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Compliance Today - July 2021
Surprises in the No Surprises Act: New requirements for plans and providers regarding provider directory information

By Michael Adelberg and John Weis

Michael Adelberg (michael.adelberg@faegredrinker.com) is Principal in the Washington, DC, office of Faegre Drinker, and **John P. Weis** (john.weis@questanalytics.com) is President and Cofounder of Quest Analytics in Overland Park, KS.

- linkedin.com/in/michael-adelberg-77799b2b/
- linkedin.com/in/john-weis-0988927/

The No Surprises Act was signed into law in December 2020 as part of the massive Consolidated Appropriations Act of 2021.[1] It is the end result of several prior bills that sought to address the national "surprise bill" problem. In recent years, millions of commercial health plan members have received services at in-network facilities but then received large out-of-network bills afterward because a particular provider at the facility (most commonly emergency physicians, pathologists, radiologists, behavioral health providers, and anesthesiologists) was out of network.[2] Other surprise billing scenarios (e.g., those involving air ambulance services) are also common. Beyond this, the No Surprises Act also includes several provisions that create new protections for health plan members and provider's patients. These protections create new requirements and risks for health plans and providers. This article focuses on one particularly weighty section of the No Surprises Act, section 116,[3] which establishes a set of new requirements for health plans and providers that will be effective on January 1, 2022.

Section 116 of the No Surprises Act, "Protecting patients and improving the accuracy of provider directory information," takes on long-simmering problems regarding the accuracy of network provider information in health plan directories and related materials. We summarized these problems in a prior *Compliance Today* article,[4] so we will not belabor the point here. Suffice it to say that it is well documented that the information in provider directories is widely understood to be rife with errors. While sincere efforts are underway to improve this information, there is little evidence to suggest that these efforts have tangibly improved directory accuracy across health insurance markets. There are good reasons why it is hard to improve provider directory accuracy, and there are steps that health plans, providers, and regulators can all take to improve the situation.

Inaccurate provider information can cause real consumer harm. Plan members show up at incorrect addresses for appointments or cannot make appointments because of outdated information—a problem exacerbated by the trend toward large group practices with practitioners seeing patients in multiple offices but not being listed across those offices. Lawsuits have been filed by plan members who joined a plan based on a directory suggesting a particular doctor was in-network when that was not the case, leading the consumer to contend they were deceived into selecting the plan. Most germane to the No Surprises Act, there are cases when a plan member has seen a provider who was listed incorrectly as in-network, leading to a surprise bill afterward. Health plans may choose to hold their member harmless when surprise bills happen, but those decisions may occur after a surprise bill has already upset the member, and not all health plans have this policy.

For the commercial market, at least, the No Surprises Act seeks to address these problems.

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