People. Trust. Results.
Since 1960

Updates to Surprise Billing Legislation

Timeline

- December 27, 2020 – President Trump signed the No Surprises Act into law
- July 1, 2021 – Requirements Related to Surprise Billing, Part 1 interim Final Rule was issued
- September 30, 2021 – A second interim Final Rule was issued and open for public comment
- November 17, 2021 – A third interim Final Rule was issued and open for public comment
- January 1, 2022 – The Final Rule and Provision took effect
- February 23, 2022 – A federal judge in Texas struck down parts of the surprise billing regulations related to arbitration
- April 5 & 6, 2022 – FAQs and Fact Sheets released addressing updates to surprise billing regulations
- April 15, 2022 – Centers for Medicare and Medicaid (CMS) opened the Federal Independent Dispute Resolution (IDR) process for providers, facilities, and health plans

Implementation

After being signed into law in late 2020, the No Surprises Act officially went into effect January 1, 2022. However, aspects of that legislation continue to muddy the waters for providers and the insurance companies who compensate them for services rendered.

The portal for independent dispute resolution (IDR) between these two parties has only just been opened on April 15th, leaving many providers still in the dark as to how to handle various circumstances that might make it difficult for them to fully comply with the newly implemented rules and regulations.
Some of the language in the Final Rule makes it difficult for providers to determine what exactly is the right course of action when providing good faith estimates (GFE) to insured patients who may or may not need advanced testing. Often the limited information available on these patients and their specific circumstances make it difficult, if not impossible, to make a clear and confident assessment as to which tests will be medically necessary for them.

This ambiguity has already resulted in a number of lawsuits between providers and insurance companies—the most notable of which is Texas Medical Association, et al. v HHS.

Texas Lawsuit

In February 2022, a federal judge from Texas struck down various aspects of the surprise billing regulations related to the arbitration process. The Texas Medical Association initiated the lawsuit on the grounds that these regulations were ambiguous and would result in lower payments. They argued this unfairly benefited insurers by placing too much emphasis on median contract rates and not taking other relevant information into account.

Ultimately, the Texas judge ruled in favor of the Texas Medical Association, concluding that the regulations were in conflict with the text of the No Surprises Act—this constitutes a significant win for providers concerned with the impact these regulations will have on their revenue and billing practices.

People. Trust. Results.
Since 1960

The CMS has since issued revised guidance sayings arbiters must consider information beyond the median contracted rates for billed items and services. Such information includes:

- Training, experience, and quality level of providers or facilities
- Regional market share of providers or facilities
- The acuity of the patients who received the services
- Teaching status, case mix, and scope of services of the facilities
- Efforts—or lack thereof—to enter into network agreements or contracted rates from the previous four years, if applicable

Other lawsuits of this kind are in progress, though there is no guarantee that they will result in the same outcome. We recommend providers stay abreast of these developments and continue to monitor the frequent developments taking place regarding this ongoing dispute.

Fact Sheets and FAQs released

In an attempt to clear up some of the ambiguity in the surprise billing regulations and rules—particularly those related to providing GFE and dispute resolution—the CMS has issued multiple Fact Sheets and FAQs to address medical providers' concerns.

On April 5 and 6, 2022, the CMS published FAQS about the No Surprises Rules and the GFE for uninsured or self-pay individuals under the Consolidated Appropriations Act of 2021, Part 2. The frequency of these updates makes it difficult to keep up with all the so-called guidance the CMS provides, but a major area of concern continues to be how to comply with GFE requirements when circumstances make it difficult to know what a patient may or may not need.

The spirit of the legislation is aimed at avoiding unnecessary surprises for patients, so the best practice is to give them open and honest estimates of what you think they may need but also be prepared to defend your decisions should anyone dispute your estimates and recommendations later.

The language in the regulations consistently refers to what a provider could "reasonably be expected" to know with the information provided. Naturally, that sort of language lends itself to dispute over what one could "reasonably be expected" to know, as well as what a "reasonable" time frame is for updating patients when new information comes to light.

The CMS notes that if a bill exceeds the GFE by $400 or more, an uninsured or self-pay individual may initiate the patient-provider dispute resolution process. It also requires providers to issue an updated GFE to the uninsured or self-pay individual no later than 1 business day before scheduled services when new information comes to light. The FAQs are not comprehensive, but they are a step in the right direction toward clearing up remaining concerns for providers.

As recently as April 15, the CMS also issued a revised version of the Requirements Related to Surprise Billing Fact Sheet originally published in September 2021. This provides updated information regarding the IDR process and the timeline by which disputes will be handled in more detail.

People. Trust. Results.
Since 1960

Below are a series of Fact Sheets issued by the CMS over the past year identifying the major updates and developments to surprise billing legislation during that time:

- July 1 Fact Sheet: What You Need to Know about the Biden-Harris Administration's Actions to Prevent Surprise Billing
- July 1 Fact Sheet: Requirements Related to Surprise Billing; Part I Interim Final Rule with Comment Period
- September 30 Fact Sheet: What You Need to Know about the Biden-Harris Administration's Actions to Prevent Surprise Billing – September Update
- November 17 Fact Sheet: Prescription Drug and Health Care Spending Interim Final Rule with Comment Period
- January 3 Fact Sheet: No Surprises: Understand your rights against surprise medical bills (for consumers) (PDF)
- April 15 Fact Sheet: Requirements Related to Surprise Billing; Part II Interim Final Rule with Comment Period

Overall, the implementation of surprise billing legislation hasn't been an entirely smooth transition, particularly in regard to the good faith estimates required and the dispute resolution process that inevitably will result when theoretical plans meet practical difficulties.

APS encourages you to monitor these developments—as we will continue to do—in order to best protect yourself in the event of a dispute. Ultimately, the goal is to avoid unnecessary surprises for patients, so taking whatever actions you can to prevent undue stress for patients should position you as well as possible to defend your estimates and the bills to follow.

Please reach out to your Practice Manager for any questions or issues related to your billing practices.