Maryland
INSURANCE ADMINISTRATION

MARYLAND
OFFICE OF THE ATTORNEY GENERAL

# What Maryland Health Care Providers Need to Know about the No Surprises Act's Balance Billing Provisions

Maryland
INSURANCE ADMINISTRATION

MARYLAND
OFFICE OF THE ATTORNEY GENERAL

This presentation does not provide legal advice. You should discuss specific questions with your legal counsel or contact the Centers for Medicare & Medicaid Services.

# No Surprises Act

- The federal No Surprises Act puts rules in place that limit the amount that patients may be billed by health care providers, health care facilities, and providers of air ambulance services for certain out-of-network services.
- The No Surprises Act also requires that patients be given certain notices and information regarding the cost for those services and their balance billing protections.

Maryland
INSURANCE ADMINISTRATION

MARYLAND
OFFICE OF THE ATTORNEY GENERAL

# No Surprises Act – Balance Billing Protections

**Effective January 1, 2022, the No Surprises Act balance billing protections will apply to items and services provided to most individuals with private or commercial health coverage, like:**

- Employment-based group health plans (both self-insured and fully insured);
- Individual or group health coverage on or outside the Federal or State-based Exchanges;
- Federal Employee Health Benefit (FEHB) health plans;
- Non-federal governmental plans sponsored by state and local government employers;
- Certain church plans within IRS jurisdiction; and
- Student health insurance coverage [as defined at 45 CFR 147.145].

Maryland
INSURANCE ADMINISTRATION

MARYLAND
OFFICE OF THE ATTORNEY GENERAL

# No Surprises Act Doesn't Apply

The No Surprises Act balance billing rules do not apply to people with coverage through these programs:

- Medicare;
- Medicaid;
- Indian Health Services;
- Veterans Affairs Health Care; or
- TRICARE.

Maryland
INSURANCE ADMINISTRATION

MARYLAND
OFFICE OF THE ATTORNEY GENERAL

# Agenda

This presentation will cover:

- The prohibitions on balance billing;
- Notice and consent requirements to waive certain balance billing protections;
- Balance billing protection disclosure requirements; and
- There are other aspects of the No Surprises Act that affect providers, but we do not have time to cover all of them today.

Maryland
INSURANCE ADMINISTRATION

MARYLAND
OFFICE OF THE ATTORNEY GENERAL

# Prohibitions on Balance Billing

Balance billing is billing the patient for the difference between the provider's charge and the amount the health plan pays plus the patient's cost-share amount.

The No Surprises Act prohibits balance billing in some circumstances, and creates a process for determining the patient's cost-share for emergency out-of-network services, out-of-network services at in-network facilities, and amounts out-of-network providers must be paid by health plans.

Maryland
INSURANCE ADMINISTRATION

MARYLAND
OFFICE OF THE ATTORNEY GENERAL

# Prohibitions on Balance Billing

Under the No Surprises Act, health plans are required to apply in-network cost-sharing terms, and out-of-network providers, facilities, or providers of air ambulance services are prohibited from billing patients more than the in-network cost sharing amounts ("balance billing") when:

1. A person gets covered emergency services from an out-of-network provider or out-of-network emergency facility;
2. A person gets covered non-emergency services from an out-of-network provider delivered as part of a visit to an in-network health care facility; or
3. A person gets covered air ambulance services provided by an out-of-network provider of air ambulance services.

Maryland
INSURANCE ADMINISTRATION

MARYLAND
OFFICE OF THE ATTORNEY GENERAL

# Prohibitions on Balance Billing

The No Surprises Act prohibitions on balance billing for air ambulance, emergency, and non-emergency services only apply to items or services that are covered benefits under the in-network terms of a privately insured individual's health plan or coverage.

Prohibitions on balance billing under the No Surprises Act apply to items or services delivered in health plan years starting on or after January 1, 2022.

Maryland
INSURANCE ADMINISTRATION

MARYLAND
OFFICE OF THE ATTORNEY GENERAL

# Prohibitions on Balance Billing – Consumer Consent Exceptions

In limited situations, some out-of-network providers and facilities are permitted to seek written consent (a notice-and-consent exception) from individuals to voluntarily waive their No Surprises Act protections against balance billing for post-stabilization services or non-ancillary, non-emergency services. We will explain what “post-stabilization” and “ancillary” mean later in the presentation.

