COSMOS
Navigate the Compliance Universe

Report on Medicare Compliance Volume 30, Number 2. January 18, 2021
No Surprises Act Limits Out-of-Network Charges; Exception Requires Compliance Oversight

By Nina Youngstrom

Hospitals and health plans soon will be circling each other in another realm—payments and claim denials for services provided out of network—now that Congress has enacted a law on surprise billing. The No Surprises Act,[1] which is part of the 2021 Consolidated Appropriations Act signed by President Trump Dec. 27, protects patients from large or unexpected bills when they're treated by hospitals, physicians and other providers that don't participate in their health plans, depending on the circumstances. The law also establishes an arbitration process for providers and payers to settle payment disputes about out-of-network services when they're at an impasse.

There are exceptions to the prohibition on surprise billing, and exceptions to the exceptions, a "convoluted" area with potential for providers to run afoul of the law, said attorney John Barnes, with King & Spalding, at a webinar sponsored by the firm's Los Angeles office.[2] It will require oversight by compliance professionals.

"The no surprise law may be the most earth-shattering change to managed care," said attorney Glenn Solomon, with King & Spalding. "Nothing will reshape managed care as much as this bill for years." HHS regulations are due out July 1, and the law takes effect for plan or policy year 2022.

"The marquee headline of the rule is it limits patient liability, when applicable, to no more than the patient's in-network cost sharing and deductibles for out-of-network care," said attorney Amanda Hayes-Kibreab, with King & Spalding. "Those are maximums applicable under that patient's health benefit plan." In other words, providers and hospitals can't balance bill patients, which makes sense since they can't bill more than in-network cost-sharing amounts, she said. To ensure hospitals and physicians are protected as well, payers must reimburse them directly for out-of-network care. "Plans are not permitted to send reimbursement checks to patients," Hayes-Kibreab said.

The protections vary depending on whether patients are receiving emergency or nonemergency services, and whether the hospital also participates in the patient's health plan.

There's a shortcut for determining whether the health plan complies with the prohibition on surprise billing, when it takes effect, Solomon said. Only the copay amount should appear on the explanation of benefits (EOB) form for the out-of-network provider in the patient portion. "Then the hospital can worry about fighting the health plan" for an appropriate payment, he said. "Regulators have to make sure health plans correctly state on the EOB what's owed by patients."