

What the Federal *No Surprises Act* Means for Californians

New Law Protects Millions of Californians from Surprise Medical Bills

In a landmark federal law going into effect January 1, 2022, over 6 million Californians will be protected from receiving certain surprise medical bills, which can wreak havoc on the finances of patients and their families. Surprise bills occur when patients get an out-of-network bill, either following emergency care or from an out of network doctor at an in-network hospital or facility. While California already has some of the strongest protections in the nation against surprise billing, the federal law fills in key gaps, most notably for those with coverage regulated at the federal level.

The **No Surprises Act** was signed on December 27, 2020 as part of the Consolidated Appropriations Act of 2021. This bipartisan, bicameral solution, resulting from over two years of stalled negotiations, stops surprise billing for emergency services, care provided by an out-of-network provider within an in-network facility, and air ambulances. While this law does **not** stop surprise billing for ground ambulance services, it requests a report on addressing this remaining gap.

Existing California Law on Surprise Medical Bills—And Its Gaps

California has existing law to prevent and protect many consumers from surprise medical bills, as well as precedent from previous California Supreme Court decisions.

PHYSICIAN BILLS: In 2016, California passed AB 72 to prevent surprise medical billing when a patient sees an out-of-network doctor at an in-network hospital or other facility.

- In AB 72, a consumer is only responsible for in-network cost sharing. The payment between the insurance company and the provider is based on a benchmark rate: either 125% of Medicare, or the average contracted rate for that service for that health plan in that region. Providers or insurers can appeal through an Independent Dispute Resolution Process.
- AB 72 applies to 14 million Californians with coverage regulated by the state's Department of Managed Health Care (DMHC) and the California Department of Insurance (CDI).
- **GAP:** Almost 6 million Californians who are in self-funded insurance plans, regulated by the Department of Labor (DOL) under federal ERISA law, did not have the same protections.

EMERGENCY ROOM BILLS: For emergency care and post-stabilization care, a California 2009 Supreme Court decision in *Prospect Medical Group Inc. v Northridge Emergency Medical Group* unanimously ruled that non-contracting emergency room doctors and hospitals cannot send the balance of a bill to consumers with DMHC-regulated coverage.

- **GAP:** Almost 7 million Californians who have coverage regulated by the state CDI or the federal DOL remained at risk for getting balance bill for an emergency room visit.

AIR AMBULANCE BILLS: AB 651, passed in 2019, protects Californians from being surprise billed for air ambulances.

- **GAP:** AB 651 did not set a payment standard.

FACT SHEET: What the Federal No Surprises Act Means for Californians

Consumer Protections in the No Surprises Act

No more surprise physician bills: The federal *No Surprises Act* finally provides relief for the around 6 million Californians with federally regulated coverage who were not protected under AB 72, and at risk for getting a surprise bill for physician care received at an in-network facility, provided by an out-of-network provider. The *No Surprises Act* ensures that a consumer is taken out of the middle of disputes between a provider or facility and a health plan. A consumer is only responsible for the in-network cost sharing for that service, and it will be attributed to the in-network deductible and the maximum out-of-pocket cost.

No more surprise emergency room bills: For the 6 million Californians in federally regulated plans and 1 million Californians with coverage regulated by the CA Department of Insurance, the *No Surprises Act* protects them from being balance billed for receiving care in an emergency setting.

Consent to go out-of-network: Under the *No Surprises Act*, a patient can consent 72 hours in advance to receive care from certain types of providers who are out-of-network. However, this provision does not apply to emergency care or certain providers, including: anesthesiologists, radiologists, pathologists, neonatologists or if there is no in-network doctor at in-network hospital. Current California law allows consent 24 hours in advance if given in writing. Health Access hopes to reconcile California law with the more consumer friendly aspects of the federal law.

Payment Standard in the No Surprises Act

While the federal and state laws protect patients similarly, they differ on the payment standard between the provider or facility and the health plan. The *No Surprises Act* defers to stronger state laws like AB 72 and its benchmark approach when applicable.

But for federally regulated plans, the *No Surprises Act* states the provider and the plan have a 30-day open negotiation period. If they are unable to agree, they go into “baseball arbitration” using an Independent Dispute Resolution Process (IDRP). The IDRP selects only between one of two rates: the rate proposed by the insurer or by the doctor/hospital. The IDRP entity is encouraged to strongly consider the median in-network rate, but can also consider other factors such as the training and experience of a doctor or whether a hospital is an academic medical center, trauma center, or other factors. This process is also used for resolving air ambulance claims. Previous California legislation protected consumers, but did not set a payment standard or process.

Conclusion

With the No Surprises Act, along with already in place state protections, all Californians, no matter what their health insurance coverage, are now protected from receiving a surprise medical bill when receiving out-of-network care without their knowledge. All Californians are also protected from air ambulance bills, but a loophole still remains for ground ambulances.