

COMPLIANCE ALERT

PROVISIONS OF THE NO SURPRISES ACT BEGINNING JANUARY 1, 2022

The No Surprises Act, part of the Consolidated Appropriations Act (CAA) of 2021 (which passed in 2020), becomes effective January 1, 2022. The No Surprises Act was passed to help alleviate issues with plan participants receiving surprise medical bills and excessive cost sharing. As an example:

Consider a surgery performed at an in-network hospital, where afterwards, the participant receives a bill from the out-of-network anesthesiologist at an out-of-network rate – despite the fact that the anesthesiologist was appointed by the in-network hospital. This happens quite often and typically results in excessive bills. In this Compliance Alert, HRWS provides a simple summary of what is known about group health plan compliance based on the Interim Final Rule (IFR). Brokers and plan sponsors are encouraged to further investigate as there are many provisions that must be adhered to.

Regulations will apply to the first policy, plan or contract year that begins on or after January 1, 2022. All fully insured and self-insured group health plans are covered under the law, including grandfathered plans. Plans such as limited scope dental, vision plans and most FSAs, which are excepted benefits, are not covered.

Under the No Surprises Act there are three covered medical billing scenarios:

- ▶ Emergency services
- ▶ Non-Emergency services by Out-of-Network providers at in-Network facilities
- ▶ Non-network air ambulance services

(Cost-sharing amounts for the three types of services will need to be

calculated based on certain allowable conditions.)

In these circumstances, plans will be required to cover these services to the degree that participants would only pay rates similar to the “in-network” schedule.

If an employer plan covers *emergency services*, those services will be required to be covered without a prior authorization. This applies even if the services are out-of-network. When out-of-network providers perform emergency services, the plan will not be permitted to implement administrative requirements more restrictive than what would be in place for an in-network occurrence. Different cost sharing requirements are also not allowed in this situation. Typically, health plans meet this requirement since the Affordable Care Act (ACA) already requires this for all non-grandfathered plans.

When an out-of-network provider performs *non-emergency services*, it cannot charge higher cost sharing at an in-network facility (unless prior notice is given and a participant gives their consent). This consent process will be specific and cumbersome according to the IFR. There are also exceptions to the consent provision for ancillary services that would be provided in connection with non-emergency care (for example, radiology and anesthesiology).

Air ambulance services provided by an out-of-network provider may only impose the same cost-sharing requirements that would be placed on an in-network provider. Further, plans will be required to pay the “recognized amount” for any emergency and

non-emergency services provided by out-of-network facilities, out-of-network providers, including air ambulance services.

Plan documents may need to be revised to meet the provisions of the Act to reflect cost-sharing levels and in-network accumulators of cost share. In other words, the cost-sharing amounts must be counted toward any in-network deductibles, and out-of-pocket maximums. If the plan is a grandfathered plan, plan documents and SPDs would need to reflect that there are no preauthorization requirements for emergency services.

Plans and health care providers will be required to post a

notice that outlines protections for balance billing. And each Explanation of Benefits (EOB) must include notice language (see issued **model notice**).

Future guidance will be provided on arbitration processes that will be implemented under the No Surprises Act. The arbitration process will be used for dispute resolutions between providers and plans or insurers. The exact release of such guidance is unknown at this time.