

NO SURPRISE BILLING RULE: WHAT PROVIDERS NEED TO KNOW



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WRITTEN MATERIALS

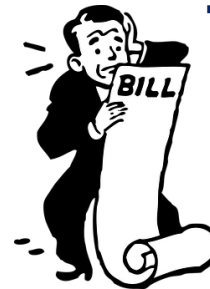
- Interim Final Rule, 86 FR 36872
- CMS, *HHS Announces Rule to Protect Consumers from Surprise Medical Bills*, <https://www.hhs.gov/about/news/2021/07/01/hhs-announces-rule-to-protect-consumers-from-surprise-medical-bills.html>
- CMS, *Requirements Related to Surprise Billing; Part I Interim Final Rule with Comment Period*, <https://www.cms.gov/newsroom/factsheets/requirements-related-surprise-billing-part-i-interim-final-rule-comment-period>
- AHA, *Detailed Summary of the No Surprises Act*, <https://www.aha.org/system/files/media/file/2021/01/detailed-summary-of-no-surprises-act-advisory-1-14-21.pdf>

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PROBLEM



In 2016:
 - 42.8% of ED visits resulted in surprise bill.
 - Average surprise bill was \$2,040.
 (86 FR 36874)

- Patients surprised when they receive bill from facility or provider despite insurance, e.g.,
 - Emergency services rendered by nonparticipating (“nonpar”) facility or provider.
 - E.g., insurer limits coverage or amount of coverage for emergency services by nonpar providers and facilities; insurer requires preauthorization; etc.
 - Nonpar providers at participating facility bill separately from facility.
 - E.g., surgeons, anesthesiology, radiology, pathology, surgical assists, labs, etc.

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OVERVIEW

- No Surprises Act (12/27/20)
- No Surprises Interim Final Rule (7/13/21), 86 FR 86872
 - Protects participants, beneficiaries, and enrollees in health plans from surprise medical bills from:
 - Emergency services at emergency facility,
 - Non-emergency services by a nonpar provider at participating facility, or
 - Air ambulance services from nonpar providers.
 - **Effective 1/1/22**
- More to come
 - HHS notice and consent forms and guidance
 - Enforcement rule
 - Federal IDR process
 - Transparency
 - Patient-provider dispute resolution process
 - Price comparison tools

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PROS AND CONS

Pros

- Requires plans and insurers to cover emergency services without prior authorization.
 - “Emergency services” interpreted broadly per EMTALA.
 - Includes certain post-stabilization services.
- Reaffirms choice of provider.

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Cons

- **Limits patient’s cost-sharing amount to that which patient would owe to a participating provider, (i.e., prohibits balance billing patient) unless you obtain notice and consent.**
 - Consent unlikely.
- May still bill insurer.
 - May have to fight with insurer.
- Must publish public notices.

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MAY ONLY CHARGE PATIENT IN-NETWORK COST-SHARING AMOUNTS

- Only applies to certain items or services covered under a health plan or insurance that are provided by nonpar providers and/or facilities to “participants, beneficiaries, or enrollees”* in the health plans insurance.

** For sake of convenience, I refer to them as “patients”.*

- Only applies to nonpar providers or facilities when:
 - Emergency services are provided by a nonpar provider or nonpar emergency facility.
 - Facility = emergency dept of hospital or independent freestanding emergency dept as licensed by state (may include urgent care center) (86 FR 36879)
 - Non-emergency services are provided by a nonpar provider at a participating health care facility.
 - Facility = hospital, hospital outpatient dept, CAH, or ASC that has a contract with a plan or insurer covering the services provided, including single case agreements. (86 FR 36882).
 - Air ambulance services are furnished by a nonpar provider of air ambulance services.

(86 FR 36904)

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APPLICATION

No Surprise Billing Rule generally does **not** apply to:

- Items or services that are provided outside a facility not arising from a facility visit.
- Services provided by participating providers at participating facilities.
- Items or services that are not covered by a plan or insurer.
- Items or services provided to self-pay patients or government program beneficiaries.

