



No Surprises Act: Impact on Surprise Billing

The No Surprises Act (NSA) was enacted on December 27, 2020, to address certain instances of surprise billing – circumstances where individuals with private health insurance receive unexpectedly high medical bills after they are unknowingly or unavoidably treated by an out-of-network (OON) provider.¹

Over 200 million Americans have private health insurance coverage and could potentially benefit from the NSA surprise billing provisions.²

Although some states have enacted laws to address balance billing, state laws have created a patchwork of consumer protections. Even within a state that has enacted such protections, those protections typically apply only to some individuals enrolled in individual and group health insurance coverage. For self-insured group health plans sponsored by private employers, the federal Employee Retirement Income Security Act (ERISA) generally preempts state laws. These self-insured private plans governed by ERISA cover approximately 100 million individuals.³ In addition, states are limited in their ability to address surprise bills that involve an out-of-state provider.

Surprise Bills Have Been Common in Emergency and Inpatient Settings

Prior to the enactment of the NSA, studies found OON bills were a common occurrence for patients treated in emergency departments or who were admitted to the hospital, many of which would be considered surprise bills. A previous ASPE report provides a detailed overview of the research evidence on surprise billing, including the impacts of state laws.⁴ Here is some of the important evidence discussed in that report:

One study using claims data for group health plans in 2014 found that surprise billing was common across hospital departments, occurring in:

- 20 percent of inpatient admissions that originated in the emergency department,
- 14 percent of outpatient emergency department visits, and
- 9 percent of elective inpatient admissions were likely to result in surprise medical bills.⁵

Another study using claims data from a large commercial issuer from 2010–2016 found that for visits to an *in-network hospital*:

- 39 percent of emergency department visits still resulted in an out-of-network bill.

¹ In the report, “provider” refers to providers, facilities, and providers of air ambulance services that are subject to NSA requirements. A provider who has a contract with a given health plan or issuer is considered to be an in-network provider, one who does not is considered to be out of network (called OON in this report).

² 86 FR 55980 (Oct., 7, 2021).

Cohen R. and Cha A. “Health insurance coverage: Early release of estimates from the National Health Interview Survey, 2022” National Center for Health Statistics. (May 2023.) https://www.cdc.gov/nchs/data/nhis/earlyrelease/insur202305_1.pdf

³ Employee Benefits Security Administration. “Health Insurance Coverage Bulletin.” (August 2022).

⁴ “Evidence on Surprise Billing: Protecting Consumers with the No Surprises Act” (Issue Brief No. HP-2021-24). Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services. (November 2021.)

<https://aspe.hhs.gov/sites/default/files/documents/acfa063998d25b3b4eb82ae159163575/no-surprises-act-brief.pdf>

⁵ Garmon C. and Chatock B., One In Five Inpatient Emergency Department Cases May Lead to Surprise Bills, *Health Affairs* 36, No. 1 (2017): 177–181.

- 37 percent of inpatient admissions resulted in at least one out-of-network bill.⁶

That study also found that patient OON responsibility for ED surprise bills averaged \$628 and averaged \$2,040 for inpatient admissions.⁷ These unexpected costs represent significant financial distress for many Americans, 63 percent of whom report not being able to cover a hypothetical \$400 emergency expense exclusively using cash or its equivalent.⁸

Provisions of the NSA that Address Surprise Billing

Under the NSA, an OON provider subject to balance billing⁹ requirements generally may not charge more than the patient's in-network cost sharing requirement based on the Recognized Amount¹⁰ for non-air ambulance items and services. The law also creates a process for resolving disputes over payment rates between providers and plans and issuers under certain circumstances. The enactment of the NSA, as well as several previous state surprise billing laws, was motivated by consumer concerns about the adverse financial impacts of surprise medical bills.

