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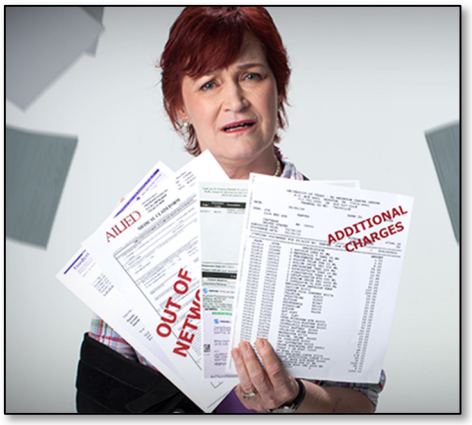
# SURPRISE BILLING LEGISLATION UPDATE

In an effort to protect patients from out-of-network medical bills, the federal government recently enacted the "No Surprises Act." Currently 32 states have also enacted some type of balance billing legislation.




For the most part, the new federal law will supersede state laws and encompass ERISA plans. Existing state requirements on providers or insurers that go beyond the new federal law will remain in place. This whitepaper outlines key points to consider as providers prepare to comply with these laws.

## FEDERAL NO SURPRISES ACT - H.R. 3630

On Dec. 27, 2020, the No Surprises Act was signed into law as part of the Consolidated Appropriations Act of 2021. It has been well-received by the AHA and other industry groups.

**Key Takeaways:**

- Patients will only be required to pay the in-network cost sharing amount for out-of-network emergency care based on a qualified payment amount, which is generally considered to be the insurer's historical median in-network rate for the relevant service.
- Non-emergent services delivered by an out-of-network provider at an in-network facility will also be paid a health plan determined allowable rate.
- The law requires health plans make an initial payment to providers within 30 days but makes no prescription as to the amount of the payment.
- The provider can accept the allowable rate or work to privately negotiate a resolution within a 30-day timeframe. If a rate is not negotiated within 30 days, the payor and provider may enter into a 30-day binding dispute resolution process with an appointed, independent arbiter. Both sides make a final payment offer (which can differ from the insurer's initial allowed amount and the provider's initial charge), and the arbiter must choose one of those two payment amounts.
- Out-of-network providers cannot engage in balance billing unless they give patients a 72-hour notice of their network status and an accurate charge estimate. Good faith estimates will be required from providers to uninsured consumers before a service is delivered.

- Although air ambulance services are covered in the federal law, it is silent on ground ambulance services.
- The federal law is scheduled to go in to effect January 1, 2022; however, HHS will be providing additional rules and guidance between now and then.

## RECOMMENDED NEXT STEPS

- ✓ Review which plans your hospital and employed providers are in-network with. Validate these assumptions by checking the plans' provider directories. Start working on how your hospital will provide 72-hour notices and charge estimates when necessary.
- ✓ Determine which non-employed providers are out-of-network for the plans noted above. Engage them now in discussions about how they will provide 72-hour notices and charge estimates to your hospital's patients.
- ✓ Compare default reimbursement rates to what your organization currently receives for out-of-network services. Begin to develop a strategy for when to use the dispute resolution process, and when to simply accept the default rate.
- ✓ Recognize these default rates, over time, will influence in-network rate negotiations. Plan accordingly.