The No Surprises Act is in effect. What physicians need to know.

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Implementation of the federal No Surprises Act, intended to protect patients from unanticipated medical expense after receiving care from an out-of-network physician, other health professional, hospital, or other provider, is very much a work in progress.

Its many moving parts include regulations firmly in place, process structures that are being legally challenged, and rules that still need to be written and disseminated.

That having been said, the statute (PDF) took effect Jan. 1, so doctors must know what the new law requires of them. A recently published document, “American Medical Association™ Toolkit for Physicians: Preparing for the Implementation of the No Surprises Act,” (PDF) can help ensure that the doctors themselves won’t be taken by surprise by elements embedded deep within the regulations.

Experts from Manatt Health will detail the enforcement challenges and the interaction between state and federal surprise billing regulations in an AMA Advocacy Insights webinar, Jan. 20, noon CST. Register now.

Toolkit address immediate needs

The No Surprises Act was signed into law Dec. 27, 2020, as part of the $1.4 trillion Consolidated Appropriations Act, after years of negotiations.

While several iterations of the legislation were written, the AMA stood fast in advocating that the bill adhere to seven principles that called for insurer accountability and transparency while protecting patients and keeping them from getting caught in the middle of payment disputes.

The federal law imposes limits and confers some rights on physicians caring for patients who unknowingly obtained medical services from professionals outside their insurance network. The AMA toolkit for physicians focuses on these three operational challenges that physicians will need to address immediately.

Notice-and-consent requirements for when care is provided by out-of-network clinicians at in-network facilities. Physicians are required to make publicly available and to each patient who is enrolled in commercial health coverage, a disclosure regarding the patient protections against balance billing. The Department of Health and Human Services (HHS) has created a model notice (PDF) that physicians should use.

Rules pertaining to emergency services and post-stabilization care at hospitals or freestanding emergency departments. This section answers question on what rules apply when patients do not consent to out-of-network post-stabilization care, when consent can be sought, and document-retention requirements regarding this consent.

Obligations to provide good faith estimates for self-pay and uninsured patients. This section answers questions on what triggers a good-faith estimate obligation and how quickly it must be provided, plus the differing obligations for “convening” physicians and those providing a “co-health care” service that is done in conjunction with the primary service needed by the patient.

The AMA will be updating the toolkit as additional guidance is available and developing new resources on the remaining provisions of the No Surprises Act not presently included in the document.

3 rules, 3 departments, many concerns

So far, regulations pertaining to the law have been issued by three different departments—HHS, Labor and Treasury—plus the Office of Personnel Management, which is the federal government’s civilian workforce human resources arm.

They have issued one proposed rule and two interim final rules—a designation that allows them to take effect without public comment. An AMA resource, Implementation of the No Surprises Act, notes what is contained in each of these rules plus the AMA’s comments and concerns about each.

These concerns were addressed in a ReachMD podcast, “What to know about the No Surprises Act,” featuring Emily Carroll, senior legislative attorney for the AMA Advocacy Resource Center.

“Congress created a meaningful arbitration process,” Carroll said, but added that regulators have tipped the scales in the payers’ favor so that the process inevitably leads to outcomes predetermined

to be at or below the median rate.

The AMA and the American Hospital Association (AHA) have sued the federal government over plans for implementing a narrow-but-critical NSA provision, arguing that the plan ignores statutory language and would result in reduced access to care.

The narrowly focused lawsuit is designed to bring regulations in line with what the law says and would not prevent its core patient protections from moving forward.

An amicus brief (PDF) supporting the AMA-AHA lawsuit has been filed by the Physician Advocacy Institute and a coalition of 16 state medical associations and nine national medical specialty societies.