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Ohio Association of Health Plans

Ohio and Federal Surprise Billing Regulations

February 2022

About OAHP

Ohio Association of Health Plans

Policy. Partnership. Advocacy.

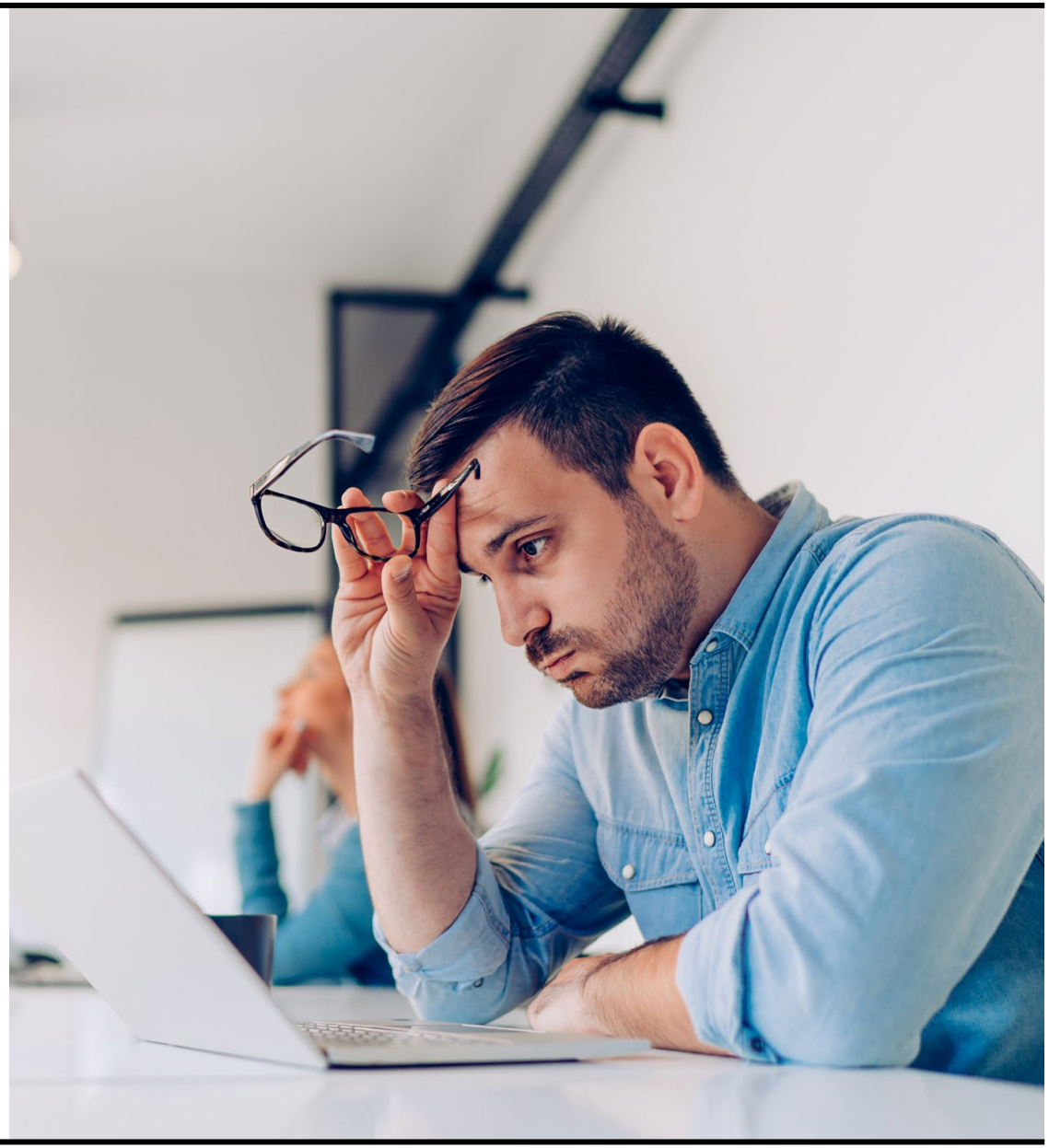
As the statewide trade association for the health insurance industry, our core mission is to promote and advocate for quality health care and access to a variety of affordable health benefits for all Ohioans.

