FEDERAL NO-SURPRISE BILLING ACT
SUMMARY AND TOOL KIT

What Is the No-Surprise Billing Act

Federal law: Title I (No Surprises Act) of Division BB of the Consolidated Appropriations Act, 2021 (CAA) amended title XXVII of the Public Health Service Act (PHS Act) to add a new Part E. Part E creates ***requirements such as cost sharing rules, prohibitions on balance billing for certain items and services, notice and consent requirements, and requirements related to disclosures about balance billing protections*** that apply to certain providers of medical items and services (including ASCs).

NOTE: STATE SPECIFIC NO SURPRISE BILLING LAWS MAY ALSO APPLY.

What and Who does it apply to

- Applies to ***all items and services*** provided by certain providers ***(including ASCs)*** to individuals enrolled in group health plans or group or individual health insurance coverage, and Federal Employees Health Benefit plans.
- The ***good faith estimate*** requirement and the requirements related to the patient-provider dispute resolution process also apply to ***self-pay and uninsured***.
- These requirements ***do not*** apply to beneficiaries or enrollees in federal programs such as Medicare, Medicaid, Indian Health Services, Veterans Affairs Health Care, or TRICARE.

Effective Date

January 1, 2022

Summary of Rule (As Applicable to ASCs)

- ***No balance billing*** for non-emergency services ***by nonparticipating providers*** at certain participating health care facilities, ***unless notice and consent*** was given in some circumstances (PHSA 2799B-2; 45 CFR 149.420)
- Disclose patient protections against ***balance billing*** (PHSA 2799B-3; 45 CFR 149.430)
- Provide ***good faith estimate in advance of scheduled services***, or upon request (PHSA 2799B-6; 45 CFR 149.610 ***(for uninsured or self-pay individuals)***
- Ensure **continuity of care** when a provider's network status changes (PHSA 2799B-8)
- Improve **provider directories** and reimburse enrollees for **errors** (PHSA 2799B-9)

Balance Billing Summary

Nonparticipating providers of non-emergency services at a participating health care facility:

- ***Cannot bill or hold liable*** beneficiaries, enrollees or participants in group health plans or group or individual health insurance coverage who received non-emergency services by a nonparticipating provider for a payment amount greater than the in-network cost-sharing requirement for such services, ***unless notice and consent requirements are met.***
  - Cost-sharing is calculated as if the total amount that would have been charged by a participating provider or participating facility were equal to the recognized amount.
  - ***Notice and consent requirements do not apply*** to ancillary services, for which the prohibition against balance billing remains applicable: Items and services related to emergency medicine, anesthesiology, pathology, radiology and neonatology; Items and services provided by assistant surgeons, hospitalists, and intensivists; Diagnostic services, including radiology and laboratory services; and Items and services provided by a nonparticipating provider if there is no participating provider who can provide such item or service at such facility.

ASC Applicable Disclosure Requirement

What: Balance ***billing protections*** and ***how to*** **report violations**.

Where: Post (1) prominently at the ***location of the facility***, (2) on a ***public website*** (if applicable); and (3) provide it ***to the participant***, beneficiary or enrollee disclose to any participant.

Good Faith Estimate

Who: ***Self Pay or Uninsured Only.***

What: notification (in clear and understandable language) of the ***good faith estimate*** of the ***expected charges, expected service, and diagnostic codes*** of scheduled services – include expected charges for the items or services that are reasonably expected to be provided in conjunction with the primary item or service, including items or services that may be provided by other providers and facilities.

Continuing Care

Provider that ***ends a contractual relationship with a plan or issuer, has a continuing care patient and results in change of network status must***:

- ***Accept payment*** for a ***continuing care patient*** at the previously agreed to payment amount ***for up to 90 days*** after the date on which the patient was notified of the change.
- ***Continue to adhere to all policies***, procedures and quality standards imposed by the plan or issuer for such items or services as if the contract were still in place.

Provider Directory Improvement and Reimbursement for Errors

Note: This document is for reference purposes only and not intended as formal legal or regulatory advice. Please consult your legal and regulatory counsel for further information. Questions: contact compliance@pegisolutions.com.

Must ***reimburse enrollees*** who relied on an ***incorrect provider directory*** and paid a provider bill in excess of the in-network cost-sharing amount.
To prevent ***must submit provider directory information*** to a plan or issuer, at a minimum:

- At the beginning of the network agreement with a plan or issuer.
- At the time of termination of a network agreement with a plan or issuer.
- When there are material changes to the content of the provider directory information of the provider or facility.
- Upon request by the plan or issuer, and
- At any other time determined appropriate by the provider, facility, or HHS.

Reference Resources

Law: https://www.federalregister.gov/documents/2021/07/13/2021-14379/requirements-related-to-surprise-billing-part-i **and** https://www.federalregister.gov/documents/2021/10/07/2021-21441/requirements-related-to-surprise-billing-part-ii

CMS No Surprise Act Website:
No Surprises Act | CMS

CMS Fact Sheet:
https://www.cms.gov/newsroom/fact-sheets/what-you-need-know-about-biden-harris-administrations-actions-prevent-surprise-billing

FAQs:
https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/FAQs-Part-49.pdf

Disclosure Notice Instructions and Sample for Posting (facility and website): **See Attached**

Patient Standard Notice and Consent Template: **See Attached**