The NO SURPRISES

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In late 2020, Congress passed the Consolidated Appropriates Act of 2021. That law amended existing federal health insurance laws and created the new No Surprises Act which offers certain billing protections to covered members who receive: (1) emergency care; (2) non-emergency care from out-of-network providers working in in-network facilities; and (3) air ambulance services from out-of-network providers. While this law is in its infancy and many details are yet to be ironed out, here is a brief summary of the protections it offers consumers against unexpected medical bills and excessive out-of-pocket costs. It should be noted that the law applies to both fully-insured health insurance policies and self-funded health plans.

The No Surprises Act was enacted to protect consumers from "surprise medical bills." The U.S. Centers for Medicare & Medicaid Services ("CMS") explains surprise medical bills as follows:

> **What are surprise medical bills?** If you have health insurance and get care from an out-of-network provider or at an out-of-network facility, your health plan may not cover the entire out-of-network cost. This can leave you with higher costs than if you got care from an in-network provider or facility. In the past, in addition to any out-of-network cost sharing that you might owe (*e.g.*, deductible, coinsurance and/or out-of-pocket expenses), the out-of-network provider or facility could bill you for the difference between the billed charge and the amount your health plan paid unless banned by state law. This is called "balance billing." An unexpected balance bill from an out-of-network provider is also called a surprise medical bill.

At first blush, it may appear that consumers are now free to go to any provider they want without having to worry about out-of-network exposure or costs, but that would be an overbroad and incomplete reading of the law. While the No Surprises Act is intended to protect consumers from large surprise bills or high uncovered medical expenses, there are some limitations on its scope and application. CMS sets forth several applications of the No Surprises Act:

1. **It bans surprise bills for emergency services,** even if you get them out-of-network and without prior authorization or approval.
2. **It bans higher out-of-network cost sharing** (*e.g.*, coinsurance, copayments or deductibles) for all emergency and some non-emergency services. You can't be charged more than in-network cost sharing for these services.
3. **It bans out-of-network charges** and balance bills for supplemental care (*e.g.*, anesthesiology or radiology) by out-of-network providers who work at an in-network facility.
4. **For non-emergency applications** of the No Surprises Act, health care providers and facilities are required to give you an easy-to-understand notice explaining that getting care out-of-network can be more expensive and it must provide options to avoid balance bills. If, after receiving this notice, you decide to waive your billing protections, you must offer your informed consent.

If you are the victim of a surprise medical bill, here's what you are entitled to under the law. It should be noted, however, that the law only applies to "surprise medical bills" and not to any and all out-of-network services or expenses so to quote Greg Brady in the 1971 Wheeler-Dealer episode of the Brady Bunch, *caveat emptor*. That said, here are the protections you are entitled to under the law:

1. **If your bill qualifies as a surprise bill,** you are only responsible for paying your share of the cost (*e.g.*, copayments, coinsurance, deductibles and out-of-pocket expenses) that you would pay if the provider or facility was in-network. Your health

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plan will pay their share directly to the out-of-network providers and facilities.

2. **Your health plan generally must:** (a) cover emergency services without requiring you to get prior approval for services; (b) cover emergency services by out-of-network providers; (c) base what you owe the provider or facility (*i.e.*, your sharing of the costs) on what it would pay an in-network provider or facility and show that amount in your explanation of benefits; and (d) count any amount you pay for emergency services or out-of-network services toward your deductible and out-of-pocket limit.

Finally, here are some excerpts from definitions offered by CMS that may help you apply the No Surprises Act to your personal situation:

Balance Billing - When a provider bills you for the balance remaining on the bill that your plan doesn't cover. This amount is the difference between the actual billed amount and the allowed amount.

Claim - A request for a benefit (including reimbursement of a health care expense) made by you or your health care provider to your health insurer or plan for items or services you think are covered.

Coinsurance - Your share of the costs of a covered health care service, calculated as a percentage (*e.g.*, 20%) of the allowed amount for the service. You generally pay coinsurance plus any deductibles you owe.

Copayment (aka "copay") - A fixed amount (*e.g.*, $15) you pay for a covered health care service, usually when you receive the service.

Cost Sharing - Your share of costs for services that a plan covers that you must pay out of your own pocket (sometimes called "out-of-pocket costs").

Deductible - An amount you could owe during a coverage period (usually one year) for covered health care services before your plan begins to pay anything.

Emergency Medical Condition - An illness, injury, symptom (including severe pain), or condition severe enough to risk serious danger to your health if you didn't get medical attention right away.

Network Provider (aka a Preferred Provider or Participating Provider) - A provider who has a contract with your health insurer or plan who has agreed to provide services to members of a plan (usually at discounted rates).

Out-of-Network Provider (Non-Preferred Provider or Non-Participating Provider) - A provider who doesn't have a contract with your plan to provide services. Many plans cover out-of-network providers at reduced rates, but some exclude coverage from non-network providers unless it satisfies the restrictive definition of an emergency.

For more information about the No Surprises Act, visit the CMS website at cms.gov/nosurprises/Ending-Surprise-Medical-Bills.

If you have questions about this article or would like to discuss your company's health insurance progam, feel free to contact me at ***(801) 263-8000*** or ***info@wmimutual.com.***