Maryland
INSURANCE ADMINISTRATION

MARYLAND
OFFICE OF THE ATTORNEY GENERAL

# Prohibitions on Balance Billing

In situations where balance billing is banned and a notice-and-consent exception doesn't apply, an out-of-network provider, emergency facility, or provider of air ambulance services cannot:

1. Bill an individual for an amount that exceeds in-network limits on cost-sharing; or
2. Hold an individual liable for paying an amount that exceeds in-network limits on cost-sharing, and the individual cannot be put in the middle of a dispute regarding the total payment amount from the plan or issuer to the provider, facility, or provider of air ambulance services.

Maryland
INSURANCE ADMINISTRATION

MARYLAND
OFFICE OF THE ATTORNEY GENERAL

# Prohibitions on Balance Billing – Air Ambulance Services

Out-of-network air ambulance service providers cannot balance bill for the following air ambulance services, including medical supplies and services provided in transport:

1. Medical transport by helicopter (“rotary wing” ambulance); and
2. Medical transport by airplane (“fixed wing” ambulance).

This applies when air ambulance services are covered under the in-network terms of an individual’s health plan/coverage, even if there are no in-network air ambulance service providers within an individual’s plan/coverage.

Air ambulance service providers may NEVER seek an individual’s consent to waive No Surprises Act protections for these services through notice-and-consent exceptions.

*The No Surprises Act does not apply to ground ambulance services, but Maryland law offers some balance billing protections.*

Maryland
INSURANCE ADMINISTRATION

MARYLAND
OFFICE OF THE ATTORNEY GENERAL

# Emergency Services – Health Care Providers

Physicians and other health care providers acting within their scope of practice (e.g., a certified nurse practitioner or physician assistant) cannot send a balance bill for covered emergency services when providing care as an out-of-network provider at an emergency facility.

# Emergency Services – Facilities

The following types of facilities can't send a balance bill for covered emergency services when providing care as an out-of-network emergency facility:

1. Emergency departments of a hospital, defined as hospital outpatient departments that provide emergency services;
2. Hospitals, regardless of the department, when providing post-stabilization services; and
3. Independent, freestanding emergency departments, defined as health care facilities that:
   - Are geographically separate and distinct and licensed separately from a hospital under applicable state law; and
   - Provide any emergency services.

Note: The facility does not have to be licensed as an "independent freestanding emergency department" to be treated as independent, freestanding emergency department.

Maryland
INSURANCE ADMINISTRATION

MARYLAND
OFFICE OF THE ATTORNEY GENERAL

# Emergency Services

Under the No Surprises Act, balance billing isn't allowed for emergency services when an individual gets care for an emergency medical condition, using a "prudent layperson" definition, and not based solely on the diagnosis codes:

- A person, who has average knowledge of health and medicine, experiences a medical condition (including a mental health condition or substance use disorder) that is so severe they believe:
  - They need immediate medical care; and
  - Failing to get immediate medical care could:
    * Result in their health or the health of their unborn child being in serious jeopardy; or
    * Result in serious impairment to bodily functions; or
    * Lead to serious dysfunction of any bodily organ or part.

Maryland
INSURANCE ADMINISTRATION

MARYLAND
OFFICE OF THE ATTORNEY GENERAL

# Prohibitions on Balance Billing – Emergency Services

Out-of-network providers and emergency facilities are ALWAYS banned from balance billing for the following emergency services:

- An appropriate medical screening examination that is within the capability of the emergency department of a hospital or of an independent freestanding emergency department, including ancillary services routinely available to the emergency department, to evaluate whether an emergency medical condition exists; and
- Further medical examination and treatment as may be required to stabilize the individual (regardless of the department of the hospital in which the further medical examination and treatment is furnished) within the capabilities of the staff and facilities available at the hospital or the independent freestanding emergency department.

Maryland
INSURANCE ADMINISTRATION

MARYLAND
OFFICE OF THE ATTORNEY GENERAL

# Post Stabilization Services

Under the No Surprises Act, certain post-stabilization services are considered emergency services, and prohibitions on balance billing generally apply.

Post-stabilization services are covered services that are provided after the individual is stabilized, as part of an outpatient observation, or an inpatient or outpatient stay related to the emergency visit (regardless of the department of the hospital).

Post-stabilization care is considered emergency care until the treating provider determines the patient can travel safely to an available in-network facility using non-medical transport or nonemergency medical transport, within a reasonable travel distance, taking into consideration the individual's medical condition. The provider's determination is binding on the facility.

Maryland
INSURANCE ADMINISTRATION

MARYLAND
OFFICE OF THE ATTORNEY GENERAL

# Consent to Waive Balance Billing Restrictions on Post-Stabilization Services

In limited circumstances, emergency facilities and some out-of-network providers can use the No Surprises Act's notice-and-consent exceptions to obtain voluntary consent from an individual to waive the balance billing protections for certain post-stabilization services. CMS has model forms on their website. The patient must be able to understand the consent form and waiver.

