



**It's Time to Come to Terms with the Federal No Surprises Act:  
*To Balance Bill or Not to Balance Bill, That is the Question!***

**May 12, 2022**

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## PRESENTERS



**Isabelle Bibet-Kalinyak, Esq.**  
Member, Brach Eichler LLC

A seasoned and creative problem-solver, Isabelle Bibet-Kalinyak, Esq., concentrates her national healthcare practice representing clients in complex business transactions including private equity transactions, mergers, and strategic partnerships, HIPAA privacy and security compliance matters, ownership and compensation arrangements, employment and partnership negotiations, medical staff matters, and fraud and abuse issues including compliance with the Stark Law and the Anti-Kickback Statute.

Isabelle leverages her keen affinity for the healthcare industry and her deep knowledge of that sector to serve as a trusted legal advisor to health systems, specialty hospitals, telemedicine virtual platforms, physician group practices, ambulatory surgical centers, laboratories, and more on a broad range of complex healthcare matters.

As one of the few French business attorneys in the U.S. and a first-generation immigrant herself, Isabelle's healthcare practice has over time organically expanded to transnational business transactions and immigration.



**Carol Grelecki, Esq.**  
Member, Brach Eichler LLC

Carol represents a wide range of health care providers, including single-specialty and multi-specialty physician practices, as well as institutional providers and ancillary services providers. She concentrates her practice on corporate and transactional matters, mergers and acquisitions, private equity and hospital-physician transactions, billing and reimbursement issues, and licensure and regulatory compliance, with a particular concentration in fraud and abuse, Stark and Codey law compliance, Anti-Kickback law, and payor contracting issues.

Carol has been named among [The Best Lawyers in America®](#) for Health Law every year since 2015, and [New Jersey Super Lawyers](#) every year since 2018. Additionally, she has been named as a top healthcare law practitioner by noted ranking company Chambers USA. According to Chambers, Carol is noted by her peers as an "outstanding lawyer."



**J. Ryan Williams, Esq.**  
Chief Legal Officer, NOMS Healthcare

Ryan comes to NOMS from Brouse McDowell in Cleveland where he was a partner and co-chair of the Health Care Practice Group.

He has significant experience representing healthcare providers, including physician groups, ambulatory surgery centers, mental and behavioral health clinics, long term care providers, durable medical equipment suppliers, home health providers, hospice agencies, pharmacies, other ancillary providers, and various non-provider health care support and service organizations, in all aspects of healthcare transactions.

As chief legal officer, Ryan coordinates and leads the legal and regulatory needs and affairs of NOMS Healthcare. His skill set ensures the legal and regulatory strategy of NOMS Healthcare will continue to integrate with and support key business, operation, and development activities across the practice organization.

Ryan is a graduate of The University of Toledo College of Law where he earned a Juris Doctorate in 2003, magna cum laude.

## NO SURPRISES ACT (NSA) - LEGISLATIVE INTENT

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- New protections for two categories of patients, effective January 1, 2022.
- Insured patients: No surprise billing from (1) out-of-network (OON) providers in specific circumstances, (2) especially in emergency situations, or (3) when patients have no choice (ancillary services).
- Non-insured and self-pay patients: Implementation of price transparency measures and care coordination between providers through notice and good faith estimate.

### **Disclosure requirements.**

- Balance billing prohibitions and restrictions.
- Balance billing restrictions subject to **patient's informed consent.**
- Dispute resolution mechanisms.
- Monetary penalties for non-compliance.

## NEW JERSEY OUT-OF-NETWORK LAW (NJ OON)

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- Federal NSA is in addition to state law requirements.
- State law only trumps NSA if state law requirements are stricter than NSA requirements.
- NJ OON applies only when carrier is licensed in NJ or self-funded plan (ERISA) that has opted into NJ law.
- NJ OON covers emergency, urgent care, and inadvertent OON services.
- Disclosures:
  - No standard disclosure or consent form.
  - Facilities must post network status; Physicians must provide notice.
  - Facilities must make standard charges available; Physicians must make specific charges available, upon request.
- Where NJ OON applies, both Federal NSA and NJ OON disclosures may be required.
- NJ OON dispute resolution process will apply where applicable.