What is a Surprise bill?

- An unexpected bill for an out of network provider delivering care at an in-network facility or from an emergency scenario.
- Examples:

  A consumer receives a bill from an out of network anesthesiologist while receiving a surgery from an in-network surgeon at an in-network hospital. The consumer did not know that the anesthesiologist was out of network had no ability to request an in-network provider;

  A consumer is having chest pains and goes to the closest Emergency Room, which happens to be out of network.



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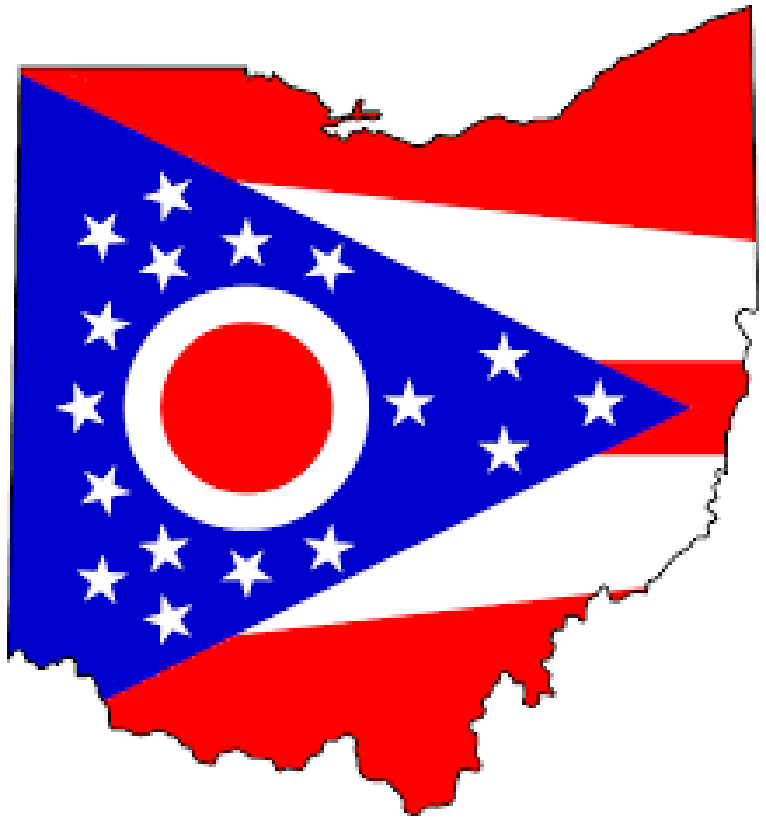
Ohio Legislation Background

- Goal of legislation:
  - Hold consumers harmless;
  - Don't increase healthcare costs in the process.
- Beginning of legislation:
  - The first surprise billing language appeared in the 133rd GA budget bill – HB 166 – but was vetoed;
  - Became its own bill in HB 388.
- Stakeholders involved:
  - Payers - insurers and business community;
  - Provider community – OSMA, ER doctors, OHA, etc.;
  - Ohio Department of Insurance.

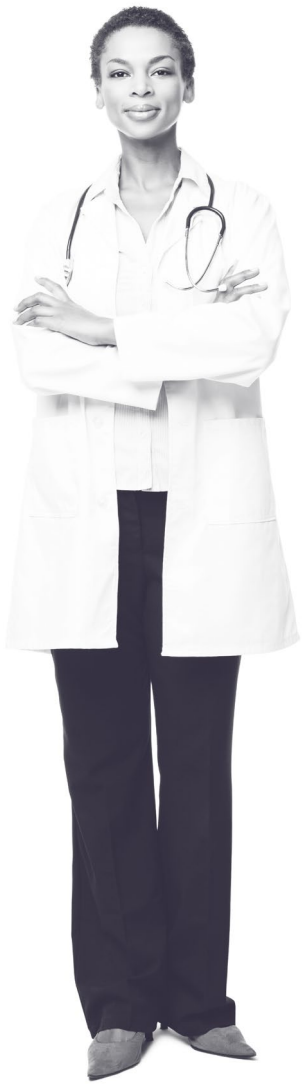


Which law applies?

