Policy At A Glance:

The No Surprises Act

The Consolidated Appropriations Act of 2021 (H.R. 133) contains provisions that aim to limit surprise medical bills and patient liability for cost of out-of-network care in emergency settings. These provisions are collectively referred to as the No Surprises Act.

Introduction

Medical debt is the leading cause of bankruptcy in America, and an important driver of medical debt is surprise medical billing.[1] Surprise medical bills arise when a patient unexpectedly receives service or care from a provider that is not covered by his or her health insurance plan. Often, the out-of-network care occurs in settings where the patient has very limited ability to make decisions regarding the provision of care (e.g., emergency care settings or during surgery). The patient is then billed directly, often for thousands of dollars, for care that the patient may not even be aware he or she had received or did not have capacity to decline (e.g., an out-of-network specialist consulted in the ED or an out-of-network anesthesiologist called in to an elective surgery arranged with an in-network surgeon). About 4 in 10 adults received a surprise medical bill in 2017, and about 13% of these bills were for an amount greater than $2,000.[2]

Signed into law by President Trump on December 27, 2020, the No Surprises Act represents a bipartisan effort to curtail the practice of surprise medical billing. This brief will provide an overview of the provisions of the Act and discuss its shortcomings.

Relevant Dates for H.R. 133[3]

1/3/2019	Introduced in the U.S. House of Representatives
1/10/2019	Passed by the House
1/15/2020	Passed by the Senate with amendment
12/21/2020	Amended version passed by the House
12/27/2020	Signed by President Trump and became law
1/1/2022	The No Surprises Act portion of H.R. 133 goes into effect

Patient Protections Against Surprise Medical Bills

Going into effect on January 1, 2022, the No Surprises Act outlines several new patient protection requirements as follows[3,4]:

- Emergency providers are prohibited from billing patients directly for any amount beyond what they would pay for in-network care.
- Insurers must cover emergency services regardless of whether the provider is in-network or not and must reimburse all providers for such services without prior authorization.
- Copayments for care not covered by the patient's plan will be determined through a process outlined in the bill; generally, they would be the same as what the patient would have paid for equivalent in-network care, except when relevant state laws (e.g., existing state surprise billing laws) or other policies apply.
- In deciding how much health plans must reimburse out-of-network providers, relevant state laws will be followed. In states with no such laws, providers and plans will negotiate an amount. If no agreement is reached, an arbitration through an independent dispute resolution (IDR) process will be used to settle reimbursement disputes (see blue box below).
- For non-emergency care by out-of-network providers at an in-network facility, patients' copayments may not exceed what they would pay for in-network care. Providers are prohibited from surprise billing patients with excessive charges. These laws do not apply if the provider and patient agree and sign a waiver; however, this can only be done if certain conditions are met.

The IDR Process: "Baseball-Style Rules"

If health plans and out-of-network providers are unable to negotiate a satisfactory reimbursement, the matter is mediated by an independent dispute resolution (IDR) entity. Disputes are resolved by so-called "baseball-style rules" whereby the provider and the plan each submit a proposed figure and the IDR selects either one or the other without modification or a middle ground.[5] In theory, this encourages both parties to submit their most reasonable offer.

Waiver Requirements

If a patient agrees to sign a consent waiver, an out-of-network provider may bill the patient directly for services. Before doing so, however, the patient must be provided with a list of in-network providers to be referred to and a good-faith estimate of the cost.[3,4]

Waivers may not be applied to the following[3,4]:

- Ancillary services that the patient would not ordinarily select (e.g., neonatology, pathology, anesthesiology, or radiology)
- Diagnostic services such as radiology or clinical laboratory services
- Services for which equivalent in-network options are not available.

