



The Commonwealth of Massachusetts
HEALTH POLICY COMMISSION
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To: Commercial Health Insurers, Blue Cross Blue Shield of Massachusetts, and Health Maintenance Organizations Accredited Pursuant to M.G.L. c. 176O; and Other Interested Parties
From: Nancy K. Ryan, Director, Office of Patient Protection
Re: External Review for Adverse Determinations in Compliance with Surprise Billing and Cost Sharing Protections under the No Surprises Act
Date: July 27, 2022

External Review for Adverse Determinations in Compliance with Surprise Billing and Cost Sharing Protections under the No Surprises Act

In December 2021, Congress passed the No Surprises Act (NSA) as part of the Consolidated Appropriations Act (CAA).¹ Effective January 1, 2022, the NSA creates new surprise billing protections for health insurance enrollees in Massachusetts.

The NSA expands the types of adverse insurance determinations eligible for external review under the PHS Act, which were previously limited to review for medical necessity.² An adverse determination that involves consideration of whether a plan or issuer is complying with NSA's protections may now be eligible for external review.³ These include (but are not limited to) claims regarding:⁴

- Patient cost-sharing and surprise billing for emergency services;
- Patient cost-sharing and surprise billing protections related to care provided by nonparticipating providers at participating facilities;
- Whether patients are in a condition to receive notice and provide informed consent to waive NSA protections; and
- Whether a claim for care received is coded correctly and accurately reflects the treatments received, and the associated NSA protections related to patient cost sharing and surprise billing.

¹ No Surprises Act of the 2021 Consolidated Appropriations Act, Pub. L. No. 116-260, 134 Stat. 1182.

² 45 C.F.R. § 149.136 (2022).

³ § 149.136(c)(2).

⁴ Guidance for States, Plans, and Issuers on State External Review Processes Regarding Requirements in the No Surprises Act (Feb. 1, 2022). <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/NSA-Guidance.pdf>.

The U.S. Department of Health and Human Services (HHS) administers an external review process for consumers with NSA compliance matters that cannot be addressed through state programs. Under existing Massachusetts law, OPP does not have authority to administer external reviews related to NSA compliance matters. To ensure that patients are afforded timely external review protections for surprise billing and cost-sharing matters, OPP will refer any NSA-compliance related issues it receives to the federal, HHS-administered external review process. Upon receipt of an external review request relating to an NSA compliance issue, OPP will submit the claim to MAXIMUS Federal Services, Inc. to conduct the review. MAXIMUS may contact the patient directly to obtain additional information to complete the external review process.⁵

If you have questions about external reviews related to NSA compliance matters, please contact Nancy K. Ryan, Director of the Office of Patient Protection, at Nancy.K.Ryan@mass.gov or 857-327-2571.

⁵ Id.