No Surprises Act (HR 133)	Ohio HB 388
Applies to: • Group health plans including self-insured ERISA plans; • Health insurance issuers, including grandfathered plans; and • The Federal employee health benefit plan. Does not apply to: • Excepted benefits.	Applies to: • Sickness and accident insurers; • HICs; • Fraternal benefit societies and MEWAs; • Non-federal public employee plans; TPAs except to the extent of ERISA preemption. Does not apply to: • Self-funded ERISA plans; • Medicaid MCOs; • Medicare Advantage and Med-Supp. plans; • Workers Compensation plans; and • Excepted benefits as identified in ORC 3922.01(L).

State and Federal Regulations

- Ohio HB 388, Ohio's Surprise Billing Act, was enacted into law in December 2020 and applies to plans subject to ODI's jurisdiction beginning with plan years on or after January 12, 2022.
- The Federal No Surprises Act (H.R. 133) was enacted into law in December 2020 and applies to plans beginning with plan years on or after January 1, 2022.
- Federal No Surprises Act Interim Final Rules were issued in December 2021.
- The Ohio Department of Insurance rules were approved by JCARR at its December 6, 2021 meeting.



Both Laws Generally Provide:

- For emergency care and care provided by out-of-network providers at in-network facilities, cost sharing may be no greater than the in-network cost sharing;
- Providers subject to the surprise billing law may not balance bill patients, and must accept payment from health plans as payment in full;
- Cost sharing paid by an enrollee for emergency care and surprise bills must be counted toward in-network deductibles and maximums;
- Payers must pay, and providers must accept, payments determined in accordance with the surprise billing laws;
    - If the payer and provider cannot agree, there is an arbitration process;
        - Both arbitration processes are baseball style, i.e., arbiter picks either payer or provider around, they can not pick a rate in the middle;
- If a provider gives advance notice to the patient of intent to balance bill and provides a good faith estimate to the patient, they can balance bill;
- Both laws require payers to disclose certain cost sharing information to consumers before treatment is rendered.

Notable Differences:

- The No Surprises Act applies to air ambulances. Ohio's HB 388 only applies to ground ambulances;

- The arbitration provisions differ:
  - Ohio HB 388 only allows arbitration if the billed amount exceeds $750, although similar claims can be bundled for purposes of arbitration.
  - Federally the "loser" pays the arbitration fee. In Ohio "loser" pays 70% and "winner" pays 30% of arbitration costs.

Federal Lawsuits:

- There have been multiple lawsuits over the final rules, notably:
  - Lawsuit filed in the Northern District of Illinois by the American College of Emergency Physicians, the American College of Radiology, and the American Society of Anesthesiologists. The lawsuit is over the interim final rules, specifically the independent review process and reimbursement amounts;
  - A similar lawsuit was filed by the Texas Medical Association, Association of Air Medical Services, the American Medical Association and the American Hospital Association.
- Common thread of the lawsuits: provider reimbursement.

State Roadblocks:

- Ground Ambulances:
  - Ground ambulances attempted to be excluded from the Ohio law until January 1, 2023. Citing federal workgroup and difference between Ohio and Federal Law;
    - These conversations have settled for now, but are probably not gone for good.
- JCARR – ODI Rules:
  - Provider attempt to invalidate ODI's rules at the December 6, 2021 JCARR meeting;
    - This attempt failed.

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Questions?

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Thank you!