The law grants the United States Health and Human Services (HHS) Secretary discretion to update this list in the future.[3,4]

Medical Transport: Air Ambulances

Air ambulances (emergency medical transport by helicopter or airplane) can contribute substantially to high surprise medical bills. Recent data shows that the average cost for a helicopter transport was $36,000 while the average cost for an airplane transport was $41,000.[6]

The No Surprises Act limits patient cost-sharing to the in-network amount for out-of-network air ambulance services. Of note, the law does not address ground ambulance services.[3,4]

Other Provisions

The No Surprises Act has many additional administrative requirements, including transparent reporting of costs by service providers, external review processes, and continuity of care.[3,4] Another provision requires organizations to maintain accessible, up-to-date provider directories effective January 1, 2022, given that over half of patients seeking mental health care found inaccuracies in their network directory, including providers incorrectly listed as being in-network.[7]

Shortcomings

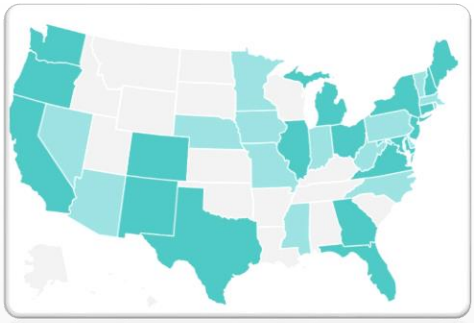
The No Surprises Act saw bipartisan support in Congress, but several organizations have expressed concerns. The American Medical Association (AMA) has expressed concerns that the new law would adversely affect physician payments, which have already suffered during the COVID-19 pandemic. The AMA feels the IDR process of the law favors health plans and penalizes providers for errors committed by the plans (e.g., inaccurate directories), requiring physicians to accept reduced reimbursement.[8] Additionally, the American Hospital Association has issued a statement highlighting several perceived flaws in the legislation, including its failure to address patient protections for ground ambulance services and the lack of a penalty system for health plans that violate surprise billing restrictions laid out by the law. Some administrative requirements of the law are also viewed as burdensome.[9]

Conclusion

The No Surprises Act makes strides in preventing surprise billing, a highly distressing problem for patients in our healthcare system. However, it has potential drawbacks as well. For example, the arbitration process between health plans and providers for determining reimbursement for these services introduces some uncertainty into the health care market. If the arbitration generally favors providers, health plans may then try to offset these increased costs by raising members' monthly premiums. Currently, the Congressional Budget Office estimates that the law will result in a 0.5 – 1% decrease in premiums, suggesting it may slightly favor health plans.[10] While the No Surprises Act is an important step toward protecting patients, there is still room for improvement, and the law's ultimate effects on the health care marketplace remain to be seen.

References

1. https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/health-matters-in-elections/surprise-billing/
2. https://www.healthsystemtracker.org/brief/an-examination-of-surprise-medical-bills-and-proposals-to-protect-consumers-from-them-3/
3. https://www.congress.gov/bill/116th-congress/house-bill/133/actions?q=%7B%22search%22%3A%5B%22hr133%22%5D%7D&r=1&s=3
4. https://www.aha.org/system/files/media/file/2021/01/detailed-summary-of-no-surprises-act-advisory-1-14-21.pdf
5. https://www.healthaffairs.org/do/10.1377/hblog20201217.247010/full/
6. https://surprisemedicalbills.chir.georgetown.edu/the-challenge/air-ambulances/
7. https://healthpayerintelligence.com/news/inaccurate-provider-directories-may-spark-surprise-medical-bills
8. https://www.ama-assn.org/delivering-care/patient-support-advocacy/proposed-no-surprises-act-favors-commercial-health-plans
9. https://www.aha.org/2020-12-13-aha-letter-no-surprises-act
10. https://www.cbo.gov/system/files/2021-01/PL_116-260_div%20O-FF.pdf
11. https://www.commonwealthfund.org/publications/maps-and-interactives/2020/nov/state-balance-billing-protections



Did you know?

Thirty-three states have laws providing at least partial protection against surprise medical billing. The No Surprises Act is the first federal law to address the issue.[11]

LOMA LINDA UNIVERSITY HEALTH

Institute for Health Policy and Leadership

11209 Anderson Street
Loma Linda, CA 92354
Phone: 909-558-7022
Fax: 909-558-5638
www.IHPL.llu.edu

Special guest contributor:
Robert West, MD, MPH

Questions?
Please contact the Institute for Health Policy & Leadership (ihpl@llu.edu).