

# Implementing the No Surprises Act

November 2, 2021

# Scope of No Surprises Act

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**Out of Network  
Emergency  
Care** (includes  
freestanding ER)

**Out of Network  
Provider at In-  
Network  
Facility**

**Air Ambulance**

*What's Not Covered:*

- *Other out of network care*
- *Ground Ambulance*
- *Urgent Care (unless regulated by State as ER)*

# How We Got Here

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- Market failures affected all commercial insured patients through high in-network rates.

## **Average contracted commercial payment rates:**

- Anesthesiologists ≈ 350% of Medicare
  - Pathologists ≈ 350% of Medicare
  - Emergency Medicine ≈ 300% of Medicare
  - Radiologists ≈ 200% of Medicare
  - Average across all physicians ≈ 125% of Medicare
- Certain specialties purposely used surprise medical billing as a business strategy to increase revenue through balance billing and generating higher in-network rates

**Note:** Estimated premium impact extrapolates from CBO estimates and assumes non-market failure contracted rates at 150% of Medicare.

**Sources:** Stead and Merrick 2018; Trish et al. 2017; MedPAC 2017; Song 2019.

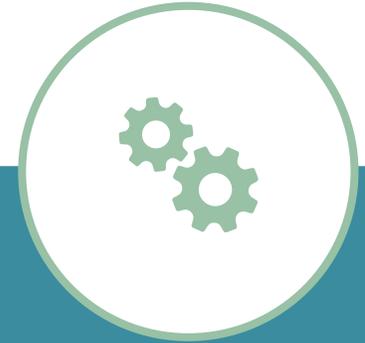
# Key Priorities for Implementation of the No Surprises Act



Reduce health costs by maintaining reasonable market-based payments to out-of-network providers & incent providers to join health plan networks



Ensure broad protections against unfair, surprise medical bills by establishing clear definitions around the scope of services affected by the law



Avoid a cumbersome arbitration process that increases costs for patients, businesses and taxpayers

# Experience in States with Surprise Billing Protection Points to Instances of Abuse Among Out-of-Network Providers

## NEW YORK



### To End Surprise Medical Bills, New York Tried Arbitration. Health Care Costs Went Up

- In 2015, [New York] passed a surprise billing law that uses "baseball-style" arbitration as a way to settle payment disputes between insurance companies and doctors."
- According to an analysis of newly released data from New York's Department of Financial Services, the New York model is making health care substantially more expensive in the state. In fact, arbiters are typically deciding on dollar amounts above the 80th percentile of typical costs.
- "This is an extremely high and extremely inflationary rule of thumb," says Loren Adler, author of the analysis and associate director of the USC-Brookings Schaeffer Initiative for Health Policy.

## NEW JERSEY



### Arbitration Decisions in New Jersey Surprise Billing Cases Result in Large Payouts

- Brookings evaluated 1,695 cases that resulted in arbitration decisions in New Jersey in 2019. The researchers link administrative data from New Jersey arbitration cases to Medicare and commercial insurance claims data.
- While few cases went to arbitration, the award amounts were considerably higher than typical in-network payment amounts. The mean arbitration award was \$7,222—9 times higher than the median in-network price for the same services. The median award amount was 5.7 times higher at \$4,354.
- Thirty-one percent of cases decided were for amounts more than 10 times the median in-network price.

## TEXAS



### Texas 'Surprise' Hospital Bill Ban Points to Capitol Hill Clash

- A provision in the law similar to those in New York and New Jersey instructs arbitrators to consider very high charges set by out-of-network doctors. And that is leading to high arbitration payouts, according to data recently released by the Texas Department of Insurance (TDI).
- Eighty-five percent of arbitration requests in the first six months of the Texas law were from Team Health, SCP Health, and Tyvan Billing.
- The cost of arbitration is averaging about \$1,000 per claim, "twice as much as the total cost of care."

