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## Surprise Billing Toolkit

### ***Update 3/4/2022***

A Federal District Court in Texas, in a suit brought by the Texas Medical Association, ruled that several of the regulatory provisions implementing the Independent Dispute Resolution (IDR) process under the No Surprises Act (NSA) are inconsistent with the NSA and should be invalidated. As a result, the Court vacated the following specific provisions on a nationwide basis:

- The requirement that the IDR entity select the offer closest to the QPA unless there is credible evidence indicating that the QPA is not the proper payment amount for the out-of-network rate.
- The requirement that the IDR entity consider additional information, when presented by the parties, that clearly demonstrates that the QPA is materially different from the out-of-network rate.
- The definition of “material difference.”
- The four examples in the October 2021 (Part 2) regulations that demonstrate how an IDR entity should choose between proposed payment amounts from the parties.
- The requirement that the IDR entity explain its decision if it did not choose the offer closest to the QPA.

On February 28, the Departments of Labor, Health and Human Services, and Treasury issued a Memorandum in response to the Court’s order. In that Memorandum the Departments state that they will:

- Withdraw guidance documents that are based on or refer to the portions of the regulation that the court vacated. Revised documents will be posted promptly.
- Provide training on the revised guidance for certified IDR entities and disputing parties.
- Open the IDR process for submissions through the IDR Portal. For disputes for which the open negotiation period has expired, the Departments will permit submission of a notice of initiation of the IDR process within 15 business days following the opening of the IDR Portal.

Although the District Court vacated certain sections of the IDR regulations, the rest of the IDR process is still in place and may be used to resolve payment disputes.

The No Surprises Act prohibits balance billing for 1) emergency services provided at a nonparticipating facility or by a nonparticipating provider; 2) non-emergency services provided at a participating facility by a non-participating provider; and 3) air ambulance services.

Group health plans, insurers, providers, and facilities are required to disclose a No Surprises Act notice, and providers and facilities are required to follow additional steps to obtain an individual's consent to balance bill for a subset of the protected services (i.e., post-stabilization services after an emergency and non-emergency services in a participating facility by a nonparticipating provider).

Additionally, the No Surprises Act requires group health plans and insurers to participate in negotiation and, if necessary, independent dispute resolution with nonparticipating providers and facilities who contest the plan's payment made under the No Surprises Act rules.

While the No Surprises Act provides a federal framework to combat balance billing, the law also keeps existing State balance billing laws in place. Therefore, fully insured plans and self-insured plans that opt-in to a State's balance billing law will potentially need to comply with both the No Surprises Act and a State's balance billing law.

To assist our clients through the process, we have developed a toolkit, which includes materials such as an overview article, employer considerations, common notices, sample procedures, and timelines. While each piece of the toolkit is independent, you can share as many pieces with each client that you believe are appropriate.

The components of the toolkit are as follows:

Webinar: No One Likes Surprises: What Employers Needs to Know about the No Surprises Act:

<https://event.on24.com/wcc/r/3551367/09D2EF40B98872AB4D9A6C5A2B49CF61>

Technical Bulletin: No Surprises Act Guidance – Part 1:

[http://ajg.adobeconnect.com/technical\\_bulletin\\_2021\\_02/](http://ajg.adobeconnect.com/technical_bulletin_2021_02/)

Technical Bulletin: No Surprises Act Guidance – Part 2:

[http://ajg.adobeconnect.com/technical\\_bulletin\\_2021\\_03/](http://ajg.adobeconnect.com/technical_bulletin_2021_03/)

FAQs: No Surprises Act – Employer FAQs: <http://ajg.adobeconnect.com/pgcc47av94jg/>

IDR Process Timeline: <http://ajg.adobeconnect.com/pw4f5eizp4p8/>



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Surprise Billing Notices: <http://ajg.adobeconnect.com/p1b4hlk1ckdk/>

Understanding the Notice and Consent Exceptions to the No Surprises Act:  
<http://ajg.adobeconnect.com/pnmbmv08x6pi/>

A Participant Signed a Balance Billing Consent. Is it Valid?  
<http://ajg.adobeconnect.com/p09rrxjdf3sr/>

The No Surprises Act Interaction with State Law:  
<http://ajg.adobeconnect.com/pol2fgx4b35f/>

With the New NSA: Should Employers Opt in (or Out) of State Surprise Billing Laws?:  
<http://ajg.adobeconnect.com/p7bnpykjq5vi/>

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*The intent of this analysis is to provide general information regarding the provisions of current federal laws and regulation. It does not necessarily fully address all your organization's specific issues. It should not be construed as, nor is it intended to provide, legal advice. Your organization's general counsel or an attorney who specializes in this practice area should address questions regarding specific issues.*