



Surprise Billing Update – New CMS Resources, Enforcement Plans

January 6, 2022

Overview

This memo outlines new resources prepared by CMS that may be helpful in implementing the new surprise billing requirements. There are two slide decks linked below that may be particularly instructive for staff responsible for interacting with patients or billing charges. Additionally, CMS established a hotline for providers to complain about insurers and for patient to complain about providers – see details below.

Litigation is underway in three different federal courts to challenge the rebuttable presumption included in the regulations that the Qualifying Payment Amount – or the in-network rate – is the “correct” payment amount for out of network providers. Links to those cases are at the end of the memo. Plaintiffs are seeking rulings prior to the time initial challenges would go to arbitration – March 2022 at the earliest. We’ll keep you posted on critical developments.

Some Members of Congress continue to urge the Administration to change the rebuttable presumption provision in the regulation, arguing that it is contrary to the statute. Click [here](#) for the latest letter signed by 24 Republican Senators, led by Sen. Bill Cassidy (R-LA) and Sen. Roger Marshall (R-KS). This follows a bi-partisan letter from 150 House members, [here](#), issued in November.

With the Administration defending its interpretation in the courts, it seems highly unlikely that it will accede to the interpretation of some Members of Congress, and it seems equally unlikely that there is sufficient Congressional support for new legislation to clarify the statutory intent.

We continue to await additional rulemaking on the good faith estimates/advanced explanation of benefits for insured patients and other provisions of the No Surprises Act, as well as additional guidance on implementation. In a briefing yesterday, CMS stated that it will be providing additional guidance on good faith estimates for mental health services.

New CMS Resources

CMS has established a website for all surprise billing information – click [here](#). Information is added periodically that may be helpful. Click [here](#) for FAQs on good faith estimates.

Slide Decks

- Click [here](#) for a deck of 71 slides CMS developed as a training module on the surprise billing rules. It includes fact-based scenarios with answers that may be helpful in training staff.
- Click [here](#) for a deck of 56 slides with information for providers and facilities on 1) balance billing disclosure requirements; 2) protections for certain continuing care patients whose plan terminates a contract with a provider; and 3) requirements to protect patients and improve the accuracy of provider directory information.

As a reminder, the Administration published FAQs in August explaining that it would not enforce certain provisions of the law, including the good faith estimate required for insured patients, until additional rulemaking occurred. This is referenced in some of the slides. Click [here](#) for the FAQs.

Process for Provider Complaints

CMS has established a process whereby a provider may complain to CMS if it believes a health plan is not complying with the dispute resolution process. The provider may contact the No Surprises Help Desk at 1-800-985-3059 from 8:00 am to 8:00 pm EST, 7 days a week to submit a question or complaint. Or the provider may submit a complaint online. Click [here](#) for more information and to submit a complaint.

Process for Patient Complaints

CMS has established a process and call center for patients to contact CMS with questions about the No Surprises Act or concerns that the Act is not being followed. Patients may also submit their questions online. Click [here](#) to learn more about the patient complaint process. This is separate from the patient dispute process whereby a patient may contest any bills of \$400 or more than the good faith estimate. Click [here](#) for details on dispute resolution.

Here's what CMS says it will do for patients:

- Review your complaint to make sure your insurance company, medical provider, or health care facility followed surprise billing rules.
- Investigate and enforce federal laws and policies under our jurisdiction.
- Try to find patterns of problems that may need further review.
- Help you understand what documentation you need to submit or what next steps you should take.
- Help answer your questions or direct you to someone who can.

CMS opened this line on Saturday without any fanfare – within 5 days it received 376 queries. Click [here](#) for the press release explaining patient protections.

Certified Independent Dispute Resolution Entities and Fees - Click [here](#) for the eight firms that have been certified to date.

Litigation Update

All three cases seek declaratory and injunctive relief, arguing that the Administration contravened the statute in establishing a rebuttable presumption that the Qualifying Payment Amount is the “correct” payment for an out-of-network provider, and limiting the application of the other factors the statute included.

- Click [here](#) for the complaint filed by the American Hospital Association and the American Medical Association in the US District Court for the District of Columbia on December 9. Plaintiffs have also filed a motion for stay pending judicial review. Click [here](#).
- Click [here](#) for the complaint filed by the American Society of Anesthesiologists, the American College of Emergency Physicians and the American College of Radiology in the US District Court for the northern District of Illinois on December 21. The initial status hearing has been scheduled for March 17, 2022.
- Click [here](#) for the complaint filed by the Texas Medical Association in the US District Court for the Eastern District of Texas on October 28.

The Air Ambulance Association also filed suit in the US District Court for the District of Columbia.

We will keep you updated on new developments and would welcome your feedback on specific challenges you are encountering in implementing the law.

For additional information, please contact our General Counsel Diane Turpin at diane.turpin@shcare.net or 202-578-5444.