## NSA PART I- INSURED PATIENTS

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*No surprises!*



## NSA - THE FORMS

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### PART I: INSURED PATIENTS

- **Form #1: Disclosure**
  - See Appendix III
  - <https://www.cms.gov/httpswwwcmsgovregulations-and-guidancelegislationpaperworkreductionof1995pra-listing/cms-10780>
- **Form #2: Notice and Consent with Good Faith Estimate (GFE)**
  - Mandatory form that must be customized for state law.
  - Appendix IV
  - <https://www.cms.gov/httpswwwcmsgovregulations-and-guidancelegislationpaperworkreductionof1995pra-listing/cms-10780>

### PART II: NON-INSURED & SELF-PAY PATIENTS

- **Form #3: Disclosure “Right to Receive GFE of Expected Charges Notice”**
  - <https://www.cms.gov/regulations-and-guidancelegislationpaperworkreductionof1995pra-listing/cms-10791>
- **Form #4: GFE and Consent**
  - <https://www.cms.gov/regulations-and-guidancelegislationpaperworkreductionof1995pra-listing/cms-10791>

## NSA - BALANCE BILLING PROHIBITIONS

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### PART I: INSURED PATIENTS

- Emergency services by OON provider or OON emergency facility.
- Post-stabilization services by OON providers at certain in-network (INN) facilities, unless patient gives informed consent, which is only permitted in limited circumstances.
- Non-emergency services by OON providers at certain INN facilities, unless patient gives informed consent, which is only permitted in limited circumstances.
- Ancillary services by OON providers at certain INN facilities.
- Air ambulance services by OON air ambulance providers.
  
- NJ OON does not cover “post-stabilization” services but does cover “urgent care” services.

# NSA - SCOPE OF BALANCE BILLING PROHIBITIONS

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## PART I: INSURED PATIENTS

- Individuals enrolled in:
  - Employment-based group health plans (self-insured and fully-insured);
  - Group or individual health insurance coverage on or off the federal and state exchanges;
  - Federal Employees Health Benefit plans; and
  - Employees on state and local government health plans.
  - Covered benefits only.
- NJ OON only applies when patient is enrolled in a NJ licensed health plan or a self-funded group health plan that has opted into participation in the NJ law.



# NSA - EMERGENCY PROVIDERS AND FACILITIES

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## PART I: INSURED PATIENTS

- Emergency facility: Hospital, critical access hospital or independent freestanding emergency department.
- Step #1: Must post disclosure on website and at facility (Form #1).
- Step #2:
- No balance billing for **emergency services** by OON emergency providers or OON emergency facilities.
- No waiver by informed consent permitted (Form #2).

## NSA - EMERGENCY SERVICES, DEFINITIONS

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### PART: INSURED PATIENTS

- NSA definition: “With respect to an emergency medical condition, an appropriate medical screening examination within an emergency department of a hospital or a freestanding emergency department, including ancillary services routinely available to the emergency department to evaluate such emergency medical condition, and such further medical examination and treatment **to stabilize the patient**, regardless of the department of the hospital where the treatment is provided.”
- CMS: Prudent layperson standard.
- A person, who has average knowledge of health and medicine, experiences a medical condition (including a mental health condition or substance use disorder) that is so severe he or she believes:
  - They need immediate medical care; and
  - Failing to get immediate medical care could:
    - Result in their health or the health of their unborn child being in serious jeopardy; or
    - Result in serious impairment to bodily functions; or
    - Lead to serious dysfunction of any bodily organ or part

## NSA - POST-STABILIZATION SERVICES TEST

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### PART I: INSURED PATIENTS

- Definition of “post-stabilization” – See Appendix.
- May balance bill for post-stabilization services after attending emergency physician or treating provider determines and documents that the patient:
  - Can travel using **non-medical or non-emergency medical transportation** to an available participating provider or facility located within a reasonable travel distance, considering the individual’s medical condition;
  - Patient or authorized representative is in a condition to receive notice and provide informed consent;
  - **Receives written notice and provides written consent within prescribed timeframe (Notice and Consent Form #2);** and
  - OON provider/facility satisfies any additional state law requirements.
  - Attending or treating physician’s determination is binding on facility.
  - Authorized representative cannot be a provider affiliated with Facility or an employee of Facility, unless provider or employee is family member.

