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CMS Ramps up Investigations of NSA Noncompliance; Lawyer: 'Lean in' Before CMPs Hit

By Nina Youngstrom

Investigations of noncompliance with the No Surprises Act (NSA) are ramping up, and enforcement actions of some kind may not be far behind, attorneys say. The investigations are in response to patient complaints about balance billing and good faith estimates (GFEs).

Complaints are investigated by the CMS Center for Consumer Information and Insurance Oversight (CCIIO), which is charged with overseeing compliance with the NSA.[1] It has been sending letters to some hospitals, asking for information on all sorts of things, including the mechanics of complying with a law that's designed to insulate patients from surprise bills and give them more information about prices.

"CMS is doing investigations of NSA and GFE compliance," said attorney David Glaser, with Fredrikson & Byron in Minneapolis. He said hospitals should brace for extensive document requests, although CCIIO has moderated them over time and granted deadline extensions.

One patient's complaint that a hospital didn't provide a GFE led to CCIIO's initial letter informing the hospital of the complaint, with details, and asking for information. That was followed by a request for more specific information. For example, CCIIO asked the hospital for "documentation that demonstrates the extent of compliance to date with the requirements of § 149.610; specifically, the results of an impact analysis to determine how many scheduled appointments for uninsured/self-pay individuals have occurred since 1/1/2022 to the present, and for how many of those visits individuals received a timely and compliant GFE as evidenced by copies retained in their medical records as required under § 149.610(f)," according to the letter.

"They want to know everything about your process," Glaser said. "That's when it gets voluminous."