

## Your Rights and Protections Against Surprise Medical Bills

When you get emergency care or are treated by an out-of-network provider at an in-network hospital or ambulatory surgical center, you are protected from balance billing. In these cases, you shouldn't be charged more than your plan's copayments, coinsurance and/or deductible.

### What is "balance billing" (sometimes called "surprise billing")?

When you see a doctor or other health care provider, you may owe certain [out-of-pocket costs](#), like a [copayment](#), [coinsurance](#), or [deductible](#). You may have additional costs or have to pay the entire bill if you see a provider or visit a health care facility that isn't in your health plan's network.

"Out-of-network" means providers and facilities that haven't signed a contract with your health plan to provide services. Out-of-network providers may be allowed to bill you for the difference between what your plan pays, and the full amount charged for a service. This is called "**balance billing**." This amount is likely more than in-network costs for the same service and might not count toward your plan's deductible or annual out-of-pocket limit.

"Surprise billing" is an unexpected balance bill. This can happen when you can't control who is involved in your care—like when you have an emergency or when you schedule a visit at an in-network facility but are unexpectedly treated by an out-of-network provider. Surprise medical bills could cost thousands of dollars depending on the procedure or service.

### You're protected from balance billing for:

#### **Emergency services**

If you have an emergency medical condition and get emergency services from an out-of-network provider or facility, the most they can bill you is your plan's in-network cost-sharing amount (such as copayments, coinsurance, and deductibles). You **can't** be balance billed for these emergency services. This includes services you may get after you're in stable condition, unless you give written consent and give up your protections not to be balance billed for these post-stabilization services.

#### **Certain services at an in-network hospital or ambulatory surgical center**

When you get services from an in-network hospital or ambulatory surgical center, certain providers there may be out-of-network. In these cases, the most those providers can bill you is your plan's in-network cost-sharing amount. This applies to emergency medicine, anesthesia,

pathology, radiology, laboratory, neonatology, assistant surgeon, hospitalist, or intensivist services. These providers **can't** balance bill you and may **not** ask you to give up your protections not to be balance billed.

If you get other types of services at these in-network facilities, out-of-network providers **can't** balance bill you unless you give written consent and give up your protections.

**You're never required to give up your protections from balance billing. You also aren't required to get out-of-network care. You can choose a provider or facility in your plan's network.**

Visit The Commonwealth Fund website for updated state balance-billing protections at <https://www.commonwealthfund.org/publications/maps-and-interactives/2021/feb/state-balance-billing-protections>.

Applicable state balance billing laws or requirements for noted states are as follows:

#### **COLORADO PROTECTIONS AVAILABLE**

- State requires insurers to hold enrollees harmless for amounts beyond in-network level of cost sharing
- State prohibits out-of-network providers from billing enrollees for any amount beyond in-network level of cost sharing
- Above protections apply
  - To HMO and PPO enrollees
  - For (1) emergency services provided by out-of-network professionals, facilities, and ground ambulance service providers and (2) non-emergency services provided by out-of-network professionals at in-network facilities
  - Provided by all or most classes of health care providers
- State provides a payment standard
- Protections do not apply:
  - to enrollees who consent to out-of-network non-emergency services
  - to enrollees of self-funded plans

#### **MISSOURI PROTECTIONS AVAILABLE**

- State prohibits out-of-network providers from billing enrollees for any amount beyond in-network level of cost sharing
- Above protection applies to:
  - To HMO, PPO, and EPO enrollees
  - For emergency services provided by out-of-network professionals at in-network facilities
  - Provided by all or most classes of health care professionals

- State provides dispute resolution process
- Protections do not apply to:
  - ground ambulance services
  - services provided at out-of-network facilities
  - non-emergency services
  - enrollees of self-funded plans

#### **NEBRASKA PROTECTIONS AVAILABLE**

- State requires insurers to hold enrollees harmless for amounts beyond in-network level of cost sharing
- State prohibits out-of-network professionals and facilities from billing enrollees for any amount beyond in-network level of cost sharing
- Above protections apply:
  - To HMO and PPO enrollees
  - For emergency services
  - Provided by all or most classes of health care professionals
- Protections do not apply to:
  - ground ambulance services
  - non-emergency services
  - enrollees of self-funded plans
- State provides a payment standard