## NSA- ANCILLARY SERVICES

### PART I: INSURED PATIENTS

- Definition: Anesthesiology, diagnostic services, including radiology and lab services, emergency medicine, neonatology, pathology, radiology, items and services provided by assistant surgeons, hospitalists, and intensivists.
- No balance billing for **covered** ancillary services.
- **No waiver** by informed consent permitted (Form #2).

OOO ANCILLARY SERVICES	FACILITY	EMERGENCY SERVICES	POST- STABILIZATION OR NON- EMERGENCY SERVICES	BALANCE BILL PERMITTED?	USE FORM #2?
COVERED	INN	Y	N	No	No
		N	Y	No	No
	OOO	Y	N	No	No
		N	Y	No	No
NOT COVERED	INN	Y	N	Permitted	No
		N	Y	Permitted	No
	OOO	Y	N	Permitted	No
		N	Y	Permitted	No

# NSA – POST-STABILIZATION SERVICES BY OON PROVIDER AT INN FACILITY

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## PART I: INSURED PATIENTS

- INN facility: Hospital, CAH, Outpatient Department of Hospital, ASC.
  - Excludes private offices.
- Step #1: Must post disclosure on website and at facility (Form #1).
- Step #2: May balance bill if...
  - Not an ancillary service;
  - Another INN provider can deliver item or service at INN facility;
  - Meet all the requirements of the “Notice and Consent Test;”
  - Written **Notice and Consent Form #2 properly obtained**; and
  - Permitted or mandated by State law.

PROVIDER / FACILITY	INN FACILITY	OON FACILITY
INN	Not applicable	Not applicable
OON	<b>NSA applicable</b>	Not applicable

# NSA - NON-EMERGENCY SERVICES BY OON PROVIDER AT INN FACILITY

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## PART I: INSURED PATIENTS

- INN facility: Hospital, CAH, Outpatient Department of Hospital, ASC.
  - Excludes private offices.
- Step #1: Must post disclosure on website and at facility (Form #1).
- Step #2: May balance bill if...
  - Not an ancillary service;
  - Another INN provider can deliver item or service at INN facility;
  - Meet all the requirements of the “Notice and Consent Test;”
  - Written **Notice and Consent Form #2 properly obtained**; and
  - Permitted or mandated by State law.

PROVIDER / FACILITY	INN FACILITY	OON FACILITY
INN	Not applicable	Not applicable
OON	<b>NSA applicable</b>	Not applicable

# NJ OON - NON-EMERGENCY, NON-URGENT SERVICES, NOTICE REQUIREMENTS

## INSURED PATIENTS

PROVIDER/FACILITY	LOCATION	NOTICE
INN	INN Facility	NJ OON Notice required
INN	OON Facility	NJ OON Notice required
INN	Office	NJ OON Notice required
OON	INN Facility	<b>NJ OON Notice required (use Federal NSA form with NJ modification)</b>
OON	OON Facility	NJ OON Notice required
OON	Office	NJ OON Notice required

## NSA - MANNER OF PROVIDING NOTICE AND CONSENT FORM # 2

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### PART I: INSURED PATIENTS

- Notice and Consent Form #2 **mandatory, customized for state law.**
- Non-emergency or post- stabilization services only.
- Never for:
  - Emergency services prior to post-stabilization.
  - Ancillary services.
  - Items, services or situations banned by state law.
- **Must list INN providers** at INN Facility able to deliver needed item or services.
- Timing of delivery:
  - Appointment scheduled at least 72 hours before appointment date – Give Form #2 no later than 72 hours before appointment date.
  - Appointment scheduled within 72 hours of appointment date – Give Form #2 on day of appointment, **but at least 3 hours before item or service is provided.**
- Time and date: When patient receives notice and when patient signs consent.
- NJ OON: Must also include contact information for other providers.