*Notice-and-consent details will appear in later slides.*

Maryland HMO members and PPO/EPO members receiving care from on-call or hospital-based physicians who accept an assignment of benefits, cannot be asked to waive their balance-billing protections.

Maryland
INSURANCE ADMINISTRATION

MARYLAND
OFFICE OF THE ATTORNEY GENERAL

# Non-Emergency Services

Out-of-network providers cannot balance bill an individual who gets covered, non-emergency items and services that are part of a visit at an in-network health care facility, except in the limited circumstances where the notice-and-consent exceptions apply.

Providers

Physicians and other health care providers acting within their scope of practice (e.g., a certified nurse practitioner or physician assistant).

In-Network Facility

- Hospitals
- Hospital outpatient departments
- Ambulatory surgical centers

➢ In-network includes having a single case agreement with a health plan for a specific individual.

Maryland
INSURANCE ADMINISTRATION

MARYLAND
OFFICE OF THE ATTORNEY GENERAL

# Non-Emergency Services

Non-Emergency services include:

1. Equipment and devices;
2. Imaging services;
3. Telemedicine services;
4. Lab services;
5. Preoperative services and postoperative services.

The items or services don’t need to happen physically within the in-network facility to be treated as part of the visit (e.g. offsite laboratory services).

Maryland
INSURANCE ADMINISTRATION

MARYLAND
OFFICE OF THE ATTORNEY GENERAL

# Prohibitions on Balance Billing – Ancillary Services

The No Surprises Act prohibits balance billing for ancillary services. Consumers may not consent to be balance billed for these services.

The No Surprises Act defines ancillary services as:

- Items and services related to emergency medicine, anesthesiology, pathology, radiology, and neonatology, provided by either a physician or non-physician practitioner;
- Items and services provided by assistant surgeons, hospitalists, and intensivists;
- Diagnostic services, including radiology and laboratory services; and
- Items and services provided by an out-of-network provider when there is no in-network provider who can provide the item or service at the in-network health care facility.

Notice-and-consent exceptions also never apply to non-emergency services when items or services are provided due to unforeseen urgent medical needs in the course of care delivery.

Maryland
INSURANCE ADMINISTRATION

MARYLAND
OFFICE OF THE ATTORNEY GENERAL

# Limited circumstances when a provider may use Notice and Consent Form

| Emergency services, including post-stabilization services | |
|---|---|
| **Use of Notice-and-Consent Exception Not Allowed** | **When providing any emergency services prior to post-stabilization services, including medical exams and treatment to stabilize an individual**<br>**When providing items or services due to unforeseen urgent medical needs in the course of care delivery**<br>**When providing post-stabilization services if any one of the requirements listed below are not met**<br>**Additional situations banned by state law** |
| **Use of Notice-and-Consent Exception Allowed** | **When providing post-stabilization services and all the following are true:**<br>• An individual is stable enough to travel using nonmedical or nonemergency medical transport to an available in-network provider/facility located within a reasonable travel distance given the individual's medical condition.<br>• The individual or their authorized representative is in a condition where they can receive information and provide informed consent.<br>• The provider/facility provides written notice and obtains written consent from the individual to waive balance billing protections under the No Surprises Act, in compliance with all related statutory and regulatory requirements.<br>• The provider/facility complies with applicable state laws. |

Maryland
INSURANCE ADMINISTRATION

MARYLAND OFFICE OF THE ATTORNEY GENERAL

*This chart was taken from the Centers for Medicare & Medicaid Services presentation "The No Surprises Act Prohibition"*

# Limited circumstances when a provider may use Notice and Consent Form

| Non-emergency services | |
|---|---|
| **Use of Notice and Consent Exception <u>Not</u> Allowed** | **When providing ancillary services, defined as:**<br>• Emergency medicine, anesthesiology, pathology, radiology, neonatology items or services provided by physician or non-physician practitioner;<br>• Items or services provided by assistant surgeons, hospitalists, and intensivists;<br>• Diagnostic services, including radiology and laboratory services;<br>**Items or services of an out-of-network provider if there is no in-network provider who can provide the item or service at the facility.**<br>**When providing items or services due to unforeseen urgent medical needs in the course of care delivery.**<br>**Additional situations banned by state law.** |
| **Use of Notice and Consent Exception <u>Allowed</u>** | **When providing non-emergency services (i.e., not post-stabilization services) in an in-network facility and all the following are true**:<br>• The items or services do not meet the definition of ancillary services;<br>• Another in-network provider can deliver the items or services at the in-network health care facility; and<br>• The provider gives written notice and gets written consent from the individual to waive the balance billing protections under the No Surprises Act, in compliance with all related statutory and regulatory requirements. |

