

Part B Insider (Multispecialty) Coding Alert

Policy: Register These Latest No Surprises Act Updates

CMS offers state regulation insight about implementation and enforcement.

With health equity reforms at the top of Medicare's to-do list, the feds continue to update their No Surprise Act (NSA) guidance to help providers with the regulations. But the latest update, which focuses on individual states' compliance and regulation alignment, isn't as clear as you'd hope, especially for providers operating in states with divergent consumer laws.



First: In December 2020, as part of the Consolidated Appropriations Act, 2021 (CAA), Congress outlined its plans for the No Surprises Act. The first interim final rule with comment period (IFC), "Requirements Related to Surprise Billing: Part I," a collaborative effort between the Departments of Health and Human Services (HHS), Labor, and Treasury, and the Office of Personnel Management (OPM), followed the legislation and offered new guidelines on the feds' mandates and reforms of balance billing practices in the healthcare industry. This first rule was published in the Federal Register on July 13, 2021.

Next: The Centers for Medicare & Medicaid Services (CMS), in coordination with the other Departments, published a second IFC titled "Requirements Related to Surprise Billing; Part II" in the Federal Register on Oct. 7, 2021. This rule went further, expanding on the regulation while providing implementation guidance, requirements related to the dispute resolution process, and other critical provisions (see Part B Insider, Vol. 22, No. 12).

Now: Over the past few weeks, CMS has started posting CAA enforcement letters on its website, which it began sending out to the states in December 2021. The letters explain the agency's interpretation of the CAA-inspired changes to the Public Health Service Act, as well as the impact on each state and the "provisions CMS will enforce," the guidance says. "These letters also communicate whether the federal independent dispute resolution process and the federal patient-provider dispute resolution process apply in each state, and in what circumstances."



Here's What You Need to Know About the Letters

CMS outlines its survey process in the enforcement letters and how the NSA dissects the laws of the individual state. For example, the letters detail "which NSA requirements will be enforced by specific states, and which requirements will be directly enforced by CMS," explain attorneys **Jonah D. Retzinger** and **Alexis Boaz** with Epstein Becker & Green, P.C. in the firm's Health Law Advisor blog.

The letters also discuss states entering into a collaborative enforcement agreement with CMS if the state cannot enforce the provisions. "Under such an agreement, the states would seek voluntary compliance with NSA requirements and CMS would consider formal enforcement action only if the state could not obtain voluntary compliance," note attorneys **Michael S. Kolber** and **Harvey L. Rochman** with Manatt, Phelps & Phillips, LLP. in the law firm's Health Highlights newsletter. "In the absence of state authority to enforce each of the NSA provisions or a collaborative enforcement agreement, CMS will directly enforce the NSA provisions," Kolber and Rochman explain.

Tip: Since state consumer rights laws can vary significantly from federal regulations, providers must figure out how to implement the NSA provisions and ensure alignment with state requirements. This is not an easy task, but a necessary one, experts warn. "As the current landscape remains ripe with risk as the industry continues to grapple with overlapping - and sometimes incompatible - regulatory regimes, continued consciousness of state-level considerations remains

paramount for stakeholders working to implement NSA compliance initiatives,” Retzinger and Boaz remind.

Resource: Find the CAA enforcement letters on the NSA provisions at <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Other-Insurance-Protections/CAA>.