# NSA - MANNER OF PROVIDING NOTICE AND CONSENT (Cont'd)

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## PART I: INSURED PATIENTS

- Method of delivery:
  - Notice and Consent: Together.
  - One page two-sided, size 12 font.
  - Physically separate from other forms: Not attached, incorporated, or hidden.
  - Paper or electronic form, as preferred by patient.
  - Representative of OON provider/Facility must be physically present or available by phone to answer questions.
  - LEP persons: Translation.
- Copy: Must give copy of signed Notice and Consent in person or by mail/email.
- Who can obtain Notice and Consent?
  - OON provider.
  - OON emergency facility.
  - INN Facility on behalf of OON Provider (not an obligation of INN Facility).

# NSA - MANNER OF PROVIDING NOTICE AND CONSENT (Cont'd)

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## PART I: INSURED PATIENTS

- Multiple OON providers: Can use single set of Notice and Consent if:
  - Each provider is identified;
  - Each items/services provided by each provider are identified;
  - GFE for each item/service; and
  - Patient can waive each provider separately.
- Insurance: Must timely notify about waiver and provide copy of signed Notice and Consent Form, preferably with claim.
- Revocation can occur before delivery of item/service.
- Document retention: 7 years.
- Can refuse to treat individual who refuses to waive balance billing, if permitted by law (federal and state).
- Cannot impose any fees for cancellation of service.

# **NJ OON REQUIREMENTS TO BILL FOR OON SERVICES**

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## **INSURED PATIENTS**

- It is a violation of NJ OON for an OON provider to knowingly waive, rebate, give pay, offer to waive, rebate, give or pay all or part of the deductible, copayment, or coinsurance owned by a covered person, pursuant to the terms of the covered person's health benefit plan, as an inducement for the covered person to seek health care services from the provider.
- Does not apply to waivers permitted under federal fraud and abuse law.
- Providers are liable for monetary penalties for violation of the NJ OON.

# NSA - INDEPENDENT DISPUTE RESOLUTION (IDR) PROVIDER vs. PAYER

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## PART I: INSURED PATIENTSPART

- Phase 1: Negotiations, 30 days.
- Phase 2: Submit dispute to “baseball-style” arbitration within 4 business days of end of negotiation period.
  - Parties select a Certified IDR Entity.
  - \$50 plus costs of IDR Entity.
  - Parties submit offers and supporting evidence to IDR Entity within 10 days after selecting it.
  - IDR Entity has 30 days to select the “winning” offer → Binding decision.
  - Payer has 30 days to pay the OON provider.
- Federal Independent Resolution Process Portal: <https://nsa-idr.cms.gov/paymentdisputes/s/>
- NJ OON: NSA defers to State dispute resolution processes where applicable. NJ OON dispute resolution process will apply where applicable.

## NSA PART II - NON-INSURED AND SELF-PAY PATIENTS

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***Price transparency  
and care coordination***



## NSA - THE FORMS

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### PART I: INSURED PATIENTS

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## NSA - NOTICE AND GOOD FAITH ESTIMATE (GFE)

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### PART II: NON-INSURED AND SELF-PAY PATIENTS

- Applies to **all providers**.
- Step #1: Implement use of Model Disclosure Form #3:
  - Screen at time of scheduling in accordance with the rules.
  - Post at location and website.
  - Give in print, signed acknowledgment not required, but recommended.
  - Document/integrate in medical records.
  - Periodic updates.
- Step #2: Implement use of Model GFE Notice Form #4:
  - Who? You if you are the Convening Provider, and your Co-Providers.
  - Expected services.
  - GFE of expected charges.
  - Diagnostic codes.

## NSA - GOOD FAITH ESTIMATE (GFE)

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### PART II: NON-INSURED AND SELFPAY PATIENTS

- Non-insured and self-pay patients.
- GFE must include:
  - Expected charges for primary item or service; and
  - Expected charges for items or services reasonably expected to be provided in conjunction with primary item or service; and
  - Includes items or services by other providers and facilities (Co-Providers) in conjunction with primary item or service.
- Calculation of GFE: Amount expected to be paid after discounts and adjustments.
- GFE is not a contract.
- 2022 – HHS enforcement discretion.
- HHS Secretary may apply civil monetary penalties not to exceed **\$10,000 per violation**.



