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Insights

It’s Time to Come to Terms with New Surprise Billing Laws

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The No Surprises Act imposed sweeping new cost transparency requirements on health care providers throughout the United States that raised many compliance questions and new challenges. Adding to the confusion, regulators responsible for implementing the new law issued regulations in phases throughout 2021 and delayed certain parts of the law to address industry challenges. Despite such delays and challenges, regulators pressed forward with many provisions effective January 1, 2022. Whether you understand or appreciate these new requirements, it is time to come to terms with the No Surprises Act and its new surprise billing requirements.

As applied to health care providers, the No Surprises Act establishes two requirements to prohibit surprise billing: 1) balance billing prohibitions; and 2) good faith estimates.

Balance billing
The balance billing prohibition is somewhat limited in scope. This law generally applies to insured patients who receive services at an in-network facility (i.e., hospital, ambulatory surgical center, or critical access hospital) and to emergency services received at these facilities. In such cases, an out-of-network provider cannot bill a patient for costs above that patient’s in-network rate without giving advance notice and obtaining the patient’s consent. However, this consent process is not available for out-of-network providers providing “ancillary services” at an in-network facility or to emergency services.

Good Faith Estimates
Conversely, the good faith estimate requirement applies broadly to all health care providers. In particular, the law requires health care providers to give all *uninsured* and *self-pay* patients a good faith estimate upon scheduling an item or service or to all patients upon request. This good faith estimate relates to the scheduled item or service and must identify the cost of all items and services relating to that item or service. Providers may need to coordinate with other health care providers to gather this information and to provide it within the specified timeframe. While these good faith estimates are not binding on health care providers, patients may challenge them before an independent appeals panel if the actual costs exceed the good faith estimate by more than $400.

The broad terms of the No Surprises Act raise many compliance challenges for health care providers because its broad terms do not precisely fit each individual health care practice. Federal regulators have also delayed other portions of the law and intend to issue new regulations in 2022. Health care providers should consult with legal counsel to discuss the applicability of and compliance with the No Surprises Act.

If you have questions about the No Surprises Act or would like assistance creating relevant policies and templates to comply with the No Surprises Act, please contact **Brandon W. Shirley** or **Robert A. Anderson**.

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