

# *What CSBs Need to Know About*



**The No  
Surprises  
Act**

**Virginia's  
Balance  
Billing  
Law**

# **The No Surprises Act**

---

The Act protects participants in commercial group or individual health plans from receiving “surprise bills” from out-of-network providers for

- most emergency services;
- specified non-emergency services;
- certain services from out-of-network air ambulance service providers.

- The Act protects patients from surprise bills related to services provided by an out-of-network provider that the patient did approve in writing in advance
- NSA does not apply to Medicaid or Medicare patients

- The Act precludes a health plan or insurer from denying out-of-network claims, applying higher out-of-network cost sharing, or imposing any requirement on the patient that is more stringent than the requirements related to in-network providers for covered emergency services, if the insurer covers any benefits related to services rendered in an ER.

## *Dispute resolution process*

---

- Insurers and providers are required to attempt to resolve disputes on their own.
- If negotiations fail, either party may initiate arbitration.
- As patients are relieved of responsibility for surprise bills, they are not involved in the process.

# **Virginia's Balance Billing Law**

---

It was enacted before the NSA, and has similar objectives and protections as the NSA. It prohibits out-of-network providers from billing patients

- for emergency services received at a hospital;
- for certain non-emergency services during a scheduled procedure at an in-network hospital or health care facility.



- The law deems the patient's obligations satisfied if the patient pays the in-network cost sharing for the services provided.

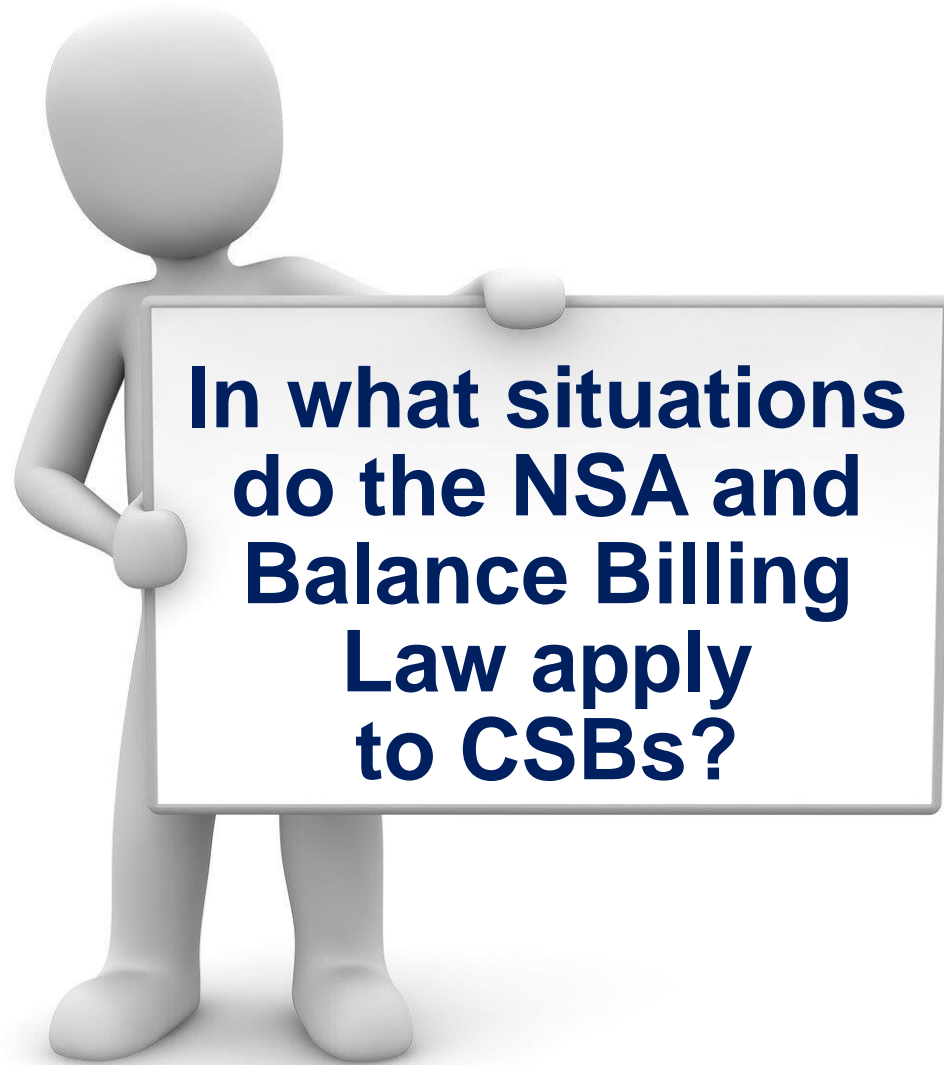
- To recover costs greater than the patient's in-network amount, the out-of-network provider must dispute the claim with the patient's insurer.
- The insurer and the provider are expected to negotiate, in good faith, an amount for the cost of the services provided.