**NSA - GOOD FAITH ESTIMATE (GFE), TIMING**  
**PART II: NON-INSURED AND SELFPAY PATIENTS**

TIMING OF APPOINTMENT	TIMING OF GFE
No Appointment scheduled.	No GFE required, <b><u>unless</u></b> specifically requested by patient. If requested, provide within <b>3</b> business days of request.
Appointment is made less than <b>3</b> days before appointment date.	No GFE required, <b><u>unless</u></b> specifically requested. If requested, provide within <b>3</b> business days of such request.
Appointment is made <b>3 to 9</b> days prior to appointment date.	GFE <b><u>must</u></b> be provided no later than <b>1</b> business day after the date the appointment is made.
Appointment is made <b>10 or more days</b> prior to the appointment date.	GFE <b><u>must</u></b> be provided no later than <b>3</b> business days after the date the appointment is made.

## NSA - PATIENT-PROVIDER DISPUTE RESOLUTION

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### PART II: NON-INSURED AND SELFPAY PATIENTS

- Patient vs. provider(s).
- Threshold: When final bill exceeds GFE expected charges by at least \$400.
- Patient or authorized representative can initiate.
- Must initiate dispute process within 120 calendar days of the date on original bill.
- \$25 fee.
- IDR Entity determines appropriate amount patient must pay → Binding decision.

## NSA CASE STUDIES

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*Test Time!*



## AMBULANCE SERVICES

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- Tiffany is a 58-year-old female with federal marketplace insurance coverage. Over 2 days, she develops worsening abdominal pain, nausea and constipation, which prompts her to call 911 . She is driven by ground ambulance transport to her local in-network hospital emergency department (ED) for exam and treatment.
- How much can the ambulance provider bill Tiffany under the NSA?
- The ambulance provider can balance bill because the NSA applies to **air** ambulance services.

## RADIOLOGY SERVICES

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### SCENARIO:

Ella is a 26-year-old female with private insurance coverage. She experiences severe pain, swelling, and redness in her right calf. She drives herself to the local hospital ED that is in-network. The ED physician orders a venous ultrasound. The radiologist who is out-of-network reads the ultrasound, which shows DVT. Zoe is discharged from the ED with medication.

## RADIOLOGY SERVICES

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### QUESTION:

Can the Radiologist balance bill for reading the ultrasound?

### ANSWER:

No.

## POST-STABILIZATION SERVICES

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- Anthony is a 62-year-old male with employer-sponsored health coverage. He is involved in a motor vehicle accident and sustains multiple injuries. He is taken to the closest hospital which is out-of-network. He undergoes surgery to repair multiple leg fractures. Once he is stable and out of surgery, he is counseled on the option to transfer care to another local in-network hospital for the duration of his recovery. His treating physician determines the safest form of transport is via ambulance. Anthony however prefers to stay as the hospital has excellent reputation. The hospital provides a written notice and gets his written consent to waive the balance billing protections of the NSA. He remains inpatient for 2 additional days prior to being discharged home.
- What can the hospital bill?
- Emergency services: No balance billing permitted.
- Post-stabilization services: No balance billing because he could only be safely transferred by ambulance and the hospital was not permitted to get his waiver.

## PLASTIC SURGEONS' CONSULT IN THE ED

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### SCENARIO:

I work for plastic surgeons who take emergency calls at the hospital. Some patients can be treated by the ED physician/PA but request a plastic surgeon.



## PLASTIC SURGEONS' CONSULT IN THE ED

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### QUESTION:

In that case, does it become elective, and can the plastic surgeons have the patient sign the Notice and Consent form so patients essentially waive the protections afforded by the NSA?

### ANSWER:

Maybe if certain conditions are met.

