

New surprise-billing law on the way: What doctors must know

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After an advocacy battle that stretched for more than a year, the federal No Surprises Act was signed into law as part of the massive \$1.4 trillion Consolidated Appropriations Act on Dec. 27. But it will be another year before the provisions of the law take effect allowing time for the Health and Human Services secretary to develop further rules focused on implementing those provisions and provide clarification on how the new federal law meshes with state laws and regulations.

The AMA is helping physicians navigate this complex terrain with a six-page guide (PDF) summarizing the new law's patient protections, processes for resolving payment and disputes, requirements for physicians and nonphysician health professionals, and health-plan transparency requirements. These include a stipulation that plans maintain accurate and current directories of their in-network doctors.

Earlier iterations of the bill were opposed by the AMA because they favored health plans while putting physician practices at a distinct disadvantage. Most importantly, the final version better reflected the principles that guided the AMA's response to unanticipated medical bills. This includes a stipulation that patients will not be put in the middle of a payment dispute and that they should only pay the usual cost-sharing amount that would have normally been their responsibility if care had been provided in-network.

"This directly addresses the situation under which surprise billing most frequently occurs—when patients reasonably believe their care is covered by their health insurer, but find it denied because their insurer lacks an adequate network of contracted physicians," wrote AMA President Susan R. Bailey, MD, in a Leadership Viewpoints column.

The new law isn't intended to preempt state surprise-billing laws, but there is ambiguity in the statutory language that will require further clarification—including as to when these protections apply to patients in self-funded plans regulated by the federal Employee Retirement Income Security Act of 1972 (ERISA), according to the AMA guide.

"The revised legislation addresses the intersection between state laws and self-insured plans by ensuring a consistent approach to both, while also extending relief to states that have not provided consumer protections against surprise bills," Dr. Bailey wrote.

How patients are protected

The AMA guide explains how the new law protects patients from surprise medical bills when they get:

- Unanticipated care from an out-of-network physician or other professional.
- Emergency care at an out-of-network facility.
- Emergency care from an out-of-network physician or other health professional at an in-network facility.

The law also ensures that continuity of care is maintained.

If a physician contract is terminated without cause, a "continuing patient" can continue to receive services from the newly excluded physician for either 90 days or the date when the services are no longer needed, whichever is earlier.

How disputes will be resolved

The guide outlines how the independent dispute resolution (IDR) process is set up, initiated and what the IDR entity can and cannot consider.

The IDR entity, for example, can consider a physician's training, experience and performance on quality measures plus the acuity of their patients and complexity of their case mix. The IDR entity cannot consider payment rates by public insurers, such as Medicare.

The guide also explains what is required of different stakeholders so the infrastructure is in place that will allow the law to take effect Jan. 1, 2022.

Physicians and health care facilities, for example, must have a process to ensure timely delivery of information to health plans to use in their network directories.

"I am proud of how our AMA has led on this issue," Dr. Bailey wrote in her column. "The final version of surprise-billing reform provides robust protection to our patients, while simultaneously serving to preserve the financial viability of all forms and types of physician practices—especially the small, independent practices that would have been ill-equipped to respond under earlier proposals."

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