

HHS, Labor, and Treasury Departments Defer Enforcement of Transparency in Coverage and No Surprises Act Requirements



The No Surprises Act and Transparency in Coverage final rules go into effect January 1, 2022. Implemented as Titles I and II of Division BB of the Consolidated Appropriations Act, these rules are intended to protect patients from surprise medical bills and increase transparency by requiring certain health care facilities and insurers to disclose certain information. The U.S. Departments of Health & Human Services, Labor, and Treasury are jointly charged with implementing specific sections of the [No Surprises Act](#) and [Transparency in Coverage](#) final rules. On August 20, 2021, however, these agencies jointly announced through an [FAQ](#) published on HHS's website that they are deferring enforcement of certain requirements from the final rules.

One of the No Surprises Act's final rule's requirements is that certain health care providers and facilities must provide a good faith estimate of an individual's expected charges for health care items or services, if the individual is enrolled in a health plan and seeks to submit a claim to the plan. The government, recognizing that providers and facilities must develop complex technical infrastructure to comply with this provision, has decided to defer enforcement of this portion of the final rules until it can issue further rules on implementing these requirements. For nearly identical reasons, the government also decided to defer enforcement of requirements that plans and health insurance issuers provide individuals an advanced explanation of benefits pending further rulemaking.

The government further stated its plan to streamline some of the overlapping requirements in the No Surprises Act and the Transparency in Coverage final rules. For example, the Transparency in Coverage rule requires certain group health plans and health insurance providers to publicly disclose specified information about their in-network provider rates, out-of-network allowed amounts and billed charges for covered items and services, and negotiated rates and historical net prices for prescription drugs in separate, machine-readable files for plan years beginning on or after January 1, 2022. ("Grandfathered" health plans and health insurance providers, however, are exempt from these rules if they were in place prior to the March 2010 enactment of the Affordable Care Act.)

The government has decided to defer enforcement of the Transparency in Coverage rules that require plans and health insurance issuers to publish machine-readable files related to prescription drug pricing pending further rulemaking, given overlap with similar requirements in the No Surprises Act. The government also indicated it will defer enforcement of all other machine-readable file publication requirements of the Transparency in Coverage final rule until July 1, 2022.

The requirements of the No Surprises and Transparency in Coverage final rules are complex and will require significant effort from health plans, healthcare facilities, and others to implement. Despite

the government's decision to defer enforcement of certain requirements, health care facilities and health insurance providers should begin preparing to meet as many of these requirements as possible – and should do so as soon as possible. This starts with understanding which of the myriad remaining No Surprises Act and Transparency in Coverage requirements still apply to which health plans or healthcare facilities.

Partnering with trusted legal counsel early on can help ensure health care providers and insurers are prepared when the full requirements of the No Surprises Act and Transparency in Coverage rules begin being enforced by the government.