Surprise Billing Rule is not needed for:

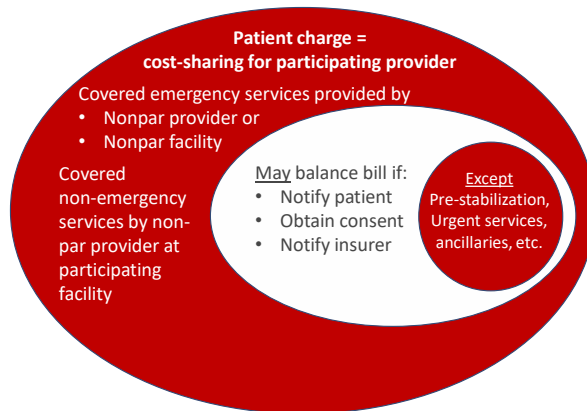
- Participating providers or facilities
 - Contract limits charges.
- Government program beneficiaries
 - Program limits charges.
- Self-pay patients
 - They already know they have no coverage.

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NO SURPRISE BILLING RULE: SUMMARY

Limits on surprise bills do not apply to:

- Participating providers and/or facilities
- Self-pay, uninsured patients
- Items or services not covered by plan or insurance
- Items or services that are not provided at a facility



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PENALTIES

- HHS may impose a \$10,000 civil penalty against facilities and providers for violations.
- HHS shall waive the penalty if:
 - The facility or provider did not know and should not have reasonably known its actions violated the rule, and
 - The facility or provider, within 30 days of the violation:
 - Withdraws the bill that violated the rule, and
 - Reimburses the health plan, insurer, or patient as applicable in an amount equal to the difference between the amount billed and the amount allowed to be billed plus interest at a rate determined by HHS.
- HHS may establish a hardship exception to penalties. (No Surprise Act § 2799D(b)(1), (4); 86 FR 36905)
 - *HHS will address enforcement in future rule.*
 - *Additional penalties, e.g., defense to payment, consumer protection statutes, state laws, etc.?*

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BALANCE BILLING FOR EMERGENCY SERVICES



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EMERGENCY SERVICES: BALANCE BILLING

- If a covered patient receives emergency services at a hospital emergency dept or an independent freestanding emergency dept,
 - nonpar facility may not balance bill above cost-sharing amount for a participating facility; and/or
 - nonpar provider may not balance bill above cost-sharing amount for a participating provider
- Except for certain post-stabilization items or services if:
 - Patient is able to travel to a participating facility within reasonable distance in nonmedical transport;
 - Patient is given required written notice (*see below*);
 - Patient gives valid consent (*see below*); and
 - Facility satisfies any additional state law requirements.
- Except with respect to unforeseen, urgent medical needs that arise at the time the services are rendered.

(45 CFR 149.410; 86 FR 36905)

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“EMERGENCY SERVICES”: BALANCE BILLING

- “Emergency services” =
 - Appropriate medical screening exam as required by EMTALA, including ancillary service routinely available to the emergency dept;
 - Such further exam and treatment needed to stabilize the patient; and
 - Post-stabilization outpatient observation or inpatient or outpatient stay after emergency care is provided.

(45 CFR 149.410)

- HHS interprets broadly to track care required by EMTALA
 - Services covered even if care turns out to be non-emergent
 - Services covered even if provider uses non-emergent code
 - Services covered even if care is not immediate

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EMERGENCY SERVICES: NEVER BALANCE BILL

- Limits on balance billing always apply (i.e., notice and consent exception does not apply) to:
 - Items or services furnished as a result of unforeseen, urgent medical needs that arise at the time an item or service is furnished.
 - *HHS: cannot get notice and consent for such emergency situations. (86 FR 36911)*
 - Emergency medical screening and stabilization services.

