

of Labor, through guidance that shall be signed by the participant, beneficiary, or enrollee before such items or services are furnished and that—

(A) acknowledges (in clear and understandable language) that the participant, beneficiary, or enrollee has been—

(i) provided with the written notice under paragraph (1)(A);

(ii) informed that the payment of such charge by the participant, beneficiary, or enrollee may not accrue toward meeting any limitation that the plan or coverage places on cost-sharing, including an explanation that such payment may not apply to an in-network deductible applied under the plan or coverage; and

(iii) provided the opportunity to receive the written notice under paragraph (1)(A) in the form selected by the participant, beneficiary or enrollee; and

(B) documents the date on which the participant, beneficiary, or enrollee received the written notice under paragraph (1)(A) and the date on which the individual signed such consent to be furnished such items or services by such provider or facility.

(4) Rule of construction

The consent described in paragraph (3), with respect to a participant, beneficiary, or enrollee of a group health plan or group or individual health insurance coverage offered by a health insurance issuer, shall constitute only consent to the receipt of the information provided pursuant to this subsection and shall not constitute a contractual agreement of the participant, beneficiary, or enrollee to any estimated charge or amount included in such information.

(e) Retention of certain documents

A nonparticipating facility (with respect to such facility or any nonparticipating provider at such facility) or a participating facility (with respect to nonparticipating providers at such facility) that obtains from a participant, beneficiary, or enrollee of a group health plan or group or individual health insurance coverage offered by a health insurance issuer (or an authorized representative of such participant, beneficiary, or enrollee) a written notice in accordance with subsection (d)(1)(B), with respect to furnishing an item or service to such participant, beneficiary, or enrollee, shall retain such notice for at least a 7-year period after the date on which such item or service is so furnished.

(f) Definitions

In this section:

(1) The terms “nonparticipating provider” and “participating provider” have the meanings given such terms, respectively, in subsection (a)(3) of section 300gg-111 of this title.

(2) The term “participating health care facility” has the meaning given such term in subsection (b)(2) of section 300gg-111 of this title.

(3) The term “nonparticipating facility” means—

(A) with respect to emergency services (as defined in section 300gg-111(a)(3)(C)(i) of this

title) and a group health plan or group or individual health insurance coverage offered by a health insurance issuer, an emergency department of a hospital, or an independent freestanding emergency department, that does not have a contractual relationship with the plan or issuer, respectively, with respect to the furnishing of such services under the plan or coverage, respectively; and

(B) with respect to services described in section 300gg-111(a)(3)(C)(ii) of this title and a group health plan or group or individual health insurance coverage offered by a health insurance issuer, a hospital or an independent freestanding emergency department, that does not have a contractual relationship with the plan or issuer, respectively, with respect to the furnishing of such services under the plan or coverage, respectively.

(4) The term “participating facility” means—

(A) with respect to emergency services (as defined in clause (i) of section 300gg-111(a)(3)(C) of this title) that are not described in clause (ii) of such section and a group health plan or group or individual health insurance coverage offered by a health insurance issuer, an emergency department of a hospital, or an independent freestanding emergency department, that has a direct or indirect contractual relationship with the plan or issuer, respectively, with respect to the furnishing of such services under the plan or coverage, respectively; and

(B) with respect to services that pursuant to clause (ii) of section 300gg-111(a)(3)(C) of this title, of section 9816(a)(3) of title 26, and of section 1185e(a)(3) of title 29, as applicable are included as emergency services (as defined in clause (i) of such section and a group health plan or group or individual health insurance coverage offered by a health insurance issuer, a hospital or an independent freestanding emergency department, that has a contractual relationship with the plan or coverage, respectively, with respect to the furnishing of such services under the plan or coverage, respectively.

(July 1, 1944, ch. 373, title XXVII, §2799B-2, as added Pub. L. 116-260, div. BB, title I, §104(a), Dec. 27, 2020, 134 Stat. 2824.)

