WOLFPOPPER

Surprise Medical Billing & The “No Surprise Act”







SURPRISE MEDICAL BILLING

Americans currently have $140 Billion in medical debt. It is the foremost reason for personal bankruptcy in America and the largest source of debt for American families. Surprise medical billing is a leading contributor to this issue.

A rampant practice in recent decades, surprise medical billing has affected millions of Americans with private health insurance, raising the total bill for medical services by an average of $14,083. But what is it?

A surprise medical bill is a medical bill received by an insured patient, from an out-of-network (“OON”) provider, for services rendered at an in-network facility, charging the patient for the difference between the OON’s chargemaster rate (its undisclosed high sticker price), and the portion of the charge paid by the patient’s insurer (usually a fraction of the physician’s charge for the service).

The “surprise” element is threefold, because:

1. **The patient, who went to an in-network facility, had no knowledge that the provider in that facility was OON until they were billed.** This is because patients have no opportunity to choose these OON providers. These providers do not disclose what “physician group” they’re a part of, or the insurance coverage their physician group accepts, if any.
2. **The patient had no access to the OON provider’s prices before services were rendered.** This is because these prices are not disclosed anywhere.

3. **The patient had no warning that the OON provider's prices would be so high.** This is because the OON provider's chargemaster rates have no relation to the actual input costs of delivering care and are entirely manufactured by medical providers who take advantage of not having to disclose their rates; and want to keep these rates artificially high to provide them an advantage in negotiations of network agreements with insurance companies.

To put this into context, on average:

- 18% of patients visiting Emergency Departments ("EDs") have received surprise bills;
- 26% of patients admitted after visiting EDs have received surprise bills;
- 20% of patients hospitalized at in-network facilities have received surprise bills;
- 20.5% of patients undergoing elective surgeries at in-network facilities have received surprise bills (especially those with surgical complications at 28%);
    - 37% of these patients have received surprise bills for anesthesiology (with an average bill of $1,219);
    - 37% of these patients have received surprise bills from surgical assistants (with an average bill of $3,633);
- Patients insured under an Affordable Care Act exchange plan have a greater likelihood of receiving surprise bills;
- 71% of patients that have used ambulance services have received surprise bills. Ground ambulances, usually an OON charge, have led to surprise bills at an average cost of $450 or more. Costs of taking an air ambulance, usually an OON charge, have led to surprise bills at an average cost of $21,698;
- Patients with surgical and mental health admissions have a greater likelihood of receiving surprise bills; and
- Patients having experienced heart attacks have a greater likelihood of receiving surprise bills.

Surprise bills have serious consequences. Because of the hefty size of the bill, the bills accrue interest over time, and medical providers often turn unpaid medical debt from surprise bills over to collection agencies. This (i) would adversely affect a patient's credit score, (ii) would remain on their consumer credit report for up to seven years, and (iii) could result in wage garnishment (a portion of your employment compensation comes out of your check to pay the doctor).

NO SURPRISES ACT

In an effort to fix this problem, Congress passed the No Surprises Act ("NSA"), bi-partisan legislation, effective as of January 1, 2022. The NSA, in large part, bans surprise medical bills for patients covered under group and individual health plans. While it's not perfect, it is a very meaningful step in the right direction for patients.

Under the NSA's protections:

- Patients are only liable for payment of in-network cost-sharing, i.e., copayments, coinsurance, and deductibles. They are not responsible for paying the balance bill portion.
- Providers and facilities must publicly disclose the surprise billing protections available to their patients.
- Patients cannot be sent a surprise medical bill for OON air ambulance transports.

- Patients cannot be sent a surprise medical bill for “emergency services” by OON providers.
    - This includes emergency services that become necessary during the provision of non-emergency services.
    - The NSA has broadly defined emergency services to include not only ED services, but post-stabilization services provided in a medical facility following an ED visit.
    - These OON providers who no longer can balance bill you may include ED physicians, certified nurse practitioners, physician assistants, radiologists, anesthesiologists, and more.
- Patients generally cannot be sent a surprise medical bill for non-emergency services rendered at an in-network facility, by an OON provider. This includes the services rendered in conjunction with these visits, such as when an in-network provider refers a patient to an OON provider for imaging services, telemedicine services, laboratory testing services, ancillary services, preoperative and postoperative services.