#### **WASHINGTON STATE PROTECTIONS AVAILABLE**

- State requires insurers to hold enrollees harmless for amounts beyond in-network level of cost sharing
- State prohibits out-of-network providers from billing enrollees for any amount beyond in-network level of cost sharing
- Above protections apply:
  - To HMO and PPO enrollees
  - To enrollees of self-funded plans that have opted into the protections
  - For (1) emergency services provided by all or most classes of health care professionals and out-of-network facilities and (2) non-emergency surgical or ancillary services provided by all or most classes of out-of-network professionals at in-network facilities
- State provides a dispute resolution process
- Protections do not apply to ground ambulance services

## **OREGON PROTECTIONS AVAILABLE**

- State prohibits out-of-network providers from billing enrollees for any amount beyond in-network level of cost sharing
- Above protection applies:
  - To HMO and PPO enrollees
  - For (1) emergency services provided by out-of-network professionals at in-network facilities, and (2) non-emergency services provided by out-of-network professionals at in-network facilities
  - Provided by all or most classes of health care professionals
- State provides a payment standard
- Protections do not apply to:
  - ground ambulance services
  - services at out-of-network facilities
  - enrollees who consent to non-emergency out-of-network services
  - enrollees of self-funded plans

## **CALIFORNIA PROTECTIONS AVAILABLE**

- State requires insurers to hold enrollees harmless for amounts beyond in-network level of cost sharing
- State prohibits out-of-network providers from billing enrollees for any amount beyond in-network level of cost sharing
- Above protections apply:
  - To HMO and PPO enrollees
  - For (1) emergency services by out-of-network professionals and facilities and (2) non-emergency services provided by out-of-network professionals at in-network facilities
  - Provided by all or most classes of health care professionals
- State provides a payment standard
- Protections do not apply to:
  - ground ambulance services
  - enrollees who consent to non-emergency out-of-network services
  - enrollees in self-funded plans

## **NEVADA PROTECTIONS AVAILABLE**

- State requires insurers to hold enrollees harmless for amounts beyond in-network level of cost sharing
- State prohibits out-of-network providers from billing enrollees for any amount beyond in-network level of cost sharing

- Above protections apply
  - To HMO and PPO enrollees
  - To enrollees of self-funded plans that have opted into the protections
  - For emergency services by out-of-network professionals and facilities
  - Provided by all or most classes of health care providers
- State provides a dispute resolution process
- Protections do not apply to:
  - ground ambulance services
  - non-emergency services

#### **ARIZONA PROTECTIONS AVAILABLE**

- State requires insurers to hold enrollees harmless for amounts beyond in-network level of cost sharing
- Above protection applies:
  - To HMO and PPO enrollees
  - For (1) emergency services provided by out-of-network professionals at in-network facilities and (2) non-emergency services provided by out-of-network professionals at in-network facilities
  - Provided by all or most classes of health care professionals
- State provides a dispute resolution process for claims over \$1000, which must be initiated by the enrollee
- Protections do not apply to:
  - ground ambulance services
  - services at out-of-network facilities
  - enrollees who consent to non-emergency out-of-network services
  - enrollees of self-funded plans

#### **NEW MEXICO PROTECTIONS AVAILABLE**

- State requires insurers to hold enrollees harmless for amounts beyond in-network level of cost sharing
- State prohibits out-of-network providers from billing enrollees for any amount beyond in-network level of cost sharing
- Above protections apply:
  - To HMO and PPO enrollees
  - For (1) emergency services by out-of-network professionals and facilities and (2) non-emergency services provided by out-of-network professionals at in-network facilities

- Provided by all or most classes of health care professionals
- State provides a payment standard
- Protections do not apply to:
  - ground ambulance services
  - enrollees who consent to out-of-network non-emergency services
  - enrollees of self-funded plans

#### **TEXAS PROTECTIONS AVAILABLE**

- State requires insurers to hold enrollees harmless for amounts beyond in-network level of cost sharing
- State prohibits out-of-network providers from billing enrollees for any amount beyond in-network level of cost sharing
- Above protections apply:
  - To HMO, PPO, and EPO enrollees
  - For (1) emergency services by out-of-network professionals and facilities, and (2) non-emergency services provided by out-of-network professionals at in-network facilities
  - Provided by all or most classes of health care professionals
- State provides dispute resolution process
- Protections do not apply to:
  - ground ambulance services
  - enrollees who consent to out-of-network non-emergency services
  - enrollees of self-funded plans