Evaluation of the Impacts of the No Surprises Act on Health Care Market Outcomes: Baseline Trends and Framework for Analysis (First Annual Report)

The NSA requires the Secretary, in consultation with the Federal Trade Commission and Attorney General, to produce annual reports for five years on the impact of NSA on patterns of vertical or horizontal integration (i.e., market consolidation and concentration), overall health care costs, and access to health care items and services.

This first annual report focuses largely on establishing a baseline and a framework for further evaluation. The report details key trends in factors that will be important to evaluate the NSA's effects including: the implementation and impacts of state surprise billing laws already in effect; trends in market consolidation and concentration; the impact of market consolidation and concentration on prices, quality, and spending; and trends in OON billing. This report also describes a conceptual framework for considering the health care market effects of NSA, as well as describing potential methodologic approaches (and their limitations) for estimating these effects. Subsequent reports will implement some of these approaches.

Estimates of the impacts of the NSA have several limitations. For the first Report, the surprise billing provisions in the law went into effect on January 1, 2022, and it likely will take time to see the full impact of the law on these outcomes -as well as have adequate data with which to evaluate the law. In addition, surprise bills are likely to be a relatively small proportion of total health care claims for items and services. Furthermore, existing data suggest these bills, and therefore the law's impact, may be concentrated in a few service areas, such as emergency departments and air ambulance services. These service areas may see significant impacts, while the majority of items and services in the health care sector may be less directly impacted by the law. The

⁶ Sun EC, Mello MM, Moshfegh J, Baker LC, Assessment of Out-of-Network Billing for Privately Insured Patients Receiving Care in In-Network Hospitals. *JAMA Intern Med.* 2019; 179(11):1543–1550 (2019).

⁷ Ibid.

⁸ Board of Governors of the Federal Reserve System. "Economic Well-Being of U.S. Households in 2022." May 2023. <https://www.federalreserve.gov/publications/files/2022-report-economic-well-being-us-households-202305.pdf>

⁹ Balance billing refers to the practice of out-of-network providers billing patients for the difference between (1) the provider's billed charges, and (2) the amount collected from the plan or issuer plus the amount collected from the patient in the form of cost sharing (such as a copayment, coinsurance, or amounts paid toward a deductible)

¹⁰ The Recognized Amount is the lesser of the amount billed by the provider or facility or the Qualifying Payment Amount (QPA), if an applicable state law or All-Payer Model Agreement does not provide for a different out-of-network rate. For air ambulance services provided by a nonparticipating provider, the cost-sharing requirement must be based on the lesser of the QPA or the billed amount.

broader impacts on vertical or horizontal integration, overall health care costs, and access to health care that Congress requests for its reports will take even longer to assess. Finally, the trends in NSA impacts that are the subject of these reports are influenced by many factors over time, including but not limited to demographic changes, technology changes that affect health care delivery, economic conditions, the COVID-19 pandemic, and health care policies that alter financial incentives. Thus, it is challenging to directly attribute observed changes to NSA policies.

One study sought to evaluate initial impressions of the impact of NSA through structured interviews with federal and state regulators, as well as organizations representing consumers, employers, payors, providers, and medical billing companies.¹¹ Based on these interviews, the authors concluded that “the NSA appears to be protecting patients from the most pervasive forms of balance billing.” However, they acknowledged that evidence to date on the impacts of NSA’s consumer protections are still limited. They also noted that it is too early to assess the broader impacts of NSA on areas like health insurance premiums, and that continued monitoring of the law’s impacts of health care costs, access to services, and patterns of consolidation are warranted.

Future Reports will Continue to Explore the Impact of NSA

For future reports, ASPE will identify the most promising study designs and statistical methods to explore these questions as data become available as well as convening discussions with interested parties and other qualitative methods to inform analyses of NSA impacts.

¹¹ Hoadley, J., Lucia, K., Volk, J., Walsh-Alker, E., Swindle, R., and Wengle, E. (2023). No Surprises Act – Perspective on the Status of the Consumer Protections Against Balance Billing. April 2023. Urban Institute Brief. (2023).

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