## ORTHOPAEDIC SURGEON SERVICES

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- Shawn is a 35-year old male who has commercial self-funded healthcare insurance. He is playing soccer and sustains a knee injury, which is later diagnosed as a torn ACL. He is advised by his friends to go to a specific orthopaedic surgeon who has an excellent reputation. His surgery is scheduled at an in-network ambulatory surgical center a week in advance. One day before his surgery, he gets an email with the written Notice and Consent (Form #2) informing him that the orthopaedic surgeon is out-of-network and requesting that he consent to waive his balance billing protections under the NSA in order to be treated by the orthopaedic surgeon. Shawn signs the Notice and Consent form to waive balance billing protections, as he would like to see this specific provider for his knee surgery. Several weeks later after his surgery, Shawn gets a balance bill from the orthopaedic surgeon.
- Did the orthopaedic surgeon comply with the NSA?
- No, he violated the Notice and Consent (Form #2) manner of delivery requirements. Shawn scheduled the surgery more than 72 hours in advance. Form #2 should have been provided no later than 72 hours in advance. Orthopaedic surgeon cannot balance bill even though Shawn signed Form #2.

## PRIMARY CARE PROVIDER

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### SCENARIO:

Dr. Harris wants to know what his duties are under the NSA. He is a primary care provider who only sees patients in his office and no longer rounds at the hospital.

## PRIMARY CARE PROVIDER

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### QUESTION:

Are all services performed by Dr. Harris in his office exempt from the NSA?

### ANSWER:

No.

## INDEPENDENT PATHOLOGY GROUP

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- Pathology Group is independent, but it provides pathology services at several hospitals and ASCs under some Professional Services Agreements. In addition, it processes outreach work from several dermatology practices.
- Since pathology services are “ancillary services,” does Pathology Group have to do anything under the NSA besides not balance billing as applicable?
- Yes, Pathology Group must take the following actions:
  - If it has a website, it must post Form #1 and Form #3.
  - It must work with hospitals, ASCs, and dermatology practices to respond to uninsured/self-pay patients’ requests for GFE within 1 business day and advise them of any changes to GFE within 1 business day of service/procedure.
  - No balance billing for OON patients at hospitals and ASCs.
  - Balance billing permitted for outreach specimens from dermatology practices (except if obtained in ASC).

## MERCI BEAUCOUP! THANK YOU!

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# APPENDIX

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## NSA - DEFINITION OF POST-STABILIZATION SERVICES INSURED PATIENTS

- Definition of Post-Stabilization: Not defined, but widely used in NSA as:
  - “[I]tems and services for which benefits are provided or covered under the plan and are furnished by a nonparticipating provider or nonparticipating emergency facility (regardless of the department of the hospital in which such items or services are furnished) after the participant or beneficiary is stabilized and as part of outpatient observation or an inpatient or outpatient stay with respect to the visit in which the [emergency] services are furnished, are not included as emergency services if all of the conditions in 45 CFR 149.410(b) are met.” [26 CFR 54.9816-4T(c)(2)(ii)]
- “To stabilize, with respect to an emergency medical condition, has the meaning given such term in section 1867(e)(3) of the Social Security Act [EMTALA] (42 U.S.C. 1395dd(e)(3))” [26 CFR 54.9816-4T(c)(3)]
- “The term ‘to stabilize’ means, with respect to an emergency medical condition ...to provide such medical treatment of the condition as may be necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility, or, with respect to an emergency medical condition [regarding pregnancy], to deliver (including the placenta).” [42 U.S.C. 1395dd(e)(3)]