# Provisions for Reducing Health Care Costs

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## Qualified Payment Amount

- Larger QPA = higher the out-of-pocket costs (esp for 122+ million have co-insurance in hospital and outpatient scenarios)
- Congress intended law to achieve \$17 B in healthcare savings

## Limited Arbitration

- Choose IDR offer closest to QPA (reflecting of recent contracted rates in that geographic area)
- Increase predictability of IDR
- Reduce prices that were previously inflated by surprise billing

# Recommendations for State Policy Makers

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- Focus on both low out of pocket costs for consumers and policies that don't inflate healthcare spending
- Ensure clear delineations between Federal & State Law - avoid situations where same claim is covered by both laws
- Assess impact of federal law before modifying state law (targeted alignment may be needed)
- Focus on provider billing enforcement – a new area for many states
- Remember approx. 110 million Americans in self-funded ERISA plans automatically covered by federal rules

# Additional Research/Appendix

# Private Equity Is Expanding Its Reach In Healthcare

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**Between 2003 and 2017, 42 private equity acquisitions involving 282 unique hospitals occurred across 36 states.**

- Acquired hospitals were significantly larger than nonacquired hospitals in terms of number of beds and discharges.
- Private equity–acquired hospitals had higher charge-to-cost ratios compared to nonacquired hospitals.
- Acquired hospitals accounted for almost 7.5 percent of all non-government-operated general acute care hospitals and 11 percent of all patient discharges in 2017.

**In 2018, the valuation of private equity deals in the US health care sector surpassed \$100 billion—a twentyfold increase from 2000.**

# High air ambulance charges concentrated in private-equity owned carriers (Oct 2020)

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## Air ambulances are frequent sources of surprise medical bills

- 40% of helicopter ambulance rides result in a surprise medical bill, which averages around \$20,000.

## Private equity-owned air ambulances charge the highest rates

- In 2017, helicopter air ambulances owned by two private equity firms charged, on average, \$48,250 — or 7.2 times the Medicare rate.
- These two companies – owned by KKR and American Securities – make up 64% of the Medicare market.
- Air ambulances that weren't owned by private equity firms or publicly traded companies charged \$28,800 on average — which is still 4.3 times higher than the Medicare rate.

## Private equity carrier charges have grown faster than the charges of other air ambulances

- Average charges from private equity carriers grew by 79% between 2012 and 2017, compared to 36% growth for carriers not part of private equity-owned companies.
- GAO reported that Air Methods (owned by American Securities) increased the average price charged per transport from \$13,000 in 2007 to \$49,800 in 2017 – an increase of 283% over the past decade.

# Surprise Bills Among Members of Commercial Health Insurance

In 2008, consumers in both emergency and non-emergency situations encountered out-of-network care from providers they did not select and that generated unexpected charges resulting in a surprise bill.

- Data reflects 2018 claims from Anthem’s affiliated commercial plans, which cover more than 23 million consumers across 14 states.
- Overall, 1.8 percent of Anthem’s affiliated commercial health plan members and 6.2 percent of episodes generated an out-of-network claim that might have resulted in a surprise bill in 2018. While those percentages are low, they represent \$1.5 billion in possible surprise bills that would be the responsibility of the consumer.
- The analysis found substantial variation across episode and facility type. Emergency care had a greater proportion (11.1%) of episodes with an out-of-network charge(s) that could result in a surprise bill(s) compared to non-emergency care (1.8%).
- Accordingly, facility types associated with emergency care had a greater proportion of episodes with the potential for a surprise bill(s) with nearly one quarter of emergency hospitalizations (23.8%) and 9 percent of ED visits possibly leading to a surprise bill.

**Figure 3**  
**Potential Surprise Bill By Specialty/Ancillary Service Type 2018**

DME Durable Medical Equipment  
 NP Nurse Practitioner  
 OT Occupational Therapy  
 PT Physical Therapy  
 ST Speech Therapy

Source: Claims data from Anthem’s affiliated commercial health plans for services rendered in 2018. Figures are rounded and may not add up to 100%.

