

# LEGAL UPDATE



## HIGHLIGHTS

The Departments released FAQs to address how the NSA's treatment of participating and nonparticipating providers relates to the ACA's MOOP limit. The FAQs clarify that:

- Cost sharing for services provided by a nonparticipating provider are considered out-of-network for purposes of the MOOP limit; and
- Health care providers or facilities that have a contractual relationship with the plan or issuer are considered in-network for purposes of the NSA and the MOOP limit.

The FAQs also provide that a plan's or issuer's self-service cost-comparison tool must include facility fees.

## New FAQs on ACA's Cost-sharing Limit and No Surprises Act

On July 7, 2023, the Departments of Labor, Health and Human Services, and the Treasury (Departments) issued [frequently asked questions](#) (FAQs) on the implementation of the Affordable Care Act's (ACA) overall cost-sharing limit and the No Surprises Act's (NSA) protections against surprise medical billing.

### NSA Protections and Cost-sharing Limit

Effective for plan years beginning on or after Jan. 1, 2022, the NSA provides federal protections against balance billing and limits out-of-network cost sharing for emergency services, nonemergency services furnished by nonparticipating providers with respect to a visit to a participating health care facility, and air ambulance services furnished by nonparticipating providers of air ambulance services.

In addition, to comply with the ACA, non-grandfathered health plans must ensure that an enrollee's annual cost sharing for essential health benefits does not exceed the maximum out-of-pocket (MOOP) limit. For plan years beginning in 2023, the MOOP limit is \$9,100 for self-only coverage and \$18,200 for family coverage. For plan years beginning in 2024, this limit increases to \$9,450 for self-only coverage and \$18,900 for family coverage. If a health plan uses a network of providers, it is not required to count an individual's out-of-pocket spending for out-of-network items and services toward the MOOP limit.

### FAQ Guidance

The Departments' FAQs provide the following guidance on the NSA's protections and the ACA's MOOP limit:

- Cost sharing for services furnished by a provider, facility or provider of air ambulance services that is considered nonparticipating for purposes of the NSA's protections is **considered cost sharing for benefits provided outside of a plan's network for purposes of the MOOP limit**; and
- A plan or issuer may have a direct or indirect contractual relationship with a provider, facility or provider of air ambulance services that sets forth the terms and conditions on which a relevant item or service is provided under the plan or coverage; in that case, the provider, facility or provider of air ambulance services is considered participating for purposes the NSA and is also **considered in-network for purposes of the ACA's MOOP limit**.

In addition, the [Transparency in Coverage final rule](#) requires health plans and issuers to make price comparison information available to participants, beneficiaries and enrollees through an internet-based self-service tool and in paper form upon request. This information must be available for plan years beginning on or after Jan. 1, 2023, with respect to the 500 items and services as well as all covered items and services, for plan years beginning on or after Jan. 1, 2024. The FAQs clarify that this price comparison information **must include facility fees** that are increasingly being charged for health care received outside of hospital settings.