



## **THA Federal Priority: Surprise Billing**

*Updated November 2021*

### **Why this is important**

Surprise medical billing may occur when a patient receives care from an out-of-network provider or physician, in many instances during an episode of care with an in-network hospital, or when their health plan fails to pay for covered services.

### **Key talking points**

- Whether due to insurance coverage gaps, or other failures in the healthcare system, no patient should have to worry about unanticipated medical bills when dealing with a health crisis.
- All Stakeholders – health plans, employers, providers, and others – must do a better job of educating patients about their health care coverage.
- Patients should have access to comprehensive provider networks and accurate network information.

### **Background**

Throughout early 2019, Congressional hearings were held and various bills were introduced advocating for different solutions, essentially using either an arbitration or a benchmark pre-determined reimbursement rate, or some combination of the two. By February 2020, most members of Congress had decided in favor of one of two major legislative approaches.

- Senate HELP Committee Chairman Lamar Alexander (R-TN) and House Energy and Commerce Committee Chairman Frank Pallone (D-NJ) and Ranking Member Greg Walden (R-OR) in December agreed to a combined surprise billing proposal which includes details from the previous bills their committees passed last year.
  - Would set benchmark rates for out-of-network providers at the median of in-network contracted rates for the geographic area. It includes arbitration as a fallback option which providers or insurers may elect if the median in-network rate payment exceeds \$750.
  - THA, the AHA and other provider organizations strongly opposed this model.
- The House Ways and Means Committee in February unveiled their proposal, which relies primarily on arbitration to resolve disputed charges. This proposal would provide a two-step process, initially requiring providers and insurers to negotiate for a limited period and exchange certain information, including the insurer's median in-network rate and the provider's median reimbursement for the same service.
  - No minimum dollar threshold to bring disputes and HHS may develop guidelines to allow for batching of similar claims to promote efficiency. If a payment agreement is not reached through negotiations, either party can seek resolution through a mediated dispute resolution process. The mediators would be independent third parties subject to rules outlined by the HHS secretary and mediators may consider the median contracted rate for similar providers, in a similar geographic area, for a similar service. Usual and customary charges or

- billed charges may not be considered. The party who loses the decision pays the mediation process fees.
- THA preferred this option over HELP/E&C approach because of the arbitration provision.

### **Current state**

The No Surprises Act was signed into law on December 27, 2020 as part of the Consolidated Appropriations Act of 2021 (H.R. 133; Division BB – Private Health insurance Public Health Provisions).

On July 13, 2021, [Part I](#) of the requirements were released

On September 30, 2021, [Part II](#) of the requirements were released and included guidelines for the Independent Dispute Resolution (IDR) process. THA believes the rules favor the payors and place too much weight on the Qualifying Payment Amount (QPA) in the IDR process. THA supported AHA in a bipartisan Dear Colleague Letter that was circulated in late October and early November. This letter urged the administration to have the departments review the guidelines published in Part II and update them to more closely reflect Congressional intent of the IDR process.

### **Helpful Links**

**AHA Implementation Guide**-[https://www.aha.org/2021-09-14-no-surprises-act-implementation-guide?utm\\_source=newsletter&utm\\_medium=email&utm\\_content=09292021%2Dat%2Dmemnofed&utm\\_campaign=aha%2Dtoday](https://www.aha.org/2021-09-14-no-surprises-act-implementation-guide?utm_source=newsletter&utm_medium=email&utm_content=09292021%2Dat%2Dmemnofed&utm_campaign=aha%2Dtoday)

**CMS Overview of rules and fact sheets**-<https://www.cms.gov/nosurprises/Policies-and-Resources/Overview-of-rules-fact-sheets>

**No Surprises Act Implementation Guide: Notice Requirements**-<https://www.pyapc.com/insights/no-surprises-act-implementation-guide-1-notice-requirements/>

**No Surprises Act Implementation Guide: Good Faith Estimate Requirements**-<https://www.pyapc.com/insights/no-surprises-act-implementation-guide-2-good-faith-estimate-requirements/>

**No Surprises Webinar conducted by Tracy Fields with Parker Hudson**-<https://register.gotowebinar.com/recording/6447506915764117007>