#### **MINNESOTA PROTECTIONS AVAILABLE**

- State requires insurers to hold enrollees harmless for amounts beyond in-network level of cost sharing
- Above protection applies:
  - To HMO and PPO enrollees
  - For non-emergency services provided by out-of-network professionals at in-network facilities
  - Provided by all or most classes of out-of-network health care professionals
- State provides a dispute resolution process
- Protections do not apply to:
  - emergency services
  - enrollees of self-funded plans

## **IOWA PROTECTIONS AVAILABLE**

- State requires insurers to hold enrollees harmless for amounts beyond in-network level of cost sharing
- Above protection applies:
  - To HMO and PPO enrollees
  - For emergency services provided by out-of-network professionals and facilities
  - Provided by all or most classes of health care professionals
- Protections do not apply to:
  - enrollees of self-funded plans
  - non-emergency services

## **ILLINOIS PROTECTIONS AVAILABLE**

- State requires insurers to hold enrollees harmless for amounts beyond in-network level of cost sharing
- State prohibits out-of-network providers from billing enrollees for any amount beyond in-network level of cost sharing
- Above protections apply:
  - To HMO and PPO enrollees
  - For (1) emergency services provided by out-of-network professionals at in-network facilities, and (2) non-emergency services provided by out-of-network professionals at in-network facilities
  - Provided by certain specific classes of health care professionals
- State provides a dispute resolution process
- Protections do not apply to:
  - ground ambulance services
  - services received at out-of-network facilities
  - enrollees who consent to non-emergency out-of-network services
  - enrollees of self-funded plans

## **INDIANA PROTECTIONS AVAILABLE**

- For HMOs, with respect to emergency services provided by out-of-network professionals and facilities, state (1) requires insurers to hold enrollees harmless for amounts beyond in-network level of cost sharing; and (2) prohibits out-of-network providers from billing enrollees for any amount beyond in-network level of cost sharing
- For HMOs and PPOs, with respect to non-emergency services provided by out-of-network professionals at in-network facilities, state prohibits out-of-network providers from billing enrollees for any amount beyond in-network level of cost sharing. This prohibition applies to all providers in the state, and therefore might also protect enrollees of self-funded plans.

- Above protections apply to services provided by all or most classes of health care professionals.
- Protections do not apply to:
  - ground ambulance services
  - enrollees who consent to non-emergency out-of-network services

#### **MICHIGAN PROTECTIONS AVAILABLE**

- State prohibits out-of-network providers from billing enrollees for any amount beyond in-network level of cost sharing
- Above protections apply:
  - To HMO and PPO enrollees
  - For (1) emergency services by out-of-network professionals and facilities; and (2) non-emergency services provided by out-of-network professionals at in-network facilities
  - Provided by all or most classes of out-of-network health care professionals
- State provides a payment standard
- State provides a dispute resolution process
- Protections do not apply to:
  - ground ambulance services
  - enrollees who consent to non-emergency out-of-network services
  - enrollees in self-funded plans

#### **OHIO PROTECTIONS AVAILABLE**

- State requires insurers to hold enrollees harmless for amounts beyond in-network level of cost sharing
- Above protection applies:
  - To HMO and PPO enrollees
  - For (1) emergency services provided by out-of-network professionals, facilities, and ground ambulance service providers and (2) non-emergency services provided by out-of-network professionals at in-network facilities
  - Provided by those classes of health care professionals as defined by regulation
- State provides a payment standard
- State provides a dispute resolution process
- Protections do not apply to:
  - enrollees of self-funded plans
  - enrollees who consent to out-of-network non-emergency services



## **MISSISSIPPI PROTECTIONS AVAILABLE**

- State requires insurers to hold enrollees harmless for amounts beyond in-network level of cost sharing
- State prohibits out-of-network providers from billing enrollees for any amount beyond in-network level of cost sharing
- Above protections apply:
  - To HMO and PPO enrollees
  - For (1) emergency services by out-of-network professionals and facilities, and (2) non-emergency services provided by out-of-network professionals at in-network facilities
  - Provided by all or most classes of health care professionals
- Protections do not apply to:
  - ground ambulance services
  - enrollees of self-funded plans