(45 CFR 149.410(b)-(c))

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EMERGENCY SERVICES: NOTICE TO PLAN OR INSURER

- nonpar emergency facility or nonpar emergency provider that provides post-stabilization services must notify the plan or insurer of the following when transmitting the bill:
 - Whether the notice and consent requirements have been satisfied; and
 - If applicable, provide a copy of the signed written notice and consent document.

(45 CFR 149.410(e))

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BALANCE BILLING FOR NON-EMERGENCY SERVICES



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BALANCE BILLING: NON-EMERGENCY SERVICES

- A nonpar provider who provides non-emergency services to a patient at a facility may not balance bill above cost-sharing amount for a participating provider
- Unless the following are satisfied:
 - Patient is able to travel to a participating facility within reasonable distance in nonmedical transport;
 - Patient is given required written notice (*see below*);
 - Patient gives valid consent (*see below*); and
 - Facility satisfies any additional state law requirements.
- Except with respect to unforeseen, urgent medical needs that arise at the time the services are rendered.

(45 CFR 149.420)

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NON-EMERGENCY SERVICES: NEVER BALANCE BILL

- Limits on balance billing always apply (i.e., notice and consent exception does not apply) to:
 - Items or services furnished as a result of unforeseen, urgent medical needs that arise when the item or service is furnished.
 - Ancillary services, i.e.,
 - Items or services related to emergency medicine, anesthesiology, pathology, radiology, and neonatology whether provided by a physician or non-physician practitioner;
 - Items or services provided by assistant surgeons, hospitalists, and intensivists;
 - Diagnostic services, including radiology and labs; and
 - Items or services provided by a nonpar provider if there is a participating provider who can furnish such item or service at such facility.

(45 CFR 149.520(b))

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PRACTICAL APPLICATION

“HHS also recognizes that compliance with these requirements may require nonpar providers and nonpar emergency facilities to refrain from billing an individual directly, even in cases that are not subject to these requirements.

“For example, the protections applicable to non-emergency services provided by a nonpar provider in a participating health care facility apply only with respect to services for which benefits are provided or covered by the plan or coverage. A nonpar provider may not have the information necessary to determine whether the services are a covered benefit under the plan or coverage. As a result, the nonpar provider may need to bill the plan or issuer directly for the services in order to determine whether the protections apply. Otherwise, the provider risks violating the statute and these interim final rules by billing individuals.”

(86 FR 36905)

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NOTICE AND CONSENT FOR BALANCE BILLING



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NOTICE TO PATIENT OR REP

- May balance bill for certain services if provide required notice to patient or personal rep and obtain consent from patient or personal rep, i.e.,
 - Covered post-stabilization services by nonpar provider or facility following emergency visit.
 - Non-emergency services provided by a nonpar provider at a participating facility, with limited exceptions.
- (45 CFR 164.410(b) and .420(b))
- Personal rep = person authorized to consent to care for patient under applicable state law.
 - Not a provider or employee of facility unless such provider or employee is family member.

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NOTICE TO PATIENT OR REP

- Provide written paper or electronic notice as selected by patient.
 - Notice must be provided using the HHS form and in the manner specified in HHS guidance; it must include the following statements:
 - Provider is does not participate in the plan.
 - Good faith estimate of amount nonpar provider will charge.
 - Notice does not constitute a contract binding on the patient.
 - Prior authorization or care management limits may be required before receiving items or services.*
 - * HHS encourages providers and facilities to contact insurers to confirm.
 - Consent is optional, and patient may seek care from an available participating provider, in which case cost sharing is limited by the plan.
- (45 CFR 164.420(c)(1), (d)).
- ✓ Watch for the HHS form notice.

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NOTICE TO PATIENT OR REP

- For balance billing post-stabilization emergency services, notice must include the following additional items:
 - *If participating facility + nonpar provider:* include a list of participating providers at the facility who are able to furnish services and state that patient may be referred to the participating provider.
 - *Do facility and providers really know this?*
 - *If nonpar emergency facility:* include good faith estimate of charges by the facility or nonpar providers for the visit at the facility.