# Federal NSA and NJ Law Comparison

	Federal - NSA	NJ – Surprise Bill Act
<b>Covered Services</b>	<ul style="list-style-type: none"> <li>• Emergency services by an OON provider or OON emergency facility.</li> <li>• Non-emergency services, by OON providers at in-network facilities and for which patients do not consent.</li> <li>• OON air ambulance services.</li> </ul>	<ul style="list-style-type: none"> <li>• Inadvertent OON services.</li> <li>• Emergency/Urgent services.               <ul style="list-style-type: none"> <li>○ Urgent medical condition is a non-life-threatening condition that requires care by a provider within 24 hours.</li> </ul> </li> </ul>
<b>Services Not Covered</b>	<ul style="list-style-type: none"> <li>• Non-emergency services at an OON facility.</li> <li>• Non-covered items and services under patient’s health plan.</li> <li>• Non-emergency or post-stabilization services by an OON provider at an in-network facility for which the patient consents to be balance billed, when permitted (can never consent to certain ancillary services).</li> </ul>	<ul style="list-style-type: none"> <li>• Knowing, voluntary, and specific selection of OON provider by patient where patient could have chosen in-network services.</li> </ul>
<b>Disclosure Requirement</b>	<p><a href="#">Model Disclosure Notice</a></p> <ul style="list-style-type: none"> <li>• Disclosure of balance billing protections must be made by all licensed providers.</li> <li>• For uninsured or self-pay individuals, notice and good faith estimate must be provided.</li> <li>• Exceptions: If the provider never furnishes services at a healthcare facility or if the individual patient will not be receiving services at a facility.</li> </ul>	<ul style="list-style-type: none"> <li>• No specific Disclosure Form available.</li> <li>• Before scheduling a non-emergency or elective procedures with a covered person, facility is required to disclose whether the facility is in-network for non-emergency services.</li> <li>• Also advise the covered person to (i) ask his or her physician whether the physician is in-network or OON and (ii) contact his or her carrier for further consultation on costs.</li> <li>• Must make available to the public a list of their standard charges, consistent with federal law.</li> <li>• Must post on its website a list of health benefit plans in which the facility is a participating provider and a statement that individual physicians’ services are not included in the facility’s charges, along with a disclaimer that some physicians may not participate with the same health benefit plans as the facility.</li> <li>• Individual healthcare professionals must (i) disclose the health benefit plans with which they participate; (ii) disclose to a particular covered person if they are OON with the person’s plan; (iii) provide the covered person with a billing estimate and with affiliated CPT codes, if requested; (iv) advise the covered person that he or she has the financial responsibility to pay for any OON services; and (v) promptly notify the covered person if their network status changes during the course of treatment.</li> </ul>

# Federal NSA and NJ Law Comparison

	Federal - NSA	NJ – Surprise Bill Act
<b>Notice and Consent Requirement</b>	<p><a href="#">Standard Notice and Consent Documents</a></p> <ul style="list-style-type: none"> <li>• This form cannot be modified.</li> <li>• Given to obtain a patient’s consent to be balance billed for OON non-emergency or post-stabilization services at an in-network facility, except for ancillary services.</li> <li>• Must include a good faith estimate for furnishing such items or services.</li> <li>• Must be provided at least 72 hours before the date the items and services are to be furnished.</li> <li>• If the appointment is made within 72 hours of the date of the items or services are to be furnished, the Notice and Consent must be provided on the date the appointment is made.</li> <li>• For same-day appointments, Notice and Consent must be provided at least 3 hours prior to furnishing the services.</li> </ul>	<ul style="list-style-type: none"> <li>• There is no inadvertent OON service where a covered person “knowingly, voluntarily, and specifically” selects an OON provider for services with full knowledge that the provider is OON with respect to the covered person’s health benefits plan, under circumstances that indicate that the covered person had the opportunity to be serviced by an in-network provider, but instead selected the OON provider.</li> <li>• There is no standard form.</li> </ul>
<b>Good Faith Estimates for Uninsured and Self-pay</b>	<p><a href="#">Notice to Uninsured/Self-Pay and Good Faith Estimate Template</a></p> <ul style="list-style-type: none"> <li>• Good faith estimate must include expected charges for the items or services that are reasonably expected to be provided, in conjunction with the primary item or services, including items or services that may be provided by co-providers and co-facilities, after discounts.</li> </ul>	<ul style="list-style-type: none"> <li>• A facility must make available to the public a list of the facility’s standard charges for all items and services provided by the facility.</li> <li>• Silent on the disclosure requirements to uninsured and self-pay. Professionals must provide a covered person with both a billing estimate and the associated CPT codes, if requested.</li> </ul>
<b>Independent Dispute Resolution (IDR) Timeline</b>  <b>(OON Provider v. Plans)</b>	<ul style="list-style-type: none"> <li>• Within 30 days – Parties negotiate.</li> <li>• Parties may submit dispute to IDR process within 4 business days of the end of the negotiation period.</li> <li>• Parties choose IDR entity; Secretary chooses if parties cannot agree.</li> <li>• Parties submit their offers and materials to arbitrator within 10 days of the date of selection of the IDR entity.</li> <li>• IDR chooses one of the parties’ offers within 30 days of selection of the IDR entity.</li> <li>• Payment to the OON provider no later than 30 days after IDR decision.</li> </ul> <p><b>NOTE:</b> If a state has its own payment standard and/or IDR process in place, that process can continue to apply for services covered by state-regulated health plans if meets or exceeds the federal standards.</p>	<ul style="list-style-type: none"> <li>• Within 20 days – Carrier must pay or notify the provider that it considers the bill to be excessive.</li> <li>• Within next 30 days – Parties negotiate.</li> <li>• If negotiation fails, the carrier will make a payment for the amount of its final offer.</li> <li>• Within next 30 days – Initiate arbitration.</li> <li>• Within 30 days – Arbitrator must issue award.</li> <li>• Excess payment by carrier, if any, to be made within 20 days.</li> </ul>