## **GEORGIA PROTECTIONS AVAILABLE**

- State requires insurers to hold enrollees harmless for amounts beyond in-network level of cost sharing
- State prohibits out-of-network providers from billing enrollees for any amount beyond in-network level of cost sharing
- Above protections apply:
  - To HMO and PPO enrollees
  - For (1) emergency services by out-of-network professionals and facilities and (2) non-emergency services provided by out-of-network professionals at in-network facilities
  - Provided by all or most classes of health care professionals
- State provides a payment standard for professionals but not facilities
- State provides a dispute resolution process
- Protections do not apply to:
  - ground ambulance services
  - enrollees who consent to non-emergency out-of-network services
  - enrollees in self-funded plans

## **FLORIDA PROTECTIONS AVAILABLE**

- State requires insurers to hold enrollees harmless for amounts beyond in-network level of cost sharing
- State prohibits out-of-network providers from billing enrollees for any amount beyond in-network level of cost sharing

- Above protections apply:
  - To HMO and PPO enrollees
  - For (1) emergency services by out-of-network professionals and facilities and (2) non-emergency services provided by out-of-network professionals at in-network facilities
  - Provided by all or most classes of health care professionals
- For PPOs, state payment standard applies to (1) emergency services and (2) non-emergency services provided by out-of-network professionals at in-network facilities
- For HMOs, state payment standard only applies to emergency services, but the state also has a claim dispute resolution program in place
- Protections do not apply to:
  - ground ambulance services for PPO enrollees
  - PPO enrollees who consent to non-emergency out-of-network services
  - enrollees of self-funded plans

#### **MAINE PROTECTIONS AVAILABLE**

- State requires insurers to hold enrollees harmless for amounts beyond in-network level of cost sharing
- State prohibits out-of-network providers from billing enrollees for any amount beyond in-network level of cost sharing
- Above protections apply:
  - To HMO and PPO enrollees
  - To enrollees of self-funded plans that have opted into the protections
  - For (1) emergency services by out-of-network professionals, facilities, and ambulance providers; and (2) non-emergency services provided by out-of-network professionals at in-network facilities
  - Provided by all or most classes of out-of-network health care professionals
- State provides a payment standard
- Protections do not apply to enrollees who consent to out-of-network non-emergency services

#### **NEW HAMPSHIRE PROTECTIONS AVAILABLE**

- State prohibits out-of-network providers from billing enrollees for any amount beyond in-network level of cost sharing
- Above protection applies:
  - To any network-based major medical health insurance product, including HMO, PPO, EPO and POS products

- For (1) emergency services provided by out-of-network professionals at in-network facilities, and (2) non-emergency services provided by out-of-network professionals at in-network facilities
- Provided by certain specific classes of health care professionals
- State provides a dispute resolution process
- Protections do not apply to:
  - ground ambulance services
  - services at out-of-network facilities
  - enrollees of self-funded plans

### **VERMONT PROTECTIONS AVAILABLE**

- State requires insurers to hold enrollees harmless for amounts beyond in-network level of cost sharing
- Above protection applies:
  - To HMO and PPO enrollees
  - For emergency services including ground ambulance services
  - Provided by all or most classes of health care professionals
- Protections do not apply to:
  - out-of-network facility charges for emergency services
  - non-emergency services
  - enrollees of self-funded plans

### **NEW YORK PROTECTIONS AVAILABLE**

- State requires insurers to hold enrollees harmless for amounts beyond in-network level of cost sharing
- State prohibits out-of-network providers from billing enrollees for any amount beyond in-network level of cost sharing
- Above protections apply:
  - To HMO, PPO, and EPO enrollees.
  - For (1) emergency services provided by out-of-network facilities, professionals, and ground ambulance providers; and (2) non-emergency services provided by out-of-network professionals at in-network facilities
  - Provided by all or most classes of health care professionals
- State provides a dispute resolution process
- Protections do not apply to
  - enrollees who consent to non-emergency out-of-network services†
  - enrollees of self-funded plans