- The amount paid by insurer should be a “commercially reasonable amount” based on payments for similar or the same services provided in a similar geographic area.

## *Dispute resolution process*

---

- Insurers and providers are required to attempt to resolve disputes on their own.
- If negotiations fail, either party may initiate arbitration.
- As patients are relieved of responsibility for surprise bills, they are not involved in the process.



**In what situations  
do the NSA and  
Balance Billing  
Law apply  
to CSBs?**

## ***Where a CSB provides emergency services to a patient***

---

- Both laws interpret such services to include treatment for an emergency medical condition of the kind that is within the capabilities of the staff and facilities of a hospital's ER.

## *Where a CSB provides emergency services to a patient*

---

- The NSA specifically includes mental health conditions and substance use disorders within the Act's definition of "emergency medical condition."
- Under the NSA, the CSB's office or other treating facility must be geographically separate and distinct and licensed separately from a hospital.

## ***Where a CSB provides emergency services to a patient***

---

- The BBL does not specify where the service must be provided.



*Where a CSB provides ancillary nonemergency services to a patient*

---

- “Ancillary services” include
  - Anesthesiology;
  - Pathology;
  - Radiology;
  - Hospitalist services;
  - Laboratory services and
  - Items and services provided by an out-of-network provider in a case where there is no in-network provider who can furnish such item or service at the health facility.

# **The CSB's**

---

# **Responsibilities**

*As health care providers  
under both laws, CSBs are required:*

---

- to inform patients of the commercial health plans in which the CSB participates;
- unless waived, not to bill or otherwise attempt to collect from a patient any amount greater than the patient's in-network cost;

*As health care providers  
under both laws, CSBs are required:*

---

- to refund patients within 30 business days for any amount collected in excess of the patient's in-network insurance cost for the services provided, if NSA applies;
- to provide patients with a notice of their rights under the NSA and Balance Billing Law; and
- not to ask patients to give up or limit their rights under both laws.

## *Good faith estimates*

---

- Required by NSA if patient is self-pay or does not have insurance coverage
- Currently no penalty or fines assigned for noncompliance, but failure to provide GFE could subject provider to a billing dispute resolution process
- GFEs must be provided to current and new patients not covered by insurance

- Estimate must include certain patient-specific information in clear and understandable language

- The patient's name and date of birth;
- A description of the primary item or service being furnished to the patient (and if applicable, the date the primary item or service is scheduled);
- An itemized list of items or services that are "reasonably expected" to be furnished;
- Applicable diagnosis codes, expected service codes, and expected charges associated with each listed item or service;
- The name, National Provider Identifier, and Tax Identification Number (TIN) of each provider or facility represented in the good faith estimate, and the state(s) and office or facility location(s) where the items or services are expected to be furnished. (APA recommends using a business TIN rather than your SSN);
- A list of items or services that the provider or convening facility (the provider or facility that handles the scheduling of the service) anticipates will require separate scheduling and that are expected to occur before or following the expected period of care for the primary item or service; <sup>1</sup>
- A disclaimer that there may be additional items or services the convening provider or convening facility recommends as part of the course of care that must be scheduled or requested separately and are not reflected in the good faith estimate;
- A disclaimer that the information provided in the good faith estimate is only an estimate and that actual items, services, or charges may differ from the good faith estimate; and
- A disclaimer that informs the patient of their right to initiate a patient-provider dispute resolution process if the actual billed charges substantially exceed the expected charges included in the good faith estimate. This should include instructions for where the patient can find information about how to initiate the dispute resolution process, as well as a statement that the initiation of a patient-provider dispute resolution process will not adversely affect the quality of health care services furnished to the patient; and
- A disclaimer that the good faith estimate is not a contract and does not require the uninsured (or self-pay) individual to obtain the items or services from any of the providers or facilities identified in the good faith estimate.

