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Some Hospitals Skip Consent Under No Surprises Act, Won't Let Patients Waive Protections

By Nina Youngstrom

There's no reason for consent forms in connection with the No Surprises Act at Fairfield Medical Center in Lancaster, Ohio, because it doesn't do balance billing of any kind. The hospital is billing patients the same amount whether the services were provided in network or out of network, with no option to waive their protections from surprise bills.

"We don't do a consent to bill out of network because we don't bill out of network," said Corporate Compliance Officer Melony Rarick. "We made an organizational decision we are not going to balance bill."

The hospital also has developed a consolidated form that presents information to patients about their various rights and responsibilities, including the good faith cost estimate requirement of the No Surprises Act, on one page. It's one of the moves made by the four-person compliance department as it tackles the No Surprises Act and other regulatory requirements in tandem, big regulations marked by detailed specifications, extensions and court battles. "You have to know what you need to be compliant and understand the regulations and set the goals, but we are compliance and not operations," Rarick said. "We provide linkage between the departments and get the right people in the room but know when it's time to step back."

Some Hospitals Skip Surprise Billing Consent

The No Surprises Act 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. In other words, balance billing isn't allowed when patients receive emergency services at out-of-network hospitals or nonemergency services from out-of-network providers at certain in-network hospitals and other facilities. To ensure hospitals and physicians are protected as well, health plans and insurers must reimburse them directly for out-of-network care. There's an arbitration process for providers and payers to settle payment disputes about out-of-network services.

Three regulations issued mainly by HHS and the departments of Labor and the Treasury implement the No Surprises Act: two interim final rules published July 13^[1] and Oct. 7^[2] and a proposed rule on enforcement issued Sept. 16.^[3]

The notice and consent form paves the way for an exemption under the No Surprises Act. Patients may be balance billed for certain nonemergency out-of-network services if they consent, but hospitals have to follow a specific regulatory process to lawfully obtain consent. For example, the form providing notice and seeking consent must be translated into the 15 languages that are most popular in the facility's region, and CMS's model form can't be modified. The notice and consent must be separate from other forms, and patients may choose to receive it in paper form or electronically. If the procedure/appointment is scheduled 72 hours or more in advance, the form must be provided to the patient at least 72 hours before the procedure/appointment. If it's fewer than 72 hours,

the form must be provided on the same day but at least three hours in advance.

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