## **MASSACHUSETTS PROTECTIONS AVAILABLE**

- State requires insurers to hold enrollees harmless for amounts beyond in-network level of cost sharing
- Above protection applies:
  - To HMO and PPO enrollees
  - For (1) emergency services provided by out-of-network professionals at in-network facilities, and (2) non-emergency services provided by out-of-network professionals at in-network facilities
  - Provided by all or most classes of out-of-network health care professionals
- Protections do not apply to:
  - ground ambulance services
  - services at out-of-network facilities
  - enrollees who consent to out-of-network services
  - enrollees of self-funded plans

## **CONNECTICUT PROTECTIONS AVAILABLE**

- State requires insurers to hold enrollees harmless for amounts beyond in-network level of cost sharing
- State prohibits out-of-network providers from billing enrollees for any amount beyond in-network level of cost sharing
- Above protections apply:
  - To HMO and PPO enrollees
  - For (1) emergency services and (2) non-emergency services provided by out-of-network professionals at in-network facilities
  - Provided by all or most classes of health care professionals
- State provides a payment standard
- Protections do not apply to:
  - ground ambulance services
  - out-of-network facility charges for emergency services
  - enrollees who consent to non-emergency out-of-network services
  - enrollees of self-funded plans

## **RHODE ISLAND PROTECTIONS AVAILABLE**

- State requires insurers to hold enrollees harmless for amounts beyond in-network level of cost sharing
- Above protection applies:
  - To HMO enrollees

- For (1) emergency services, and (2) non-emergency services provided by out-of-network professionals at in-network facilities
- Provided by all or most classes of health care professionals
- Protections do not apply to:
  - PPO enrollees
  - ground ambulance services
  - enrollees of self-funded plans

#### **PENNSYLVANIA PROTECTIONS AVAILABLE**

- State requires insurers to hold enrollees harmless for amounts beyond in-network level of cost sharing
- Above protection applies:
  - To HMO and PPO enrollees
  - For emergency services
  - Provided by all or most classes of health care professionals
- Protections do not apply to:
  - ground ambulance services
  - out-of-network facility emergency service charges, for PPO enrollees only
  - non-emergency services
  - enrollees of self-funded plans

#### **NEW JERSEY PROTECTIONS AVAILABLE**

- State requires insurers to hold enrollees harmless for amounts beyond in-network level of cost sharing
- State prohibits out-of-network providers from billing enrollees for any amount beyond in-network level of cost sharing
- Above protections apply:
  - To HMO, PPO, EPO and POS enrollees
  - To enrollees of self-funded plans that have opted into the protections
  - For (1) emergency services provided by out-of-network professionals and facilities, and (2) non-emergency services provided by out-of-network professionals at in-network facilities
  - Provided by all or most classes of health care professionals
- State provides a dispute resolution process
- Protections do not apply to:
  - ground ambulance services
  - enrollees who consent to non-emergency out-of-network services

## **MARYLAND PROTECTIONS AVAILABLE**

- State requires insurers to hold enrollees harmless for amounts beyond in-network level of cost sharing
- State prohibits out-of-network providers from billing enrollees for any amount beyond in-network level of cost sharing
- Above protections apply:
  - To (1) emergency services provided by out-of-network professionals, facilities, and ambulance providers; and (2) non-emergency services provided by out-of-network professionals at in-network facilities
  - Provided by all types of out-of-network health care professionals for HMO enrollees
  - Provided by on-call or hospital-based physicians who agree to accept assignment of benefits for PPO enrollees
- State provides a payment standard
- Protections do not apply to enrollees in self-funded plans

## **VIRGINIA PROTECTIONS AVAILABLE**

- State requires insurers to hold enrollees harmless for amounts beyond in-network level of cost sharing
- State prohibits out-of-network providers from billing enrollees for any amount beyond in-network level of cost sharing
- Above protections apply:
  - To HMO and PPO enrollees
  - To enrollees of self-funded plans that have opted into the protections
  - For (1) emergency services by out-of-network professionals and facilities, and (2) non-emergency surgical or ancillary services provided by all or most classes of out-of-network professionals at in-network facilities
- State provides a dispute resolution process
- Protections do not apply to ground ambulance services

## **WEST VIRGINIA PROTECTIONS AVAILABLE**

- State requires insurers to hold enrollees harmless for amounts beyond in-network level of cost sharing
- Above protection applies:
  - To HMO enrollees
  - For emergency services including ground ambulance services
  - Provided by all or most classes of health care professionals
- Protections do not apply to:
  - out-of-network facility charges for emergency services

