

THE FEDERAL “NO SURPRISES ACT” ARRIVES JANUARY 1, 2022

The Consolidated Appropriations Act 2021 was signed into law on December 27, 2020 (“COVID Relief Bill”). The “No Surprises Act” contained therein specifies that patients will only be required to pay in-network cost sharing amounts for out-of-network emergency care and care provided from out-of-network providers at in-network facilities without the patient’s informed consent. Many of the sections of the new law will go into effect on January 1, 2022. At the federal level, the Department of Health and Human Services, the Department of Labor and the Treasury Department will be promulgating regulations in furtherance of the Act.

The No Surprises Act pertains to surprise bills from doctors, hospitals, and air ambulances for out-of-network emergency care and for care provided by out-of-network providers at in-network facilities without the patient’s consent. The Act will prevent these providers from billing patients who have health coverage for unpaid balances for these types of services. Instead, providers will have to work with the group health or health insurer to determine the appropriate amount to be paid by the plan or issuer under a methodology provided in the Act. The Act’s methodology limits what patients can be billed for out-of-network services to a fee that is based on in-network services.

The Act further requires insurers and medical providers who cannot agree on a payment rate to utilize an outside independent arbitrator to decide. The arbitrator will determine a fair amount, based, in part, on what other doctors and hospitals are typically paid at the median in-network rate for similar services, in addition to other criteria set forth in the Act. Significantly, the No Surprises Act prohibits the arbitrator from taking into consideration the rates paid by governmental payers, such as Medicare and Medicaid, which often pay less than the cost of providing care, but are many times utilized by payors as benchmarks for reimbursement.

Regulations by the applicable federal agencies are currently being promulgated so that a large portion of the Act will be effective January 1, 2022. The federal No Surprises Act will not pre-empt existing state law for those states who have previously enacted surprise billing prohibitions with frameworks for dispute resolution processes. However, for state regulated health plans in those states which do not have a surprise billing law, such as Pennsylvania, as well as federally regulated ERISA employer sponsored health plans, both types of plans will be subject to the jurisdiction, protections, and dispute resolution process set forth in the new No Surprises Act. Stay tuned!

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