COSMOS
Navigate the Compliance Universe

Report on Medicare Compliance Volume 30, Number 45. December 20, 2021
Identifying Out-of-Network Services, Billing Amounts Is 'Hard Part' of No Surprises Act

By Nina Youngstrom

"The hard part" of the No Surprises Act, which takes effect Jan. 1, will be identifying out-of-network emergency services provided to patients and the amount they should be billed when balance billing is off the table,[1] according to one compliance officer. It's a familiar refrain. "We don't always have good information when the patient comes in for their services, and then on the back end, we are making sure we're not balance billing the patient," explained the compliance officer, who works at a health system and prefers not to be identified. "Our hope is insurance companies will give us good information." So far, one payer has agreed to use a newly created code on the remittance advice to alert the hospital that the patient is out of network and specify the amount to bill the patient. Without that information, how would the hospital know what to charge? "We can't bill them any more than their normal cost share amount," the compliance officer said. "Do they have a $5,000 deductible? Do they pay a $500 emergency room copay? You have to have cooperation from the payers." She hopes other insurers follow suit.

The 2020 No Surprises Act and its implementing regulations bring many challenges, even with CMS granting some enforcement discretion. And they have led to a "deluge" of "extraordinarily specific questions" from hospitals and other facilities that perhaps are losing sight of the forest because of the many trees of the law and its regulations, said attorney Emily Cook, with McDermott Will & Emery in Los Angeles. She encourages facilities to develop an understanding of how they will approach the No Surprises Act so it can be applied more predictably to various scenarios as they arise.

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 out-of-network providers and nonemergency services provided by out-of-network providers at in-network hospitals. The law applies to patients with commercial insurance, not Medicare and Medicaid, as well as patients who self-pay.