### Simple GFE template for services provided by one psychologist

[Put your practice's logo, name and address here]

Date of Good Faith Estimate: \_\_\_/\_\_\_/\_\_\_ This estimate is for psychotherapy services through [Date]

#### [Optional] Brief explanation of estimate for new patients:

The estimate below is the [range of costs]/cost that is likely for most new patients. Until I do an initial evaluation and we start to work together, I will not have a clear picture of your specific diagnosis, issues and needs. I typically see therapy patients for [number or range] sessions for a total cost of \$[number or range]. But in [some/many] cases a patient's issues may be more complicated, so we may need additional sessions during the time covered by this estimate.

[Optional] **Brief explanation for continuing patients:** The estimate below is the [range of costs]/cost that I think is likely for your care over the time period covered by this estimate. However, depending on how treatment progresses, more or fewer sessions may be needed.

**Contact:** If you have questions about this estimate, please contact [your name, or other person in your practice who can answer questions about the GFE] at [phone number and email].

#### Details of the Estimate

The following is a detailed list of expected charges for psychological services scheduled for [date or dates]. [Include the following for reoccurring services like psychotherapy.] The estimated costs are valid for 12 months from the date of this Good Faith Estimate, unless [I/we] send you an updated Estimate.

Service	Diagnosis Code (once determined)	Service code	Quantity (# of sessions or units. Give number or range)	Cost per unit	Expected cost
Initial evaluation	[use ICD codes]	90791		\$	\$
Psychotherapy		90837 and/or 90834		\$	\$

Total estimated cost: \$ \_\_\_ [number or range]

**Psychologist providing services:** Name \_\_\_\_\_ [you can delete this if you are a solo practitioner or the practice name is the same as the treating psychologist]

NPI number: \_\_\_\_\_ TIN: \_\_\_\_\_

Address of office from which services will be provided \_\_\_\_\_ [This is only needed if you have multiple offices and you'll be providing services from a different office than the one listed at the top of the notice]

## Sample template



# Sample template from CMS

OMB Control Number [XXXX-XXXX]  
Expiration Date [MM/DD/YYYY]

## Appendix 1

### Standard Notice: “Right to Receive a Good Faith Estimate of Expected Charges” Under the No Surprises Act

(For use by health care providers no later than January 1, 2022)

#### Instructions

Under Section 2799B-6 of the Public Health Service Act, health care providers and health care facilities are required to inform individuals who are not enrolled in a plan or coverage or a Federal health care program, or not seeking to file a claim with their plan or coverage **both orally and in writing** of their ability, upon request or at the time of scheduling health care items and services, to receive a “Good Faith Estimate” of expected charges.

This form may be used by the health care providers to inform individuals who are not enrolled in a plan or coverage or a Federal health care program (uninsured individuals), or individuals who are enrolled but not seeking to file a claim with their plan or coverage (self-pay individuals) of their right to a “Good Faith Estimate” to help them estimate the expected charges they may be billed for receiving certain health care items and services. **Information regarding the availability of a “Good Faith Estimate” must be prominently displayed** on the convening provider’s and convening facility’s website and in the office and on-site where scheduling or questions about the cost of health care occur.

To use this model notice, the provider or facility must fill in the blanks with the appropriate information. HHS considers use of the model notice to be good faith compliance with the good faith estimate requirements to inform an individual of their rights to receive such a notice. Use of this model notice is not required and is provided as a means of facilitating compliance with the applicable notice requirements. However, some form of notice, including the provision of certain required information, is necessary to begin the patient-provider dispute resolution process.

**NOTE:** The information provided in these instructions 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. Readers should refer to the applicable statutes, regulations, and other interpretive materials for complete and current information. [Link to IFR when available.]

