The New Jersey Hospital Association’s (“NJHA”) Federal/State Surprise Billing Requirements Toolkit (“Materials”) is intended to serve as tools that member hospitals may use to implement and comply with the requirements of both the New Jersey “Out-of-network Consumer Protection, Transparency, Cost Containment and Accountability Act” and the federal “No Surprises Act.” Member hospitals should not regard any information provided in these Materials as specific legal advice, and they should consult with their own legal counsel for additional guidance as appropriate. NJHA and any other party involved in creating, producing, or delivering these Materials shall not be liable for any direct, incidental, consequential, indirect, or punitive damages arising out of the use of these Materials. The further distribution of these Materials is prohibited without the prior written consent of NJHA.

The information contained within the Materials is provided to assist members’ compliance efforts to protect consumers from surprise medical bills as required by law effective Jan. 1, 2022. However, it must be noted that the federal law requirements were issued as interim final rules—that are subject to change and are only accurate as of the date released.

**Federal/State Surprise Billing Notice and Consent Resource for Patient Billing**

The federal No Surprises Act and New Jersey’s Out-of-Network law are both intended to minimize the instances in which a consumer receives a surprise medical bill.

Both laws have strict notice and consent requirements related to when an individual can be billed more than their in-network cost-sharing amounts.

Both laws also include notice requirements regarding the forms the individual must complete that permit the provider to bill them for services. They also require providers to obtain signed forms, which the provider must keep on file, and to provide good faith estimates of out-of-network costs. At this time, good faith estimates only need to be provided to uninsured and self-pay patients. We are awaiting additional federal guidance concerning good faith estimates for individuals with insurance coverage before providers will be obligated to comply.

**Providers/Services Covered**

The federal protections governing which providers can bill a patient go beyond New Jersey’s requirements. Therefore, providers must never bill consumers in the following situations:

* The care is for emergency or urgent services.
* There is no in-network provider available at the facility.
* The provider is an ancillary provider.

One important exception is that the No Surprises Act protections do not apply to non-emergency services by out-of-network providers at out-of-network facilities.

**Notice and Consent Standards**

The federal rules also establish specific standards for notice and consent for out-of-network providers providing items or services at in-network facilities.

* The notice must be tailored to the individual patient in each circumstance, including identification of the provider or facility and a good faith *estimate (currently only applies to uninsured and self-pay patients, pending additional regulations*) of the amount to be billed.
* A facility may provide a single notice for multiple out-of-network providers, provided that:

(1) each provider’s name is specifically listed

(2) each provider includes an individual estimate of the items and services they are individually furnishing, and

(3) the patient has the option to consent to waive balance billing protections with respect to each individual provider separately.

Additional federal standards for the notice and consent forms include that:

* The notice and consent documents must be provided together and cannot be attached to or incorporated into any other documents.
* It must be made clear that the good faith estimate and patient consent do not constitute a contract or a binding commitment to the estimated charge.
* It must include information regarding whether prior authorization or other care management limitations may be required prior to the provision of services.
* It must clearly state that the patient is not required to consent to receive such items and services, and that the patient may instead seek care from an available in-network provider or facility and that in such cases, in-network cost-sharing amounts will apply.
* It must include a list of in-network providers at the facility who are able to furnish the same items or services and state that the patient may be referred at their option to such provider(s) for post-stabilization services furnished by an out-of-network provider at an in-network emergency facility.
* Notices and forms must be available in any of the 15 most common languages in the geographic region in which the facility is located. If an individual cannot understand any of the provided languages, the provider or facility must obtain a qualified interpreter.
* The in-network facility may provide the notice on behalf of an out-of-network provider.
* A patient may revoke consent by notifying the provider or facility in writing prior to the furnishing of items or services.
* The federal requirements indicate consent must be maintained for a minimum of seven years. However, New Jersey law requires that the notices be a part of the patient’s medical record.

**Notice and Consent Timing**

Under the federal rules, the notice must be provided within an appropriate timeframe for the patient to make an informed decision. In instances of appointments scheduled in advance, notice should be made at least 72 hours before the date of the appointment. If an appointment is made on the day of services, notice should be given at least three hours prior to furnishing the items or services.

New Jersey’s law established that notice must be given at the time of scheduling. The Department of Health released forms in 2019 with instructions stating that the notice must be signed prior to the provision of services when scheduling by phone and at the time of scheduling if in person.

Both state and federal rules require that a provider’s representative be available to explain the disclosures.

**Notice and Consent Forms**

The federal rules are clear that, unlike the disclosures for surprise billing protections, the model notice created by the U.S. Department of Health and Human Services must be used and cannot be modified. Therefore, similar to the recommendation in the resource *Notices of Patient Protections,* providers should use the federal and state forms to ensure compliance until there is further guidance from the State.

Copies of the state and federal notices can be found here [The New Jersey Hospital Association (njha.com)](https://www.njha.com/resources/toolkits/oon-implementation-toolkit/) and here [Standard Notice and Consent Documents Under the No Surprises Act (cms.gov)](https://www.cms.gov/files/document/standard-notice-consent-forms-nonparticipating-providers-emergency-facilities-regarding-consumer.pdf) respectively.