#AskAOA
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January 2022

No Surprises Act (NSA)

What Doctors of Optometry Need to Know

What is the No surprises Act?

On Dec. 27, 2020, the No Surprises Act was signed into law. The No Surprises Act is aimed at addressing situations in which patients receive surprise medical bills when they inadvertently or unknowingly receive care from an out of network provider. The Departments of Health and Human Services, Treasury, and Labor have developed several regulations to implement the law.

What are some of the new protections for patients?

The Following new protections for patients do not apply in physician offices but may apply in other settings where doctors of optometry provide clinical care

- Ban surprise billing for emergency services. Emergency services, even if they're provided out-of-network, must be covered at an in-network rate without requiring prior authorization.
- Ban balance billing and out-of-network cost-sharing (such as out-of-network co-insurance or copayments) for emergency and certain non-emergency pre-scheduled care. In these situations, the consumer's cost for the service cannot be higher than if these services were provided by an in-network provider, and any coinsurance or deductible must be based on in-network provider rates.

What is considered emergency care?

Under the NSA, the definition of emergency services includes care provided in emergency departments of hospitals and in independent freestanding emergency departments. Emergency care is not considered care provided in a physician's office, such as a doctor of optometry's office.

What is considered non-emergency care?

Under the NSA, the definition of non-emergency care includes care provided in hospitals, hospital outpatient departments, critical access hospitals, and ambulatory surgical centers. Non-emergency care, for the purposes of this new law and corresponding regulations, does not include care provided in a physician's office, like a doctor of optometry's office.

When do these new rules go into effect?

They go into effect on January 1, 2022.

How do these rules really impact doctors of optometry?

These rules are targeted foremost at facilities such as hospitals. Doctors of optometry providing care at facilities that provide emergency or non-emergency care, as delineated above could be impacted by these new rules.

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Updated January 2022: Good Faith Estimates

What else does the NSA do that might impact doctors of optometry?

The NSA regulations also requires that patients be provided with "good faith estimates" of costs of certain procedures for certain patients.

What facilities and practices are required to provide good faith estimates for uninsured patients?

Given a lack of clarity in the interim final rule issued in fall of 2021, the AOA and other associations such as the American Medical Association have been seeking clarity from HHS on the applicability of the GFE requirements on individual physician practices. Following AOA outreach, on December 27, 2021 HHS clarified that "Generally, all providers and facilities that schedule items or services for an uninsured (or self-pay) individual or receive a request for a GFE from an uninsured (or self-pay) individual must provide such individual with a GFE. No specific specialties, facility types, or sites of service are exempt from this requirement."

AOA has serious concerns about the December 2021 clarifying information and has asked HHS for a delay of implementation of this rule to consider additional feedback from physician practices.

When do the good faith estimate requirements go into place?

January 1, 2022 is the implementation date for providing good faith estimates to uninsured patients. However, HHS is exercising some enforcement discretion in 2022.

What should be included in the good faith estimate?

HHS has indicated that practices and facilities should provide a single, comprehensive good faith estimate to patients. This is recommended in lieu of providing separate good faith estimates from each person or facility involved in the care. A template from HHS is provided here: https://www.cms.gov/files/document/good-faith-estimate-example.pdf

Can the estimate be provided orally?

HHS has indicated that if an estimate is provided orally, the practice must follow up with an estimate in writing.

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Who does an estimate need to be provided to?

Practices should ask patients scheduling appointments if they have commercial health coverage, Medicare, Medicaid or the Federal Employees Health Benefits Program (FEHBP) and, if the patient is covered under commercial coverage or FEHBP, whether the patient will be using that coverage. If the patient does not have coverage that patient will need to be provided with a good faith estimate when they schedule their appointment or if the patient requests and estimate.

Do I need to post anything in my office?

Yes, notice of the availability of the good faith estimate must be posted on the provider's or facility's website and at the office. The current version of HHS's model notice is available here: https://www.cms.gov/regulationsand-guidancelegislationpaperworkreductionactof1995pra-listing/cms-10791

When does the estimate need to be provided?

If an uninsured patient requests a good faith estimate prior to scheduling care a good faith estimate must be provided.

When an uninsured patient schedules an appointment, a good faith estimate must be provided.

What other resources are available?

HHS released an FAQ document available here: https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Guidance-Good-Faith-Estimates-FAQ.pdf

Do good faith estimates need to be provided to insured patients seeking care in facilities impacted by the rule?

No, not at this time.

What should I do in my practice today?

1. Look for additional updates on these regulations from AOA. We have serious concerns with the implementation of this rule and are seeking a delay in implementation.

2. Familiarize yourself with the good faith estimate requirements.

3. Attend the #AskAOA Webinar on good faith estimates.