



Federal Surprise Billing Law

The federal “**No Surprises Act**” was included with the latest version of COVID-19 relief passed by the Congress and signed by the president. This legislation was designed to address the concerns surrounding out-of-network billing. The bill represents a major change from significantly more burdensome legislation proposed by various House and Senate committees. The final legislation was heavily influenced by Senator Mitch McConnell (R-KY), who listened to concerns raised by the Kentucky Hospital Association and ensured those concerns were addressed in the final bill.

MAJOR PROVISIONS INCLUDE:

- Beginning January 1, 2022, prohibits out-of-network facilities and providers from balance billing more than the in-network cost-sharing amount for out-of-network emergency care, for certain ancillary services provided by out-of-network providers at in-network facilities and for out-of-network care provided at in-network facilities without the patient’s informed consent.
- NO benchmark rate.
- Provider and insurer to negotiate; if no agreement, the parties may go to independent dispute resolution (IDR).
- Billing disputes may be batched together if they occurred within 30 days; no minimum threshold for dispute resolution.
- Parties jointly select the IDR entity.
- Parties each submit their best offer – IDR entity picks one after considering the median in-network rate, the complexity of the case and the relative market power of the insurer versus the doctor or hospital, among other factors.
- IDR decision is binding, and generally not subject to judicial review.
- Air ambulances.
- Balance billing permitted in non-emergency cases when notice and consent are provided.
- Amending ERISA.
- No preemption of state law relating to provider directories.