

## Upcoming Deadline Under The No Surprises Act – Air Ambulance Reporting By Group Health Plans and Insurance Issuers

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Air ambulance services often result in large, unanticipated medical bills for patients. A study by the Government Accountability Office found that in 2017, 69% of air ambulance transports provided to individuals covered by private insurance were out-of-network, and that the median price charged was \$36,400 for helicopter transport and \$40,600 for fixed-wing transport.<sup>1</sup>

To help address the high costs of air ambulance services, Congress included requirements regarding air ambulance services in the No Surprises Act. In addition to including air ambulance services in the ban on surprise billing, Section 106 of the No Surprises Act also requires health plans and health insurance issuers to disclose certain data to the Department of Health and Human Services (HHS) regarding the use of air ambulance services. For more information about the No Surprises Act and its implementing regulations, view our articles [here](#) and [here](#).

HHS, the Department of the Treasury, and the Department of Labor (together, the “Departments”) released proposed rules implementing Section 106 of the No Surprises Act regarding these required disclosures on September 16, 2021 (the “Proposed Rule”).<sup>2</sup> The Departments have not yet issued the final rule on air ambulance reporting, but final rules may be published soon. The Proposed Rule would require plans and issuers to submit air ambulance reporting for the 2022 plan year by March 31, 2023, and for the 2023 plan year by March 30, 2024.

The Proposed Rule requires plans and issuers to report the following data to the Departments for the 2022 and 2023 plan years, for each claim for air ambulance services received or paid for during the applicable plan year:

- Identifying information for the group health plan, plan sponsor or issuer, and for any entity reporting on behalf of the plan or issuer, as applicable.

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- The type of coverage (e.g., self-insured plan offered by a large employer, fully-insured large group, etc.)
  - Date of service
  - Billing National Provider Identifier (NPI) information
  - Current Procedural Terminology (CPT) or Healthcare Common Procedure Coding System (HCPCS) code information
  - Transport information, including type of aircraft, loaded miles, pick-up and drop-off zip codes, whether the transport was emergent or non-emergent, whether the transport was an inter-facility transport, and, if available, the service delivery model of the provider (e.g., government-sponsored, hospital-owned, etc.).
  - Whether the provider had a contract with the plan or the issuer
  - Claim adjudication information, including whether the claim was paid, denied or appealed, and the denial reason and appeal outcome, as applicable.
  - Claim payment information, including submitted charges, amounts paid by each payor, and cost-sharing amount, if applicable.

Plans and issuers may enter into contractual arrangements to have another party submit the reporting on their behalf, such as a third-party administrator (TPA). However, the Proposed Rule will only transfer legal responsibility for the reporting to the contracted party for fully-insured group health plans, if the plan enters into a written agreement with the issuer requiring the issuer to submit the reporting. The legal responsibility will not transfer to a TPA or other vendor, even when there is a written agreement between the TPA and a self-insured plan or issuer (of course, parties are free to negotiate indemnification contractually).

Though we are waiting for the final rule and for the Departments to establish a method for submitting the reports, plans and issuers should start ensuring that their systems and vendors are able to gather and collect the data identified by the Proposed Rule. Practically speaking, the heavy lifting associated with the reporting requirements is likely to fall on issuers and TPAs. Plans and issuers should review their service agreements to determine how air ambulance reporting requirements will be covered and to ensure that everything is on track for when the reporting requirements take effect.

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## FOOTNOTES

<sup>1</sup> U.S. Government Accountability Office, Air Ambulance: Data Collection and Transparency Needed to Enhance DOT Oversight, GAO-17-637 (July 27, 2017), available at <https://www.gao.gov/assets/gao-17-637.pdf>.

<sup>2</sup> The Proposed Rule is available at <https://www.federalregister.gov/documents/2021/09/16/2021-19797/requirements-related-to-air-ambulance-services-agent-and-broker-disclosures-and-provider-enforcement>.

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