

Client Alerts, News Articles & Blog Posts

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Interim Final Rule for Surprise Billing

July 12, 2021

In an effort to implement the new bipartisan No Surprises Act, on July 1, 2021, the Department of Health and Human Services (HHS), along with the Departments of Labor and Treasury, issued an interim final rule to safeguard patients against unforeseen medical bills arising from out-of-network care.

The Interim Final Rule (IFR), Requirements Related to Surprise Billing: Part I

Medicare and Medicaid already prohibit surprise billing/balance billing, and the IFR extends this protection to patients insured through employer-based and individual health plans.

What are Surprise Medical Bills (Balance Bills)?

Patients receive surprise medical bills, or balance bills, when they receive health care from providers who are not covered under the network of their insurance plans. Out-of-network providers usually charge insurers a higher rate than in-network providers.

Client Alert

New State Budget Institutes Licensure Requirement for Ohio's Hospitals

July 14, 2021

Posted by Victoria Ferrise with Jacob Davis

Client Alert

Healthcare Provisions in the Ohio FY 22-23 Budget

July 13, 2021

When insurers refuse to pay the bills charged by out-of-network providers, the providers may bill the patient for the balance for services not covered by the insurer. Surprise medical bills can arise from both emergency and non-emergency situations.

Provisions of the IFR protect patients from surprise billing for:

- Emergency services
- Out-of-network air ambulance services
- Non-emergency services rendered by out-of-network providers at facilities that are in the patient's network in certain circumstances

The IFR prohibits surprise billing for most emergency services, including out-of-network air ambulance services. This means that out-of-network emergency services must be billed at the same rate as in-network services without prior authorization. Surprise billing is also prohibited for patients who receive non-emergency services from out-of-network providers at facilities that are in the patient's network (also known as ancillary care).

Additionally, the IFR bans excessive out-of-network cost-sharing for both emergency and non-emergency care. Patients who receive non-emergency services (that are subject to protections from the NSA) from out-of-network providers are only responsible for the cost they would have incurred if the provider were in-network.

Who is affected by the NSA/IFR?

These regulations apply to group health plans and health insurers of group or individual health coverage for plans/policies beginning on or after **January 1, 2022**. The NSA does not require all insurers to provide coverage for the types of care under the NSA. But if the insurer's plan covers emergency care, then they are subject to the requirements of the NSA.

The NSA also applies to physicians, health care providers, health care facilities, and air ambulance services effective **January 1, 2022**.

Implications for Providers

Posted by Ashley Watson

Client Alert

President Biden Seeks to Limit Non-Compete Agreements

July 8, 2021

Posted by Jeffrey C. Miller

Client Alert

New NIL Opportunities for Student-Athletes Require Diligent Review

July 8, 2021

Posted by Michael De Matteis and Nicholas Karam

Client Alert

Tax Savings Potentially on the Chopping Block under President Biden's American

Implications for Providers

Healthcare providers and facilities are generally prohibited from sending patients balance bills, but the NSA does not prohibit all balance bills. Balance bills are permitted if the patient consents to out-of-network providers. Additionally, the NSA only applies to certain types of health care services. Providers and facilities can still send balance bills if they provide non-emergency services, as defined by the NSA. However, HHS warns against sending balance bills to patients until providers have determined whether the services delivered are subject to the NSA.

A provider that sends a patient a balance bill in violation of the NSA could face up to \$10,000 per violation in civil monetary penalties.

Notice and Consent Exception

A patient may voluntarily consent to out-of-network providers, thus agreeing to a balance bill, but the ability of a provider to seek a consent waiver from a patient is limited. Providers can only ask a patient to sign a consent waiver for nonemergency services. Even for non-emergency services, providers are prohibited from asking for a consent waiver if (1) the facility does not have an in-network provider; (2) the care needed is unforeseen and urgent; (3) the provider delivers ancillary services not typically selected by the patient.

When obtaining patient consent in these limited circumstances, providers and facilities are required to use the standard HHS written notice and consent forms. This form must be separated from all other documents and given to the patient and signed 72 hours before an appointment, and the provider must retain a copy of the form for no less than seven years.

The provisions of the IFR for surprise billing are complex, and providers must take precautions to ensure that they comply with all regulations.

If you have any questions, please contact BMD Healthcare and Hospital Law Member [Amanda Waesch](mailto:alwaesch@bmdllc.com) at alwaesch@bmdllc.com or 330-253-9185.

Posted by Amanda Waesch

DISCLOSURE / AFFILIATION

Jobs Plan and American Families Plan

June 18, 2021

Posted by Tracy L. Albanese

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