Maryland
INSURANCE ADMINISTRATION

MARYLAND
OFFICE OF THE ATTORNEY GENERAL

*This chart was taken from the Centers for Medicare & Medicaid Services presentation "The No Surprises Act Prohibition"*

# What information must be included in the Notice and Consent

CMS provides a template for the notice and consent forms. (https://www.cms.gov/files/document/standard-notice-consent-forms-nonparticipating-providers-emergency-facilities-regarding-consumer.pdf)

**Carefully read and follow the instructions given by CMS.*

Maryland
INSURANCE ADMINISTRATION

MARYLAND
OFFICE OF THE ATTORNEY GENERAL

# Balance Billing – Disclosure Requirements

Health care providers and health care facilities prohibited from balance billing under the No Surprises Act (except air ambulances) are required to publicly share written disclosures, through multiple methods, outlining key balance billing protections.

The disclosures must include:

1. The prohibitions on balance billing for emergency or non-emergency services with which the provider or health care facility must comply;
2. Any state laws governing balance billing with which the provider or health care facility must comply; and
3. Contact information for state and/or federal agencies that an individual can contact to report a suspected provider or health care facility violation of the balance billing protections in the No Surprises Act or state laws governing surprise medical bills.

Maryland
INSURANCE ADMINISTRATION

# Balance Billing – Disclosure Requirements

Health care providers and health care facilities must share the required disclosure through 3 methods:

1. Public signage posted prominently at the provider or facility's location (unless there is no publicly accessible location);
2. Posting on a public, easily accessible website paywalls (unless there is no website); and
3. One-page notice provided directly to insured individuals that must be delivered in person or by email or mail, based on the individual's preference.

Maryland
INSURANCE ADMINISTRATION

MARYLAND
OFFICE OF THE ATTORNEY GENERAL

# Balance Billing – Disclosure Requirements- One-Page Notice

- Notice should be limited to one double-sided page and must use a font size of 12-points or larger.
- Notice must be provided NO LATER than the date & time when payment is requested, including requests for co-payments or co-insurance made at the time of the visit.
- If payment isn't requested from an individual, the notice must be provided NO LATER than the date a claim is submitted for payment to a health plan or issuer.

Maryland
INSURANCE ADMINISTRATION

MARYLAND
OFFICE OF THE ATTORNEY GENERAL

# Balance Billing – Disclosure Requirements- Model Notice

- HHS has issued a model disclosure notice that providers and facilities can *choose* to use.
- This model disclosure was published as part of CMS Form Number 10780 and is available for download at: https://www.cms.gov/httpswwwcmsgovregulations-and-guidancelegislationpaperworkreductionactof1995pra-listing/cms-10780
- HEAU and MIA developed the required state-specific language to assist providers and facilities in satisfying the No Surprises Act requirement. The model notice with Maryland-specific language can be found here.

Maryland
INSURANCE ADMINISTRATION

MARYLAND
OFFICE OF THE ATTORNEY GENERAL

# Determining Patient Cost Share

When balance billing is banned under the No Surprises Act, health plans must calculate the patient's in-network cost sharing amount based on the "recognized amount" as specified in regulations. This amount can be set by:

1. All-payer model agreement (if applicable to plan and provider);
2. Specified state law (if applicable to plan and provider); or
3. Lesser of:
    a) billed charges, or
    b) **Qualifying Payment Amount**

Maryland
INSURANCE ADMINISTRATION

MARYLAND
OFFICE OF THE ATTORNEY GENERAL

# Determining Patient Cost Share

The Qualifying Payment amount is defined in regulation and is generally the plan or issuer's median contracted rate for the item or service in the geographic area where the item or service was delivered from January 31, 2019, indexed for inflation.

For Air Ambulance services, the all-payer and specified state law provisions do not apply.

Maryland
INSURANCE ADMINISTRATION

MARYLAND
OFFICE OF THE ATTORNEY GENERAL

# Determining Provider Reimbursement

After an out-of-network provider, facility, or provider of air ambulance services furnishes items or services to an individual, the out-of-network provider or facility receives an initial payment from the health plan or issuer. However, the final payment they receive from the plan may be determined by:

- An all-payer model agreement (APMA) or specified state law, depending on the item or service, geographic area where the care was provided, and type of plan or issuer and provider or facility involved.
- If there is no APMA or specified state law that applies, the provider, facility, or air ambulance provider may accept the initial payment as payment in full or may enter into a 30-business-day period of open negotiations with the health plan or issuer to determine the final total amount.
- If negotiations fail, the two parties may enter a federally-administered independent dispute resolution (IDR) process to determine final total payment. A portion of these regulations were recently vacated by Texas federal court judge.

