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Complete Healthcare Compliance Manual 2024
Revenue Cycle: Surprise Billing and the No Surprises Act

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What Is Surprise Billing and the No Surprises Act?

When patients see providers, they may need to pay out-of-pocket costs, even if they have health insurance. These costs may be for a co-pay, deductible, or coinsurance. If the patient visits a provider outside of their health plan's network, the patient may have to pay the entire bill. Or an out-of-network provider may bill a patient for the difference between what the plan agrees to pay and the full cost of care. These kinds of payments are expected in healthcare, but some bills far exceed a patient's expectations.

This results in surprise billing. These bills might be for services the patient thought would be covered by insurance or for uninsured patients. Another source of a surprise bill is when a patient is unexpectedly treated during an emergency situation, such as an accident or sudden illness. Surprise bills often happen when a patient has no control over their care. These surprise bills have happened to many people, too. Ultimately, if consumers have health coverage and receive care from an out-of-network provider, their health plan usually wouldn't cover the entire out-of-network cost, causing surprise billing.[3]

A 2018 University of Chicago survey found that 57% of adult Americans have received some kind of surprise bill.[4] Other studies show that surprise billing results from emergency room visits, elective surgeries, childbirth-related costs, and air-ambulance services.[5] The Peterson-KFF Health System Tracker and other studies have found this happens in about one in five emergency room visits.[6] In addition, 9%–16% of in-network hospitalizations for nonemergency care include surprise bills from out-of-network providers (i.e., anesthesiologists) not chosen by the patient.[7]

Surprise bills have long been a significant pain point for patients, and this issue has had the attention of Congress and policy makers for quite some time. While findings vary, most cited studies indicate that medical costs contribute to somewhere between one-third and two-thirds of all bankruptcies.[8] Even outside of bankruptcy, unplanned and surprise medical bills create serious financial challenges for millions of families every year. The problems seem most prevalent in the context of emergency services for uninsured patients, but also there has been extensive concern about bills of insured patients who find that one or more of their caregivers within a facility is out-of-network, even though the hospital or other provider was "in network."

On December 27, 2020, the Consolidated Appropriations Act (CAA), which includes the No Surprises Act (NSA), was enacted.[9] The NSA represents the culmination of years of bipartisan efforts to address surprise billing at the federal level, particularly for uninsured and self-pay patients and for insured patients navigating the in-network versus out-of-network challenges. The NSA directs departments to specify the information that a plan or insurer must share with a nonparticipating provider, nonparticipating emergency facility, or nonparticipating provider of air-ambulance services, as applicable, after determining the qualified payment amount (QPA).

Implementation of the law began on January 1, 2022, although enforcement of some of the law's requirements was deferred to give both payers and providers an opportunity to develop plans and processes, and to acquire the

resources to comply (provided those payers and providers are engaged in good faith efforts to meet the law's requirements in the interim). The U.S. Department of Health & Human Services (HHS) has indicated that it will step up enforcement efforts in 2023.[10]

The NSA will apply to most surprise bills but focuses on three main types of services: emergency services, post-emergency stabilization services, and nonemergency services provided at in-network facilities. Surprise billing protections apply to most emergency services, including emergency departments, freestanding emergency departments, and urgent care centers that are licensed to provide emergency care. The NSA also includes post-stabilization care as emergency care until a physician determines the patient can travel safely to another in-network facility using nonmedical transport—and that the facility will accept the patient. Lastly, nonemergency services provided at in-network facilities include doctors who work in hospitals but don't work *for* the hospital. These physicians bill independently and do not necessarily participate in the same health plan networks.[11]