

## No Surprises Act

### Cross References

- T.D. 9951, July 7, 2021

The IRS has issued interim final rules implementing certain provisions of the No Surprises Act, which was enacted as part of the Consolidated Appropriations Act, 2021.

Under the Affordable Care Act, enacted in 2010, if health insurance coverage provides benefits with respect to emergency services in an emergency department of a hospital, the plan must cover emergency services without the individual or the health care provider having to obtain prior authorization, including when the emergency services are provided out-of-network, and without regard to whether the health care provider furnishing the emergency services is an in-network provider with respect to the services.

**Balance billing.** Regulations implementing the provisions under the ACA did not prohibit balance billing. Balance billing refers to the practice of out-of-network providers billing patients for the difference between:

- 1) The provider's billed charges, and
- 2) The amount collected from the health plan or insurer plus the amount collected from the patient in the form of cost sharing, such as a copayment, coinsurance, or amounts paid toward a deductible.

The regulations state that a reasonable amount must be paid by a health plan or insurer before a patient becomes responsible for a balance billing. The regulations contain a set of rules that limited balance billing by providing a formula to create a minimum payment requirement for the health plan or insurer.

The No Surprise Act expanded the patient protections related to emergency services under the ACA by providing additional consumer protections related to balance billing.

**Surprise billing.** A surprise medical bill is an unexpected bill from a health care provider or facility that occurs when a covered person receives medical services from a provider or facility that, usually unknown to the participant, beneficiary, or enrollee, is a nonparticipating provider or facility with respect to the individual's coverage. Surprise billing occurs both for emergency and non-emergency care. In an emergency, a person usually goes (or is taken by emergency transport) to a nearby emergency department. Even if they go to a participating hospital or facility for emergency care, they may receive care from nonparticipating providers working at that facility. For non-emergency care, a person may choose a participating facility (and possibly even a participating provider), but not know that at least one provider involved in their care (for example, an anesthesiologist or radiologist) is a nonparticipating provider. In either circumstance, the person might not be in a position to choose the provider, or to ensure that the provider is a participating provider.

Therefore, in addition to a bill for their cost-sharing amount, which tends to be higher for out-of-network services, the person might receive a balance bill from the nonparticipating provider or facility. This scenario also plays out frequently for air ambulance services, where individuals generally do not have the ability to select a provider of air ambulance services, and, therefore, have little or no control over whether the provider is in-network with their plan or coverage.

When individuals are unable to avoid nonparticipating providers, it raises health care costs and exposes patients to financial risk. The evidence suggests that the ability to balance bill is used as leverage by some providers to obtain higher in-network payments, which results in higher premiums, higher cost sharing for individuals, and increased health care expenditures overall.

Studies have shown that surprise bills can be large. For example, a recent study found that physicians collected, on average, 65 percent of the total charged amount for emergency department visits that likely included surprise bills, compared to 52 percent of the total charged amount for emergency department visits that likely did not include surprise bills. The study also found that nine percent of the individuals who likely received surprise bills paid physicians an amount more than \$400, which may cause financial hardship to many individuals. In addition, out-of-network cost sharing and payments for surprise bills usually do not count towards an individual's deductible and maximum out-of-pocket expenditure limits. Therefore, individuals with surprise bills may have difficulty reaching those limits, even after a significant health care event.

**No Surprise Act.** On December 27, 2020, the Consolidated Appropriations Act, 2021, which included the No Surprises Act, was signed into law. The No Surprises Act provides federal protections against surprise billing and limits out-of-network cost sharing under many of the circumstances in which surprise bills arise most frequently.

Section 102 of the No Surprises Act added IRC section 9816, which contains limitations on cost sharing, and requirements for initial payments for emergency services and for non-emergency services provided by nonparticipating providers at certain participating health care facilities.

The new law also establishes an independent dispute resolution process that allows plans and issuers and nonparticipating providers and nonparticipating emergency facilities to resolve disputes over out-of-network rates.

The new law also added IRC section 9817 which contains limitations on cost sharing and requirements for initial payments to nonparticipating providers of air ambulance services, and allow plans and issuers and such providers of air ambulance services to access the IDR process.

**T.D. 9951.** The IRS is issuing regulations in several phases implementing provisions of the No Surprises Act. T.D. 9951 describes the rules that protect participants, beneficiaries, and enrollees in group health plans and group and individual health insurance coverage from surprise medical bills when they receive emergency services, non-emergency services from nonparticipating providers at participating facilities, and air ambulance services from nonparticipating providers of air ambulance services, under certain circumstances. See T.D. 9951 for details.