- non-emergency services
- enrollees of self-funded plans

#### **NORTH CAROLINA PROTECTIONS AVAILABLE**

- State requires insurers to hold enrollees harmless for amounts beyond in-network level of cost sharing
- Above protections apply:
  - To HMO and PPO enrollees
  - For emergency services by out-of-network professionals
  - Provided by all or most classes of health care professionals
- Protections do not apply to:
  - ground ambulance services
  - emergency services by out-of-network facilities
  - non-emergency services
  - enrollees of self-funded plans

#### **DELAWARE PROTECTIONS AVAILABLE**

- State requires insurers to hold enrollees harmless for emergency services provided
  - by out-of-network professionals
  - at out-of-network facilities
  - by certain out-of-network ground ambulance service providers
- State prohibits providers from balance billing enrollees for non-emergency services provided at in-network facilities unless they obtain consent from the enrollee
- Above protections apply to:
  - HMO and PPO enrollees
  - For services provided by all or most classes of health care professionals
- State provides a payment standard for emergency services
- State provides the option of arbitration
- Protections do not apply to:
  - enrollees who consent to non-emergency out-of-network services
  - enrollees in self-funded plans

**When balance billing isn't allowed, you also have these protections:**

- You're only responsible for paying your share of the cost (like the copayments, coinsurance, and deductible that you would pay if the provider or facility was in-network). Your health plan will pay any additional costs to out-of-network providers and facilities directly.
- Generally, your health plan must:
  - Cover emergency services without requiring you to get approval for services in advance (also known as "prior authorization").
  - Cover emergency services by out-of-network providers.
  - Base what you owe the provider or facility (cost-sharing) on what it would pay an in-network provider or facility and show that amount in your explanation of benefits.
  - Count any amount you pay for emergency services or out-of-network services toward your in-network deductible and out-of-pocket limit.

**If you think you've been wrongly billed**, contact <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/no-surprises-act>. The federal phone number for information and complaints is: 1-800-985-3059.

Visit <https://www.commonwealthfund.org/publications/maps-and-interactives/2021/feb/state-balance-billing-protections> for more information about your rights under your state laws.



# LEGAL UPDATE

## Revised Surprise Billing Model Notice Now Available

On Aug. 19, 2022, the Departments of Labor (DOL), Health and Human Services (HHS) and the Treasury (Departments) jointly released [FAQs](#) implementing provisions of the No Surprises Act (NSA), including the requirement that plans and issuers disclose certain balance billing protections to participants. Previously, the Departments released a model notice that could be used to satisfy these disclosure requirements (“Version 1”). **Based on public comments, the Departments revised this model notice (“Version 2”) and included it in the [appendix](#) of the latest FAQs.**

### Disclosure Requirements

For plan years beginning on or after Jan. 1, 2022, the NSA requires group health plans and issuers to make publicly available, post on a public website and include on each applicable explanation of benefits information on the restrictions against balance billing, including any applicable state law protections, and information on contacting appropriate state and federal agencies. The revised notice includes more specific federal agency contact information, along with other minor clarifications.

### Employer Compliance Steps

Plans and issuers may, but aren’t required to, use the model notice to meet their disclosure obligations. Most employers will rely on their issuers, TPAs or other service providers to fulfill these disclosure requirements. Employers should confirm that their service providers that use the model notice will use Version 2 for plan years beginning on or after Jan. 1, 2023.

In addition, the Departments’ [FAQs](#) confirm that a health plan that does not have its own website can satisfy the requirement to post the notice by entering into a written agreement where its issuer or TPA agrees to post the notice on a public website where information is normally made available to plan participants on the plan’s behalf.

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Provided to you by **Holmes Murphy**

### Important Dates

#### Jan. 1, 2022, to Jan. 1, 2023

The Departments will consider the use of either Version 1 or Version 2 of the model notice to be good faith compliance with respect to plan or policy years beginning on or after Jan. 1, 2022, and before Jan. 1, 2023.

#### Jan. 1, 2023, and Beyond

The Departments will consider the use of **only** Version 2 of the model notice to be good faith compliance with respect to plan or policy years beginning after Jan. 1, 2023.

*The revised notice includes more specific federal agency contact information and can be used in 2022 and beyond.*