



BULLETIN NUMBER 2021-09

TO: All Insurers Licensed to Transact Accident and Health Insurance Business within the State of South Carolina, Licensed Health Maintenance Organizations (collectively "Health Insurance Issuers"), Producers and Agencies, Pharmacy Benefit Managers, Independent Review Organizations and Other Third-Party Service Providers

FROM: Raymond G. Farmer
Director of Insurance 

SUBJECT: Compliance with the *Consolidated Appropriations Act of 2021*

DATE: December 31, 2021

I. PURPOSE AND SCOPE

On December 27, 2020, the *2021 Consolidated Appropriations Act (CAA)* was signed into law. It includes Title I, the *No Surprises Act (NSA)* and Title II, *Transparency*. The NSA applies to individual and group insurance plans offered by health insurance issuers as well as self-insured and grandfathered plans.

The purpose of this Bulletin is to inform licensees issuing health insurance coverage ("health insurance issuers"), certified Independent Review Organizations and Private Review Agents and other licensees providing services related to health insurance coverage of the provisions of the NSA of the CAA and regulations issued by the Department of Health and Human Services (HHS), under 45 C.F.R. Parts 144, 147, 149 and 156. Insurers must certify compliance with the provisions of the CAA annually.

II. IMPACT OF THE CAA ON POLICY FORMS

Insurance policy forms issued in South Carolina must comply with all applicable provisions of the NSA of the CAA. *See* S.C. Code Ann. Section 38-61-20 (2018). Some insurers have already begun amending their policy forms to comply with the NSA. Changes to policy forms to bring them into compliance should be made by endorsement or amendment and submitted via the System for Electronic Rates & Form Filing (SERFF) for approval prior to issuance in this state. These filings will be given review priority.



If the issuer determines that reopening a recently closed filing would be the best way to make the changes, the issuer must submit an email to LAHmail@doi.sc.gov and a Note to Reviewer via SERFF outlining the proposed changes and requesting to reopen the filing.

Further, the issuer must complete the attached certification confirming that all policy forms used in the State of South Carolina comply with the applicable provisions of the Act effective January 1, 2022.

The NSA provides federal protections against surprise billing and limits out-of-network cost sharing under many circumstances in which surprise bills arise most frequently. In summary, the NSA:

- Requires coverage of emergency services at in-network rates and without prior authorizations. *See Section 102.*
- Requires a 30-day open negotiation period for health insurance issuers to settle out-of-network claims with providers, including out-of-network air ambulance claims. *See Section 103.*
- Establishes an independent dispute resolution process for health insurance issuers and out-of-network providers who cannot agree on a rate during the open negotiation period. *See Section 103.*
- Prohibits balance billing participants by an out-of-network provider for services received at an in-network facility, unless the out-of-network provider provides notice to the participant and the participant consents. *See Section 104.*
- Prohibits out-of-network air ambulances from charging participants more than the in-network cost-sharing amounts for their services. *See Section 105.*

Additionally, the following patient protections are also included:

- A requirement that Insurance ID cards must include in- and out-of-network deductible amounts and maximum out-of-pocket costs. *See Section 107.*
- A requirement that the Secretaries of HHS, Labor, and Treasury promulgate a rule no later than January 1, 2022, implementing protections against provider discrimination. *See Section 108.*
- An extension of the Affordable Care Act's external review process to adverse benefit determinations under the surprise billing provisions. *See Section 110.*
- A requirement that health insurance issuers provide an "Advanced Explanation of Benefits" containing good faith estimates of the costs of services the participant is likely to receive and associated disclaimers. *See Section 111.*
- A requirement that health care providers and facilities must verify, three days in advance of service and not later than one day after scheduling of service, what type of coverage the patient is enrolled in and provide notification of a good faith estimate to the payer or patient whether the patient has coverage. It also requires the Secretary of HHS to establish a patient-provider dispute resolution process for uninsured individuals no later than January 1, 2022. *See Section 112.*
- A requirement that certain participants receive up to 90 days of continued coverage at in-network cost-sharing rates when their provider moves out-of-network. *See Section 113.*

- A requirement that health insurance issuers offer price comparison guidance via telephone and an online cost comparison tool. *See* Section 114.
- A requirement that health insurance issuers provide up-to-date provider directories, and participants who rely on incorrect information from a plan about a provider's network status prior to a visit will only be responsible for in-network cost-sharing amounts. *See* Section 116.

These protections generally apply with respect to plan years beginning on or after January 1, 2022.

The CAA added provisions applicable to group health plans and health insurance issuers in the group and individual markets in a new Part D of Title XXVII of the Public Health Service Act and added new provisions to Employee Retirement Income Security Act Part 7, and Subchapter B of Chapter 100 of the Internal Revenue Code. The transparency provisions added to the Act include prohibitions on gag clauses, *see* Section 201; disclosures of broker and consultant compensation arrangements, *see* Section 202; enhancing mental health parity benefit, *see* Section 203; and pharmacy benefit and drug cost reporting, *see* Section 204.

III. COMPENSATION ARRANGEMENTS

Effective December 27, 2021, health insurance issuers must disclose certain compensation arrangements. *See* Section 201.

IV. ENFORCEMENT

The enforcement of the provisions of the CAA generally follows the enforcement provisions of the Affordable Care Act. The United States Department of Labor will enforce provisions of the Act as they relate to self-insured plans and the states will regulate fully insured plans and other licensees engaged in the issuance or servicing of health insurance coverage.

The Centers for Medicare and Medicaid Services (CMS) will be the primary enforcement authority for regulating the conduct of health care providers and may initiate investigations or examinations of such providers. Please note that the regulations also allow CMS to conduct random or targeted investigations and market conduct examinations, including through the audits of plan and issuer compliance with the rules related to calculating the qualifying payment amount.

V. QUESTIONS

Questions regarding this bulletin should be submitted via email to LAHmail@doi.sc.gov and include the issuer's name and primary point of contact (with phone number and email address) for follow up.

Bulletins are the method by which the Director of Insurance formally communicates with persons and entities regulated by the Department. Bulletins are Departmental interpretations of South Carolina insurance laws and regulations and provide guidance on the Department's enforcement approach. Bulletins do not provide legal advice. Readers should consult applicable statutes and regulations or contact an attorney for legal advice or for additional information on the impact of that legislation on their specific situation.

**Certification
2021 Consolidated Appropriations Act
No Surprises Act**

I, the undersigned officer of _____ have
(Name of Entity)

reviewed or supervised the review of the policy forms contained in this filing and hereby certify to the best of my knowledge and belief that they comply with the provisions of the *No Surprises Act* of the *2021 Consolidated Appropriations Act* (NSA) and applicable state law. I further certify that the only changes made to the previously filed/approved policy forms are those that have been approved by the South Carolina Department of Insurance. These changes are necessary to bring these forms into compliance with the requirements of the NSA and applicable regulations. These forms will be revised and/or discontinued as appropriate to ensure compliance with applicable state or federal statutes, regulations, or bulletins.

I further certify that the representations contained in this document are true and correct in all respects as of the date listed below.

(Signature of Officer*)

(Title of Officer*)

(Printed Name of Officer*)

(Date)

** If the individual signing the certification is other than the president, vice president, assistant vice president, corporate secretary, assistant corporate secretary, CEO, CFO, COO, General Counsel, or an actuary that is also a corporate officer, documentation must be included that shows that this individual has been appointed as an officer of the organization by the Board of Directors.*