

Report on Medicare Compliance Volume 30, Number 36. October 11, 2021

Surprise Billing Rules: With Alleged Violations, CMS Will Weigh Evidence of Compliance

By Nina Youngstrom

Hospitals that assimilate the No Surprises Act into their compliance programs will fare better if they're investigated for a violation, according to one of three implementing regulations—and it may not be hard to trip over the requirements.^[1] They include limits on balance billing and notice and consent provisions that require providers to give patients cost estimates of items and services.

“Coming into compliance with the sweeping new billing and transparency obligations imposed by the No Surprises Act will require intense coordination between legal, compliance, operations, and revenue cycle management,” said former CMS chief legal officer Brenna Jenny, with Sidley Austin LLP in Washington, D.C.

The 2020 No Surprises Act, which takes effect Jan. 1, protects patients from large or unexpected bills from out-of-network providers when they're treated at hospitals, ambulatory surgery facilities and other facilities, depending on the circumstances. The law limits patient liability for out-of-network services to no more than the in-network cost sharing and deductibles. To ensure hospitals and physicians are protected as well, health plans and insurers must reimburse them directly for out-of-network care. Patients are kept out of the haggling between providers and commercial payers for payment for out-of-network services. The law also established an arbitration process for providers and payers to settle payment disputes about out-of-network services.

The latest interim final rule was published in the Oct. 7 *Federal Register*,^[2] and it fleshes out the requirement that providers give patients an advance cost estimate on request or when scheduling an item or service. There's also more detail on the independent dispute resolution process for payment disputes between providers and health plans/insurers, which didn't get a warm reception from providers.

Hospitals have their work cut out for them with the three regulations, which were brought to you mainly by HHS and the Departments of Labor and the Treasury. Another interim final rule was published July 13,^[3] and a proposed rule on enforcement of the No Surprises Act came out Sept. 16.^[4]

“The No Surprises Act transforms the federal landscape governing balance billing, but it does so by overlaying itself on a patchwork of state surprise medical billing laws that intersect with the federal legislation in complicated and evolving ways,” Jenny said. “Providers must not only develop new systems and compliance guardrails to ensure compliance with prohibitions on balance billing and transparency obligations, but they also face new challenges in negotiating reimbursement for out-of-network services from payers. The federal government's interest in immediate enforcement remains an open question, as does state appetite to fill the void, but the need to ultimately come into compliance with this regime is inevitable, and health care providers should take steps now to do so.”

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