

Publications

No Surprises Act Disclosure Notice

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The No Surprises Act (NSA), part of the Consolidated Appropriations Act, 2021, provides protections against certain types of surprise medical bills. The NSA includes a requirement that group health plans and health insurance issuers provide a notice describing participants' rights and protections regarding these surprise medical bills. This disclosure notice (Notice) must be publicly available, must be posted on the group health plan's or issuer's public website, and must be included on any applicable explanation of benefits (EOB). The Notice is intended to raise awareness and enhance understanding of state and federal balance billing protections.

Who must provide the Notice?

All group health plans and health insurance issuers offering group or individual health insurance coverage must provide the Notice.

How should the Notice be provided?

The Notice must be provided in the following three ways: (i) it must be made publicly available, (ii) it must be posted on a public website of the plan or issuer, and (iii) it must be included on each EOB for an item or service with respect to which the requirements under the NSA apply.

On August 20, 2021, the Department of Labor (DOL), Department of Health and Human Services and Department of Treasury (Tri-Agencies) issued FAQs stating that they would not be issuing regulations addressing the balance billing disclosure requirements prior to the effective date. However, in Q-9 of the FAQs, the Tri-Agencies stated that plans and issuers are expected to implement these requirements using a good faith, reasonable interpretation of the statute until further guidance or regulations are issued. As discussed further below, interim final regulations have been issued that focus on disclosures by health care providers and facilities; however, those regulations do not define how or if those requirements should be applied to disclosures by group health plans and insurers.

Therefore, group health plans and issuers should take the following actions:

Public Availability

Several federal laws require employers to post certain notices of rights and posters in a conspicuous, physical location at the workplace. Employers should consider posting the Notice in the same location.

Plan sponsors should consider other methods of making this Notice publicly available such as including a copy of the Notice in their open enrollment materials, including the Notice in new hire packets, or separately distributing the Notices (via email or mail) to employees.

Posted on a Public Website of the Plan or Issuer

There is some debate about what qualifies as a “public website” for this purpose. The regulations issued with respect to disclosures by health care providers and facilities require that the public website be searchable and accessible free of charge, without having to establish a user account, password or other credentials, accept any terms or conditions, and without having to submit any personal identifying information such as a name or email address. We recommend that an employer post the Notice or a link to the Notice on the employer’s main Human Resources website and on the plan’s website. Although these websites are often not accessible by the general public, we believe that such postings serve the purpose of communicating with employees and other plan participants, while the average participant would not think to search on an employer’s public facing websites. To the extent that an employer’s Human Resource website requires an employee to sign-in to access the content, we recommend that the employer send an email to the employees indicating that the Notice has been posted to the Human Resources website and providing contact information in the event the employee has difficulty signing into the Human Resources website.

Included on each EOB

Plan sponsors should work with their third party administrators and/or insurers to ensure that the Notice will be added to EOBs issued with respect to plan years beginning on or after January 1, 2022.

When do plans and issuers need to start providing the Notice?

The disclosure requirement takes effect for plan years beginning on or after January 1, 2022. The Tri-Agency guidance does not provide a deadline for making the initial or annual Notice publicly available. We recommend that the Notice be provided at least 30 days prior to the beginning of the plan year which begins on or after January 1, 2022.

What does the Notice need to say?

The Notice must include an explanation *in clear and understandable language* of all of the following:

1. The requirements and prohibitions applicable to group health plans, health insurance issuers, health care providers and facilities regarding balance billing for out-of-network emergency services and certain non-emergency services provided by out-of-network providers in an in-network facility,

including information regarding cost-sharing limitations;

2. Any applicable state law requirements regarding the amounts such providers and facilities may charge a participant, beneficiary, or enrollee of a group health plan or individual health insurance coverage when such provider or facility does not have a contractual relationship with the group health plan or issuer; and
3. Contact information for the appropriate state and federal agencies to whom complaints may be directed if the individual believes a provider or facility has violated the restrictions against balance billing.

On July 13, 2021, the DOL issued a model notice, [Your Rights and Protections Against Surprise Medical Bills](#). Use of the model notice is optional. However, the Tri-Agencies will consider use of the model notice in accordance with the related instructions to be good faith compliance with the disclosure requirements if all other applicable requirements are met.

Note: if a state develops model language for its disclosure notice, the Tri-Agencies will consider a plan or issuer that makes good faith use of the state-developed model language to be in compliance with the federal requirement to include information about state law protections.

Please reach out to your Vorys attorney if you have any questions regarding the Notice timing and/or requirements.