

# No Surprises Act

*This communication was printed, published, or produced and disseminated at U.S. taxpayer expense.*



# Disclaimers

This presentation offers only general information on the contents of the No Surprises Act.

The information provided in this presentation is intended only to be a general informal summary of the No Surprises Act, and is not intended to take the place of the statutory provisions on which it is based. Readers should refer to the applicable statutory provisions for complete and current information.

The views presented are those of the speakers and do not necessarily represent the views of HHS, its components, or any other federal agency.

# Agenda

- Introductions
- Surprise Billing and Air Ambulance
- No Surprises Act and Air Ambulance
- Statute Deep Dive
- Statute Deadlines
- Questions

# Definitions from AAPB Subcommittee Report

**Balance Bill:** A medical bill from an out-of-network provider or supplier for the portion of the provider or supplier's charge that is not covered by the patient's commercial health insurer or self-funded employer health plan, calculated as the difference between the provider or supplier's charge and the amount allowed by the payor and the patient's coinsurance and/or deductible.

**Surprise Bill:** A surprise medical bill occurs when a patient receives an unanticipated bill for the difference between an out-of-network provider or supplier's charges and the amount covered by the patient's health insurance. In the case of air ambulance services, a surprise medical bill can arise in an emergency when the patient does not have the ability to select the air ambulance provider.

# Surprise Billing and Air Ambulance

## Surprise Billing

- 1 Unexpected medical bill from a nonparticipating (out-of-network) provider
- 2 Occurs during emergencies or when receiving care at a participating (in-network) facility but by a nonparticipating provider
- 3 Prevalent with air ambulances as one often cannot verify network status or select their provider during an emergency

# Surprise Billing and Air Ambulance

- According to GAO: in 2017, about 2/3 of air ambulance transports for patients with private insurance were nonparticipating.
- GAO's analysis found the median price charged by air ambulance providers was about \$36,400 for a helicopter transport and \$40,600 for a fixed-wing transport

# No Surprises Act and Air Ambulance Providers

Enacted in December 2020 and applicable January 1, 2022, or plan/policy years beginning on or after January 1, 2022, as applicable



Protects patients from balance bills



Establishes a dispute resolution process for OON payment



Improves transparency via cost estimates, network directories, and insurance card updates

## Air ambulance provider involvement in No Surprises Act

- Consumer billing protections for services from nonparticipating providers
- Dispute resolution process
- Air ambulance provider reporting requirements

# Consumer Cost-Sharing Protections for Nonparticipating Air Ambulance

- Air ambulance: Medical transport by helicopter (rotary wing) or airplane (fixed wing) for patients
- Patients transported by nonparticipating air ambulance only owe cost-sharing based on what would apply if covered services were provided by participating provider
  - Both for emergency and non-emergency services
  - Co-insurance and deductible amounts based on participating rate
  - Cost-sharing amounts counted toward in-network deductible and in-network out-of-pocket maximum
  - Providers prohibited from charging more than cost sharing



# Independent Dispute Resolution (IDR)

- Plan owes provider within 30 days of billing
  - Initial payment or notice of denial of payment
- Negotiations between plan and provider
  - May be initiated within 30 days after following plan's initial payment or notice of denial of payment for a period of 30 days
- IDR process
  - Either party initiates within 4 days of end of negotiation period
  - Parties jointly select certified IDR Entity
    - If not, HHS Secretary selects

# Independent Dispute Resolution (IDR)

- Plan and provider submit offers within 10 days of selecting entity
- Negotiations can continue until IDR entity decides
- Rulemaking for batching of items and services
- Entity has 30 days from selection to decide between offers
- Non-prevailing party pays the IDR fee
- Additional admin fee established by HHS Secretary paid by both parties

# IDR Considerations Under NSA Section 105

- parties' offers; PHSa 2799A-2(b)(5)(B)
  - (corollary rules: ERISA 717 and IRC 9817)
- qualifying payment amount; PHSa 2799A-2(b)(5)(C)(i)(I))
- provider quality measures, complexity of treatment, training of medical personnel, vehicle type, population density of pick-up location, good faith efforts to enter into network agreements, contracted rates over past 4 years (if applicable); PHSa 2799A-2(b)(5)(C)(ii)
- shall not consider: usual and customary charges, charges that would have been billed had the No Surprises Act (at PHSa 2799B-5) not applied, payment/reimbursement rate by public payers such as Medicare and Medicaid; PHSa 2799A-2(b)(5)(C)(iii)

# Qualifying Payment Amount

- For 2022: median of the contracted rates recognized by the plan or issuer for all plans or coverage offered by a plan or issuer in a given market for the same or similar service, provided by a provider in the same or similar specialty, in a geographic region as of January 31, 2019
  - For new plans, Tri-Department rulemaking by July 1, 2021
- 2023+: amount is increased by the percentage change in CPI-U over the prior year

# Air Ambulance Service Reporting Requirements

- Providers submit to Secretaries of HHS and Transportation:
  - Cost data for services furnished by provider, number and location of all bases, number and type of aircraft, number of transports by type, number of claims denied and reasons, and more
- Plans submit to Secretaries of HHS, Labor, Treasury:
  - Whether air ambulance serviced on emergency/non-emergency basis, rural/urban, aircraft type, contract status, and more
- Civil monetary penalty up to \$10,000 for air ambulance providers who do not report as required; enforced by HHS
  - Good faith exemption
- Secretaries' report: Required contents described under NSA section 106
- Advisory Committee on Air Ambulance Quality and Patient Safety

# Relevant Statutory Deadlines

## Rulemaking

- July 2021
  - Methodology on determining qualified payment amount (QPA)
- December 2021
  - IDR process and payment amount determination
  - Form and manner for air ambulance reporting submission
  - Consumer complaints process

**Providers generally must begin complying with No Surprises Act on January 1, 2022. Plans and issuers generally must begin complying with No Surprises Act for plan or policy years beginning on or after January 1, 2022.**



# Questions?