**Health care providers and facilities should not include these instructions with the documents given to patients.**

OMB Control Number [XXXX-XXXX]  
Expiration Date [MM/DD/YYYY]

## You have the right to receive a “Good Faith Estimate” explaining how much your medical care will cost

Under the law, health care providers need to give **patients who don’t have insurance or who are not using insurance** an estimate of the bill for medical items and services.

- You have the right to receive a Good Faith Estimate for the total expected cost of any non-emergency items or services. This includes related costs like medical tests, prescription drugs, equipment, and hospital fees.
- Make sure your health care provider gives you a Good Faith Estimate in writing at least 1 business day before your medical service or item. You can also ask your health care provider, and any other provider you choose, for a Good Faith Estimate before you schedule an item or service.
- If you receive a bill that is at least \$400 more than your Good Faith Estimate, you can dispute the bill.
- Make sure to save a copy or picture of your Good Faith Estimate.

For questions or more information about your right to a Good Faith Estimate, visit [www.cms.gov/nosurprises](https://www.cms.gov/nosurprises) or call [INSERT PHONE NUMBER].



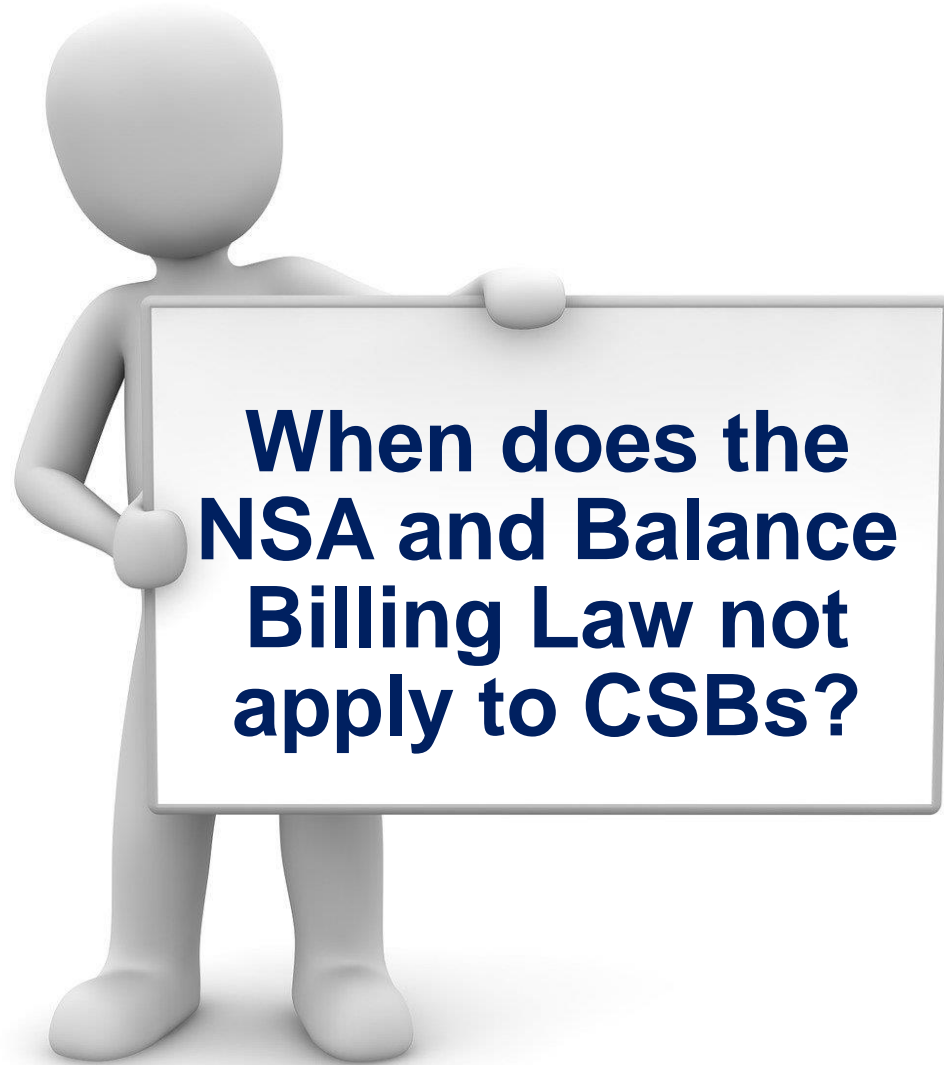
<https://www.apaservices.org/practice/legal/managed/good-faith-estimate-notice.pdf>