(45 CFR 149.410(b)(2))

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NOTICE TO PATIENT OR REP

- Notice must be provided:
 - With the consent document.
 - Physically separate from, not attached to, and not incorporated into any other document.
 - To the patient:
 - If services scheduled at least 72 hours in advance: notice must be provided at least 72 hours before services.
 - If services scheduled less than 72 hours in advance: notice must be provided on day the appointment is made.
 - If notice provided on date of service: notice must be provided at least 3 hours in advance of services.

(45 CFR 164.420(c)(1); 86 FR 36907)

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CONSENT OF PATIENT OR REP

- Consent must be obtained:
 - From the patient or authorized representative;
 - Voluntarily;
 - Using HHS form;
 - In accordance with the form and manner specified in HHS guidance.
- Consent must be signed by patient or personal rep prior to receiving the relevant items or services.
- Patient or personal rep may revoke consent in writing prior to receiving the items or services to which the consent applies.

(45 CFR 164.420(c)(2), (e))

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CONSENT OF PATIENT OR REP

- Consent must acknowledge in clear and understandable language:
 - Patient was given the written notice in the form (i.e., paper or electronic) selected by patient;
 - Patient has been informed that payment by patient may not accrue toward meeting any limitation that plan places on cost sharing, including in-network deductible or out-of-pocket maximum applied under the plan;
 - By signing consent, patient agrees to be treated by nonpar provider or facility and patient may be balanced billed for cost-sharing amounts;
 - Name the specific provider(s) (see 86 FR 36909).
 - Document time and date of:
 - Receipt of written notice, and
 - Patient signed the consent.

(45 CFR 164.420(e))

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CONSENT OF PATIENT OR REP

- Must provide a copy of the signed written notice and consent to the patient in person or through mail or e-mail as selected by the patient.

(45 CFR 164.420(c)(1))

- Consent only applies to receipt of information re balance billing; it does not
 - Create a contractual agreement by the patient to any estimated charge or amount; or
 - Constitute consent for treatment.

(45 CFR 164.420(g))

- Patient may consent to balance bill by some providers but not others. (86 FR 36909)

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NOTICE AND CONSENT: LANGUAGE ACCESS

- nonpar provider or facility must give the patient the choice to receive the notice and consent in any of the 15 most common languages
 - in the state where the applicable facility is located; or
 - In the geographic service area of the facility.
- If patient's preferred language is not among the 15 most common languages and patient cannot understand the language of the notice and consent, nonpar provider or facility must provide qualified interpreter to meet the notice and consent requirements.

(45 CFR 149.420(f))

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TOP 15 LANGUAGES IN IDAHO*

- | | |
|-------------------------|--|
| 1. English | 11. French (449) |
| 2. Spanish (47,041) | 12. Japanese (395) |
| 3. Chinese (1,798) | 13. Romanian (315) |
| 4. Serbo-Croatian (815) | 14. Sudan (305) |
| 5. Korean (767) | 15. Persian (296) |
| 6. Vietnamese (630) | |
| 7. Arabic (628) | *As of August 2016,
https://www.cms.gov/ccio/resources/regulations-and-guidance/downloads/appen-dix-a-top-15.pdf |
| 8. German (588) | |
| 9. Tagalog (562) | |
| 10. Russian (481) | |

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NOTICE AND CONSENT: PRACTICAL APPLICATION

- Likely difficult to satisfy notice and consent requirements.
 - Applies in limited circumstances.
 - Patients unlikely to consent. Why would they?
 - Challenging to satisfy all the requirements.
 - nonpar provider may generally refuse to provide care if patient does not consent to balance billing subject to:
 - EMTALA
 - Other state or federal requirements
 - Contract obligations.
- (86 FR 36905)

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NOTICE AND CONSENT: DOCUMENT RETENTION

- nonpar provider or facility that obtains consent to balance bill from a patient must retain the written notice and consent for 7 years.
(45 CFR 149.410(d), (h))
- Provider may coordinate with facility as to which retains the documents.