More information about the IDR process can be found at: https://www.cms.gov/nosurprises/policies-and-resources/overview-of-rules-fact-sheets

Maryland
INSURANCE ADMINISTRATION

MARYLAND
OFFICE OF THE ATTORNEY GENERAL

# Determining payment amounts

Maryland has laws that will determine the consumer and provider payment amounts in some situations, including:

- An all-payer model agreement for Maryland hospital services.
- Section 19-710.1 of the Health-General Article applies to services to members of an HMO.
- Section 14-205.2 of the Insurance Article applies to hospital-based physicians and on-call physicians who accept assignment of benefits.
- Section 15-138 of the Insurance Article prohibits ambulance service providers owned, operated, or under the jurisdiction of a political subdivision of the state or a volunteer fire company or rescue squad that accept assignment of benefits from balance billing patients for covered services.

Rates are set by the respective statutes.

Maryland
INSURANCE ADMINISTRATION

MARYLAND
OFFICE OF THE ATTORNEY GENERAL

# Where to Go for Help

**Maryland Insurance Administration** – The MIA can review decisions by health plans that are subject to Maryland law. Many of these will have "MIA" printed on the ID card.

Specifically, the MIA can review:

- The denial of all or part of a claim;
- Whether the amount of payment complies with legal requirements; and
- Consumer complaints about whether a claim was properly processed to permit balance billing.

**Health Education & Advocacy Unit of the Maryland Attorney General** – The HEAU assists consumers with medical billing disputes, including balance billing disputes. The HEAU also helps consumers (including providers seeking assistance on their patients' behalf) whose private health plans (including those not subject to Maryland law) have denied coverage for all or part of a claim, or whose plans may have improperly processed claims to permit balance billing. The HEAU will mediate No Surprises Act complaints and may refer violations to the Office's Consumer Protection Division for enforcement.

# Overview: No Surprises Act - Provider and facility requirements that apply starting January 1, 2022

- No balance billing for out-of-network emergency services (PHSA 2799B-1; 45 CFR 149.410)
- No balance billing for non-emergency services by nonparticipating providers at certain participating health care facilities, unless notice and consent was given in some circumstances (PHSA 2799B-2; 45 CFR 149.420)
- Disclose patient protections against balance billing (PHSA 2799B-3; 45 CFR 149.430)

Maryland
INSURANCE ADMINISTRATION

MARYLAND
OFFICE OF THE ATTORNEY GENERAL

# Overview: No Surprises Act - Provider and facility requirements that apply starting January 1, 2022

- No balance billing for air ambulance services by nonparticipating air ambulance providers (PHSA 2799B-5; 45 CFR 149.440)
- Provide good faith estimate in advance of scheduled services, or upon request (PHSA 2799B-6; 45 CFR 149.610 (for uninsured or self-pay individuals)
- Ensure continuity of care when a provider's network status changes (PHSA 2799B-8)
- Improve provider directories and reimburse enrollees for errors (PHSA 2799B-9)

Maryland
INSURANCE ADMINISTRATION

MARYLAND
OFFICE OF THE ATTORNEY GENERAL

# Contact Information

**Maryland Insurance Administration**

**800-492-6116 or 410-468-2000**

**www.insurance.maryland.gov**

**For questions, email: lhcomplaints.mia@maryland.gov**

Maryland Insurance Administration

Maryland Insurance Administration

marylandinsuranceadmin

MD_Insurance

Maryland
INSURANCE ADMINISTRATION

# Contact Information

**Health Education and Advocacy Unit**
**Consumer Protection**
**Office of the Attorney General**

**(410) 528-1840 or (877) 261-8807 (toll free)**

**Fax: (410) 576-6571**

heau@oag.state.md.us

www.marylandcares.org

# Contact Information

- More information about the No Surprises Act can be found at: https://www.cms.gov/nosurprises

- Providers can email questions to CMS at: provider_enforcement@cms.hhs.gov

Maryland
INSURANCE ADMINISTRATION

MARYLAND
OFFICE OF THE ATTORNEY GENERAL

Information contained in this presentation are based on the CMS presentation "The No Surprises Act's Prohibitions on Balance Billing:

https://www.cms.gov/files/document/a274577-1a-training-1-balancing-billingfinal508.pdf