## *Good faith estimates*

---

- It is important to track billing vs. GFEs to avoid reaching the point where billing is \$400 over the GFE.
- If this occurs, update the GFE and talk to the patient.
- The patient may wish to pursue dispute resolution.



**When does the  
NSA and Balance  
Billing Law not  
apply to CSBs?**

- The CSB is deemed an in-network provider.
- The services provided are non-emergency services that are not covered by either law.
- Services covered by Medicare or Medicaid.

- If a patient has knowingly and voluntarily waived the protections against surprise billing and where the service provided is deemed a nonemergency service.
- A service is deemed a nonemergency if the attending emergency physician or treating provider determines that the patient can travel using nonemergency medical transportation (or nonmedical transportation) to an in-network provider located within a reasonable distance.

## ***Additional requirements for patients to waive balance billing protections***

- there are in-network providers located within the treating facility;
- the care is not for unforeseen, urgent medical care such as post-stabilization services; and
- the provider is not furnishing ancillary services.

## *Waiver form requirements*

---

- Use HHS model form

## Surprise Billing Protection Form

The purpose of this document is to let you know about your protections from unexpected medical bills. It also asks whether you would like to give up those protections and pay more for out-of-network care.

**IMPORTANT:** You aren't required to sign this form and shouldn't sign it if you didn't have a choice of health care provider when you received care. You can choose to get care from a provider or facility in your health plan's network, which may cost you less.

If you'd like assistance with this document, ask your provider or a patient advocate. Take a picture and/or keep a copy of this form for your records.

---

You're getting this notice because this provider or facility isn't in your health plan's network. This means the provider or facility doesn't have an agreement with your plan.

Getting care from this provider or facility could cost you more.

If your plan covers the item or service you're getting, federal law protects you from higher bills:

- When you get emergency care from out-of-network providers and facilities, or
- When an out-of-network provider treats you at an in-network hospital or ambulatory surgical center without your knowledge or consent.

Ask your health care provider or patient advocate if you need help knowing if these protections apply to you.

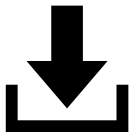
If you sign this form, you may pay more because:

- You are giving up your protections under the law.
- You may owe the full costs billed for items and services received.
- Your health plan might not count any of the amount you pay towards your deductible and out-of-pocket limit. Contact your health plan for more information.

You shouldn't sign this form if you didn't have a choice of providers when receiving care. For example, if a doctor was assigned to you with no opportunity to make a change.

Before deciding whether to sign this form, you can contact your health plan to find an in-network provider or facility. If there isn't one, your health plan might work out an agreement with this provider or facility, or another one.

See the next page for your cost estimate.



[www.cms.gov/files/document/standard-notice-consent-forms-nonparticipating-providers-emergency-facilities-regarding-consumer.pdf](https://www.cms.gov/files/document/standard-notice-consent-forms-nonparticipating-providers-emergency-facilities-regarding-consumer.pdf)

## *Wavier form requirements*

---

- Personalize the form to include certain patient-specific information
  - ✓ itemized cost estimate
  - ✓ whether prior authorization needs to be satisfied
  - ✓ facility or provider information







CHRISTIAN & BARTON, LLP  
ATTORNEYS AT LAW

---

*This is provided as an informational service and does not constitute legal counsel or advice, which can only be rendered in the context of specific factual situations.*

*If a legal issue should arise, please retain the assistance of competent legal counsel.*

# Thank You

---



**Jonathan M. Joseph**  
Christian & Barton, LLP  
901 East Cary Street  
Suite 1800  
Richmond, Virginia 23219  
804.697.4125  
jjoseph@cblaw.com  
www.cblaw.com