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POST-STABILIZATION SERVICES: NOTICE TO PLAN OR INSURER

- Nonpar provider nonpar facility providing post-stabilizing items or services must timely notify the plan or insurer when submitting bill:
 - Whether the notice + consent requirements have been satisfied for each such item or service; and
 - If applicable, provide a copy of the signed written notice and consent document.

(45 CFR 149.410(e))

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NON-EMERGENCY SERVICES: NOTICE TO PLAN OR INSURER

- Nonpar provider (or facility on behalf of provider) must timely notify the plan or insurer:
 - That item or service furnished during a visit at a participating health care facility; and
 - If applicable, provide a copy of the signed written notice and consent document.
- If nonpar provider bills patient directly, provider may notify the plan or insurer by including the notice with the bill to the patient.

(45 CFR 149.420(i))

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IN SUMMARY: VERY DIFFICULT TO BALANCE BILL PATIENT

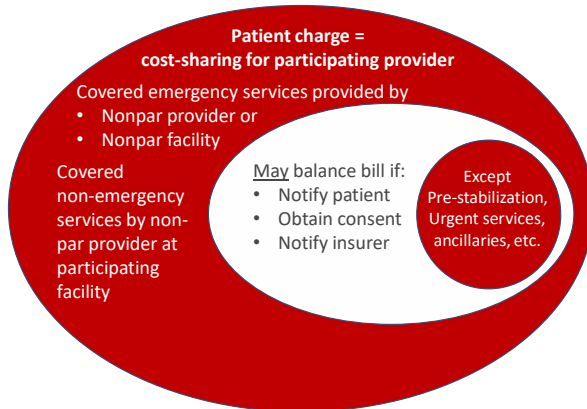
- ✓ Notice and consent exception only applies to limited services.
 - Post-stabilization emergency services.
 - Non-emergency services by nonpar provider at participating facility subject to extensive exceptions
- ✓ Provide notice to patient
 - Containing info required by HHS
 - Within time limits
- ✓ Obtain informed consent from patient.
 - Include info required by HHS
- ✓ Satisfy language accessibility requirements.
- ✓ Notify insurer.

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NO SURPRISE BILLING RULE: SUMMARY

Limits on surprise bills do not apply to:

- Participating providers and/or facilities
- Self-pay, uninsured patients
- Items or services not covered by plan or insurance
- Items or services that are not provided at a facility

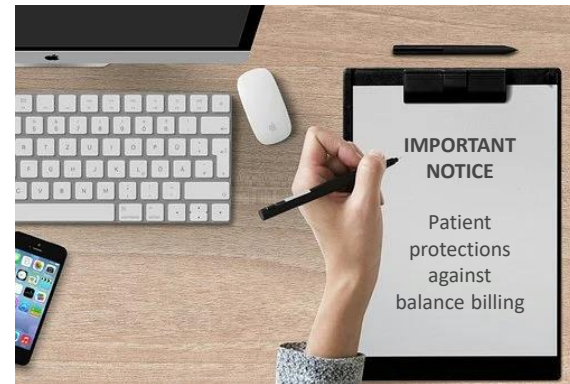


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NOTICE OF PATIENT PROTECTIONS



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NOTICE OF PATIENT PROTECTIONS

Must give notice

- Health care facilities.
- Providers who provide items or services at or in connection with a visit to a health care facility, i.e.,
 - Hospital or CAH
 - Hospital outpatient dept
 - ASC
 - Freestanding emergency department.

