic services. The Kaiser report notes that consent "must be given voluntarily and cannot be coerced, although providers can refuse care if consent is defined."

To further protect consumers, the NSA establishes a national consumer complaints system through the U.S. Department of Health and Human Services (HHS). HHS personnel have 60 business days to respond to filed complaints and, if necessary, refer consumers to the appropriate regulatory agency.

The message for healthcare providers? Get ready for the NSA, but also be aware that the highly complex law is still evolving. Specific regulations — including definitions of the law's key terms — are still being finalized via public comment periods. The law is also likely to be modified as legal challenges proceed.