§ 300gg-133. Provider requirements with respect to disclosure on patient protections against balance billing

Beginning not later than January 1, 2022, each health care provider and health care facility shall make publicly available, and (if applicable) post on a public website of such provider or facility and provide to individuals who are participants, beneficiaries, or enrollees of a group health plan or group or individual health insurance coverage offered by a health insurance issuer a one-page notice (either postal or electronic mail, as specified by the participant, beneficiary, or enrollee) in clear and understandable language containing information on—

(1) the requirements and prohibitions of such provider or facility under sections 300gg-131

and 300gg-132 of this title (relating to prohibitions on balance billing in certain circumstances);

(2) any other applicable State law requirements on such provider or facility regarding the amounts such provider or facility may, with respect to an item or service, charge a participant, beneficiary, or enrollee of a group health plan or group or individual health insurance coverage offered by a health insurance issuer with respect to which such provider or facility does not have a contractual relationship for furnishing such item or service under the plan or coverage, respectively, after receiving payment from the plan or coverage, respectively, for such item or service and any applicable cost-sharing payment from such participant, beneficiary, or enrollee; and

(3) information on contacting appropriate State and Federal agencies in the case that an individual believes that such provider or facility has violated any requirement described in paragraph (1) or (2) with respect to such individual.

(July 1, 1944, ch. 373, title XXVII, §2799B-3, as added Pub. L. 116-260, div. BB, title I, §104(a), Dec. 27, 2020, 134 Stat. 2829.)

§ 300gg-134. Enforcement

(a) State enforcement

(1) State authority

Each State may require a provider or health care facility (including a provider of air ambulance services) subject to the requirements of this part to satisfy such requirements applicable to the provider or facility.

(2) Failure to implement requirements

In the case of a determination by the Secretary that a State has failed to substantially enforce the requirements to which paragraph (1) applies with respect to applicable providers and facilities in the State, the Secretary shall enforce such requirements under subsection (b) insofar as they relate to violations of such requirements occurring in such State.

(3) Notification of applicable Secretary

A State may notify the Secretary of Labor, Secretary of Health and Human Services, or the Secretary of the Treasury, as applicable, of instances of violations of sections 300gg-131, 300gg-132, or 300gg-135 of this title with respect to participants, beneficiaries, or enrollees under a group health plan or group or individual health insurance coverage, as applicable¹ offered by a health insurance issuer and any enforcement actions taken against providers or facilities as a result of such violations, including the disposition of any such enforcement actions.

(b) Secretarial enforcement authority

(1) In general

If a provider or facility is found by the Secretary to be in violation of a requirement to which subsection (a)(1) applies, the Secretary may apply a civil monetary penalty with re-

spect to such provider or facility (including, as applicable, a provider of air ambulance services) in an amount not to exceed \$10,000 per violation. The provisions of subsections (c) (with the exception of the first sentence of paragraph (1) of such subsection), (d), (e), (g), (h), (k), and (l) of section 1320a-7a of this title shall apply to a civil monetary penalty or assessment under this subsection in the same manner as such provisions apply to a penalty, assessment, or proceeding under subsection (a) of such section.

(2) Limitation

The provisions of paragraph (1) shall apply to enforcement of a provision (or provisions) specified in subsection (a)(1) only as provided under subsection (a)(2).

(3) Complaint process

The Secretary shall, through rulemaking, establish a process to receive consumer complaints of violations of such provisions and provide a response to such complaints within 60 days of receipt of such complaints.

(4) Exception

The Secretary shall waive the penalties described under paragraph (1) with respect to a facility or provider (including a provider of air ambulance services) who does not knowingly violate, and should not have reasonably known it violated, section 300gg-131 or 300gg-132 of this title (or, in the case of a provider of air ambulance services, section 300gg-135 of this title) with respect to a participant, beneficiary, or enrollee, if such facility or provider, within 30 days of the violation, withdraws the bill that was in violation of such provision and reimburses the health plan or enrollee, as applicable, in an amount equal to the difference between the amount billed and the amount allowed to be billed under the provision, plus interest, at an interest rate determined by the Secretary.

(5) Hardship exemption

The Secretary may establish a hardship exemption to the penalties under this subsection.

(c) Continued applicability of State law

The sections specified in subsection (a)(1)² shall not be construed to supersede any provision of State law which establishes, implements, or continues in effect any requirement or prohibition except to the extent that such requirement or prohibition prevents the application of a requirement or prohibition of such a section.

(July 1, 1944, ch. 373, title XXVII, §2799B-4, as added Pub. L. 116-260, div. BB, title I, §104(a), Dec. 27, 2020, 134 Stat. 2829.)

§ 300gg-135. Air ambulance services

In the case of a participant, beneficiary, or enrollee with benefits under a group health plan or group or individual health insurance coverage offered by a health insurance issuer and who is furnished in a plan year beginning on or after

¹ So in original. Probably should be followed by a comma.

² So in original. Subsec. (a)(1) specifies “this part”, but does not specify individual sections.