# Federal NSA and NJ Law Comparison

	Federal - NSA	NJ – Surprise Bill Act
<b>IDR Decision Factors</b>	<ul style="list-style-type: none"> <li>• “Baseball-style” arbitration process.</li> <li>• Qualifying payment amount (QPA) and other factors can be used.</li> <li>• QPA is no longer the presumptive reimbursement amount following Texas case.</li> </ul>	<ul style="list-style-type: none"> <li>• “Baseball-style” arbitration process.</li> <li>• Review of written submissions by both parties.</li> </ul>
<b>IDR Procedure</b>	<ul style="list-style-type: none"> <li>• Parties select a certified IDR entity.</li> <li>• Each party submits its offer for payment with documentation.</li> <li>• IDR entity select one of the offers.</li> <li>• Losing party is responsible for the IDR entity’s fee.</li> </ul>	<ul style="list-style-type: none"> <li>• Party requesting arbitration must notify of final offer prior to arbitration.</li> <li>• DOBI chooses the arbitrator.</li> <li>• Final offers must be at least \$1,000 apart.</li> <li>• Parties split cost of arbitration and each party pays own attorney’s fees.</li> </ul>
<b>Uninsured/Self-Pay Patient – Provider Dispute Resolution (Uninsured or Self Pay Patient v. Provider)</b>	<ul style="list-style-type: none"> <li>• Available when patient gets a bill from a provider at least \$400 more than good faith estimate.</li> <li>• Patient or their authorized representative may initiate the dispute process.</li> <li>• Patient must file to dispute claim within 120 days of date on bill.</li> </ul>	<ul style="list-style-type: none"> <li>• Under NJ OON, there is no arbitration procedure between an uninsured/self-pay patient against the provider.</li> </ul>
<b>Self-Funded Plan That Opted In v. OON Provider</b>	N/A	<ul style="list-style-type: none"> <li>• Self-funded plan (that has elected to be subject to the Law) and an OON provider are unable to resolve a payment dispute.</li> <li>• DOBI will select experienced arbitrators.</li> <li>• Arbitrator must take both positions into account and must ultimately produce written findings.</li> </ul>
<b>Covered Person With Self-Funded Plan That Does Not Opt In v. OON Provider</b>	N/A	<ul style="list-style-type: none"> <li>• The member of the self-funded plan that does not elect to opt-in or the OON provider may request binding arbitration after no resolution within 30 days.</li> <li>• DOBI will select experienced arbitrators.</li> <li>• Arbitration decision must be issued within 30 days after the request for arbitration is filed with the DOBI.</li> </ul>
<b>Penalties</b>	<ul style="list-style-type: none"> <li>• The NSA allows HHS to impose penalties of up to \$10,000 per violation.</li> </ul>	<ul style="list-style-type: none"> <li>• Up to \$100 per violation for healthcare professionals.</li> <li>• Up to \$1,000 per violation for carriers and healthcare facilities (every day qualifies as a separate violation, but no provider will be liable for more than</li> </ul>