

Can't Have Your Cake and Eat It Too: Participating Providers Under No Surprises Act Are Network Providers Under the ACA

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PRACTICES Employee Benefits and Executive Compensation

New FAQs issued by the U.S. Departments of Labor, Health and Human Services, and Treasury (collectively, the “**Departments**”) state that the Departments are aware of some group health plans which have contractual relationships with providers (in this case air ambulance providers) that the plans do not consider to be part of their networks, and the plans may be treating such providers as out-of-network providers for purposes of the maximum out-of-pocket limit (“**MOOP limit**”) under the Affordable Care Act (“**ACA**”) but participating providers for purposes of the balance billing and cost-sharing protections under the No Surprises Act (“**NSA**”). The FAQs state that this inconsistent categorization is impermissible. Cost-sharing for services provided by a participating provider under the NSA is considered to be in-network cost-sharing for purposes of the MOOP limit, and cost sharing for services provided by a nonparticipating provider under the NSA is considered to be out-of-network cost sharing for purposes of the MOOP limit.

The FAQs are available [here](#).