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New Government Guidance on Requirements Related to Surprise Billing

While portions of the federal No Surprises Act (the act or NSA) remain embroiled in litigation, healthcare providers have struggled to comply with various provisions of the act, particularly the disclosure requirements, since its January 1 effective date. On June 23, the Centers for Medicare & Medicaid Services (CMS) released [frequently asked questions](#) (FAQs) on the NSA implementation that address a wide range of issues. While the FAQs do not have the force of law and specifically state that they are not meant to bind the public in any way (unless specially incorporated into a contract), they do provide a good general summary of the technical legal standards and offer guidance on common questions that have arisen since the effective date, including:

- Provide a list of the types of providers (and categories of services) subject to the act (and specifically which providers are *not* subject to the act) and which specific requirements of the act apply to which providers by category of service.
- Confirm that the balance billing protections of the act do not apply when furnishing services to beneficiaries or enrollees in federal health programs, such as Medicare (including Medicare Advantage), Medicaid (including managed Medicaid), and Veterans Affairs healthcare or TRICARE, because these programs have other protections in place to address high medical bills.
- Discuss the general prohibition on using notice and consent to waive the balance billing and cost-sharing protections of the act.
- Review the limited circumstances when notice and consent can be used to waive the balance billing and cost-sharing protections of the act.
- Address the retention requirements for notice and consent documentation.
- Make it clear that verbal consent to waive the protections is not sufficient.
- Address the timing required for any notice and waiver consent.

The FAQs are helpful for providers as they decipher the complicated requirements of the act. As the legal guidance continues to be released, providers will want to periodically check the webpage CMS has created to compile all guidance on the act, found [here](#).

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