

## Don't be Surprised by New No Surprise Billing Rules

The federal "No Surprises Act" (NSA) went into effect in January and enacts new medical billing regulations aimed at curbing surprise billing in certain settings. A "surprise" bill can be a shock to an insured patient who sought care at an in-network hospital but was subsequently treated by out-of-network providers and thus faced a higher bill than they were anticipating. Surprise billing occurs when non-networked provider bills a patient for the entire balance remaining.

At least 30 states, including Arizona, already have some mechanism in place to ameliorate this situation. Arizona sets up a settlement/arbitration mechanism while the NSA is a ban on surprise medical bills expanding protections to more emergency contexts and covers previously unaffected health care plans.

The main effect of No Surprises Act (the "NSA") is clear. Now, patients can no longer receive surprise bills (1) after seeking emergency care, (2) after being transported by an air ambulance, or (3) after receiving nonemergency care at an in-network hospital where a patient is unknowingly treated by an out-of-network physician or laboratory. In these instances, patients will only be required to pay only the deductibles and copayment amounts that they would under the in-network terms of their insurance plans.

**Emergency Services** – Surprise billing protections apply to most emergency services, including those provided in hospital emergency rooms, freestanding emergency departments, and urgent care centers that are licensed to provide emergency care. Further, the NSA applies to air ambulance transportation (emergency and non-emergency), but not ground ambulance. Emergency care includes screening and stabilizing treatment sought by patients who believe they are experiencing a medical emergency or active labor.

**Post-emergency stabilization services** – The NSA defines emergency services to include post-stabilization services provided in a hospital following an emergency visit. Post-stabilization care is considered emergency care until a physician determines the patient can travel safely to another in-network facility using non-medical transport. The NSA also requires that patients must receive written notice and give written consent to be transferred.

**Non-emergency services provided at in-network facilities** – The NSA covers non-emergency services provided by out-of-network providers at in-network hospitals and other facilities. The regulation broadly defines covered non-emergency services to include treatment, equipment and devices, telemedicine services, imaging and lab services, and preoperative and postoperative services, regardless of whether those services are provided within the facility. In addition, "facility" is defined broadly to include hospitals, hospital outpatient departments, and ambulatory surgery centers.

Consumers are not protected by the NSA against surprise bills for non-emergency services provided in other facilities such as birthing centers, clinics, hospices, addiction treatment facilities, nursing homes, or urgent care centers.

Plans and treating providers must notify patients of their surprise medical bill protections. Providers and facilities must post a one-page disclosure notice summarizing NSA surprise billing protections on a public-facing website and give this disclosure to each patient for whom they provide NSA-covered services. This notice must be provided no later than the date when payment is requested, though it is not required to be included with the bill, itself. Health plans are also required to provide consumers with

the disclosure notice with every Explanation of Benefits that includes a claim for surprise medical bills. The Center for Medicare & Medicaid Services' forms are available [here](#).

The patient and physician are allowed to "opt-out" of the NSA by contracting around the prohibition on balance billing. To do this, physicians must provide a cost estimate and a list of in-network providers at the facility and get patient consent at least 72 hours before treatment. For shorter-turnaround situations, the bill requires that patients receive the consent information the day the appointment is made. If the health care customer has waived the NSA's provisions, the out-of-network provider may bill for the entire amount incurred even if that amount exceeds the estimate. Certain types of physicians, however, cannot ask a patient to "opt out:" anesthesiologists, assistant surgeons, hospitalists, intensivists, neonatologists, pathologists, and radiologists.

#### **ARIZONA'S STATE REGULATION OF SURPRISE BILLING STILL IN EFFECT**

Arizona has had its own Surprise Out-of-Network Billing Dispute Resolution ([SOONBDR](#)) Program since 2019. It applies to certain out-of-network bills of more than \$1,000 and creates a binding arbitration process. These regulations remain in effect and may cover situations where there are gaps in the NSA.

Another difference is that SOONBDR does not apply to self-funded or self-insured employee benefit plans preempted by the Employee Retirement Income Security Act or to state employees covered by state health plans. The NSA applies to most types of insurance plans so it may offer relief in situations not covered by SOONBDR.

*Heather Macre is an attorney with Fennemore where she is the Healthcare Practice Group leader. Heather's healthcare practice encompasses healthcare agreements, non-compete covenants and disciplinary proceedings, CMS compliance, HIPPA and Stark and False Claims Act compliance, among other matters.*