However:

- Patients may still receive surprise medical bills for OON services rendered at an in-network facility in 2021 or earlier.
- Patients may still receive surprise medical bills for ground ambulance transports, except approximately ten states have laws restricting such bills.
    - *E.g.,* Illinois’s Health Maintenance Organization Act prohibits surprise billing for ground ambulances where patients are enrolled in an HMO healthcare plan.
- Patients may still be responsible for paying surprise medical bills for non-emergency services at in-network facilities where the provider/facility has given written notice of the NSA protections, and patients have given written consent (usually via a signed consent form) agreeing to pay any resulting surprise medical bills from an OON provider, waiving any billing protections afforded by the NSA. However, such consents and waivers do not apply under the following circumstances:
    - The provision of emergency services, anesthesiology, pathology, radiology, and neonatology;
    - Facilitative services by assistant surgeons, hospitalists, and intensivists;
    - Diagnostic services by radiologists and laboratory services; and
    - Services rendered by OON providers when there are no other in-network providers to provide the relevant service in that facility.

  It is important to remember that completion of these consent forms is entirely up to the patient. If a patient refuses to sign the relevant form, healthcare providers and facilities may refuse to provide non-emergency services, or post-stabilization care.[1] However, if they agree to treat the refusing patient, the protections of the NSA will continue to apply.
- Patients **will** still receive large medical bills for willingly/knowingly going to an OON provider or an OON facility.

[1] The rule applies to post-stabilization care, in relevant part, where:
- The patient is stable enough to travel without an ambulance to a nearby in-network provider/facility with availability; or
- The patient or their authorized representative is found to be in a condition where they can receive information and provide informed (written or unwritten) consent.

ILLINOIS

Illinois first passed its own surprise billing laws in 2011 and recently enacted Public Act 102-0901, to align Illinois law with the NSA. Thus, there's significant overlap between both pieces of legislation.

Notably, enrollees with insurance plans using PPO or HMO health care plans, or VHSPs, regulated by the state of Illinois, will now have multi-faceted protections at the federal and state level.

For example, the former prohibition on surprise billing by facility-based OON providers rendering radiology, anesthesiology, pathology, neonatology, or emergency services, has been expanded beyond these five specialties to all facility-based OON providers providing services at an in-network facility.

Patients enrolled in the self-funded plans of individual employers, employee organizations, and state or local governments, operating outside the scope of Illinois' state protections, will now be subject to the protections of the NSA.

Furthermore, as of January 1, 2023, the policy forms for medical plans with a PPO and for HMO must disclose that:

> *Non-participating providers may bill enrollees for any amount up to the billed charge after the plan has paid its portion of the bill, except as provided in Section 356z.3a of the Illinois Insurance Code for covered services received at a participating health care facility from a nonparticipating provider that are: (a) ancillary services, (b) items or services furnished as a result of unforeseen, urgent medical needs that arise at the time the item or service is furnished, or (c) items or services received when the facility or the non-participating provider fails to satisfy the notice and consent criteria specified under Section 356z.3a.*

HOW'S IT GOING?

To date, enforcement of the NSA has been light to non-existent. As of June 2022, six months after the NSA came into effect, 20% of American adults who should be protected by the NSA have reportedly continued to receive surprise medical bills. In these instances, where services were rendered after January 1, 2022:

- You can decide not pay the bill since it is likely invalid (although you risk negatively impacting your credit score).
- Demand that your health insurance plan pays more.
- Contact the Federal No Surprises Helpdesk at 1-800-985-3059.
- E-mail outreach@wolfpopper.com or call (877) 370-7703 for a free consultation from an attorney at Wolf Popper LLP, a law firm with substantial surprise bill class action experience, if you have a legal question relating to a surprise bill you received. This service is only available to members of pension and health trust organizations.