(45 CFR 149.430(e); 86 FR 36914)

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NOTICE OF PATIENT PROTECTIONS

- Providers and facilities must notify covered patients of balance billing protections.
 - Prominent sign in provider's or facility's location (if have one).
 - E.g., patient's schedule care, check in, or pay bills. (86 FR 36914)
 - Post on website (if have one):
 - Required info or link on searchable homepage of website.
 - Must be able to access without charge, setting up account, or giving personal information. (86 FR 36913)
 - Give notice to each patient who receives items or services.
 - One page, double-sided page using print \geq 12-point font.
 - Provide in-person, mail or e-mail as selected by patient.
 - No later than the date and time:
 - When provider or facility requests payment from patient; or
 - If provider does not request payment from patient, when provider or facility submits claim to plan or insurer.

(45 CFR 149.430(c), (d))

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NOTICE OF PATIENT PROTECTIONS

- Notice must state in clear and understandable language:
 - Explain the requirements and prohibitions relating to balance billing.
 - If applicable, explain state law requirements concerning balance billing.
 - Contact information for appropriate federal and state agencies to report violations.

(45 CFR 149.430(b))

- HHS working on model notice.
 - Use of model notice is deemed good faith compliance.
- Notice must satisfy language accessibility standards.

(86 FR 36912-13)

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NOTICE OF PATIENT PROTECTIONS

- Both provider and facility must:
 - Post sign at prominent location (if have one), and
 - Post on website.
- Provider and facility may enter a written agreement so that facility provides the required one-page notice to the patient.
 - If facility fails to provide the required notice, balance billing rules still apply; nonpar provider may not balance bill.
 - If facility fails to provide the required notices (i.e., sign and notice to individual) per the agreement and patient is balance billed, the facility is liable, not the provider.

(45 CFR 149.430(f); 86 FR 36915)

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BALANCE BILLING: AIR AMBULANCES



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AIR AMBULANCES

- If nonpar air ambulance provider renders services to a covered person, provider may not bill patient more than cost-sharing amount that would apply to a participating provider.

- No exception for notice and consent.

(45 CFR 149.440)

- May still bill and recover from plan or insurer for covered services.

- May still bill self-pay patients.

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COMPLAINTS



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COMPLAINT PROCESS

- Complainant may file complaint with HHS for violations of the No Surprises Billing Rule.
- HHS will review the complaint and may request additional information.
- HHS may refer complaints against payers to CMS enforcement process under 45 CFR part 150.
- HHS will make reasonable attempts to notify the complainant of the resolution.

(45 CFR 149.450)

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ACTION ITEMS

CHECKLIST



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ACTION ITEMS: BEFORE 1/1/22

- ✓ Facilities: identify nonpar providers.
 - Balance billing rules apply to nonpar providers.
- ✓ Nonpar Providers: identify facilities at which you provide services and determine if they are participating.
- ✓ Confirm and coordinate state law requirements.
- ✓ Prepare notices of patient protections:
 - Website
 - Sign in prominent location
 - One page form to distribute to patients
- ✓ Prepare written agreement so that facility provides required notice to patients at facility.

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ACTION ITEMS: BEFORE 1/1/22

- ✓ Determine if you are going to attempt notice and consent from patient.

- Likely very difficult to obtain patient consent.

If you decide to attempt notice and consent:

- ✓ Prepare notice for patients.
 - Watch for HHS form.
- ✓ Prepare consents for patients.
 - Watch for HHS form.
- ✓ Notice to insurers.
- ✓ Accommodate language barriers.

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ACTION ITEMS: BEFORE 1/1/22

- ✓ Educate staff and implement processes

- Limits on charges to patient and balance billing rules.
- Distributing one-page notice to patients.
- Providing notice + obtaining consent.
- Providing notice to plan or insurers if obtain notice + consent.

Training should include following personnel:

- Medical staff office
- Patient intake and scheduling
- Billing and collections
- Compliance personnel
- Website design

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ACTION ITEMS

- Stay tuned...
 - Additional guidance from HHS.
 - Required or model forms from HHS.
 - Final rule following comments.
 - Regulations implementing other portions of the No Surprise Act.

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QUESTIONS?



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