

Frequently Asked Questions (FAQs) about Consolidated Appropriations Act, 2021 Implementation- Federal Independent Dispute Resolution System, Notice and Consent, Applicability

Set out below are Frequently Asked Questions (FAQs) regarding implementation various components of the No Surprises Act (NSA) of Division BB of the Consolidated Appropriations Act, 2021 (CAA 2021), and implementing regulations published in the Federal Register on July 13, 2021 as part of interim final rules with comment period, entitled “Requirements Related to Surprise Billing; Part I” and on October 7, 2021 as part of interim final rules with comment period, entitled “Requirements Related to Surprise Billing; Part II.”

These FAQs have been prepared by the Department of Health and Human Services (HHS) to address the provision of the Federal Independent Dispute Resolution system and Notice of Consent requirements. The contents of this document do not have the force and effect of law and are not meant to bind the public in any way, unless specifically incorporated into a contract. This document is intended only to provide clarity to the public regarding existing requirements under the law.

The information provided in this document is intended only to be a general informal summary of technical legal standards. It is not intended to take the place of the statutes, regulations, or formal policy guidance upon which it is based. This document summarizes current policy and operations as of the date it was presented. We encourage readers to refer to the applicable statutes, regulations, and other interpretive materials for complete and current information.

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Q. Will the Model Standard Notice and Consent Document notice be changing?

A. On November 19, 2021 CMS published revised model notices and a **Federal Register** notice that provides the public a 60-day comment period. These model notices will replace the currently approved emergency model notices, which will expire on 3/31/2022. The Model Standard Notice and Consent Document is the standard form that can be used by out-of-network providers and facilities to satisfy the notice and consent exception to balance billing. Health care providers and facilities may, but aren't required to, use the model notice to meet these disclosure requirements. If there are further questions on this issue, please email provider_enforcement@cms.hhs.gov.

Q. Is a walk-through of the Federal Independent Dispute Resolution (IDR) system available? If so, when?

A. . We will offer technical trainings on how to use the IDR system and are planning webinars and meetings to take place in the coming weeks to review this information. If you have specific questions beforehand, please email provider_enforcement@cms.hhs.gov or call the NSA Help Desk at 1-800-985-3059 between 8 a.m. and 8 p.m. EST, 7 days a week.

Q. What happens if a patient decides to get elective, non-emergency care from an out-of-network provider at an in-network facility? Is that out-of-network provider required to present a Model Standard Notice and Consent Document if the provider wants to be able to bill the patient for any charges not covered by the patient's insurance?

A. If the provider is out-of-network and the facility in which the non-emergency care would be provided is in-network, and the services are not of the type that the regulations prohibit a provider from seeking consent for (for example, ancillary services, etc.), then notice must be provided and consent obtained in order for the provider to be able to balance bill. If the patient declines to give consent, the provider is not required to provide the services. But if the provider chooses to furnish the care anyway, the provider is not permitted to balance bill the patient. If you have further questions, please email provider_enforcement@cms.hhs.gov.

Q. Can you provide any information on how the various payers will be returning in-network and out-of-network indicators for the requesting providers in advance of the No Surprises Act?

A. Our rules do not establish specific requirements regarding the indicators that plans and issuers must use in responding to providers.

Q: Which physician types do the No Surprises Act rules apply to?

A. Any physician or other health care provider who is acting within the scope of practice of that provider's license or certification under applicable State law may be subject to the rules, depending upon the rule. For example, a provider who never furnishes services in connection with a visit to a health care facility or emergency facility would generally not furnish items or services that fall within the balance billing protections. However, that same provider may need to provide a good faith estimate of expected charges to uninsured or self-pay individuals. If you have further questions, please email provider_enforcement@cms.hhs.gov.