



# HOSPITALS AND HEALTH SYSTEMS

## GENERAL COUNSEL'S CORNER

## NO SURPRISES ACT UPDATE: WHAT YOU NEED TO KNOW ABOUT THE AUGUST FINAL RULE

September 2022

On Friday, August 19, 2022, the Departments of the Treasury, Labor and Health and Human Services (the Departments) issued a final rule (the August Final Rule) implementing modifications to the No Surprises Act (NSA). The August Final Rule focuses on various aspects of the qualified payment amount (QPA) concept and the federal Independent Dispute Resolution (IDR) process, but notably, does not address the general balance billing or good faith estimate requirements set forth in either Interim Final Rules (IFR) Part I or Part II, issued on July 13, 2021, and October 7, 2021, respectively. In the August Final Rule, the Departments acknowledge that they intend to address comments received as to other provisions of IFR Parts I and II at a later date. Based on this, we anticipate that the Departments may issue another final rule sometime before the end of this year to address, among other components of the NSA, those that become effective on January 1, 2023 (*i.e.*, the good faith estimate requirement for co-providers and co-facilities).

We have compiled the following resources for your convenience:

1. [A copy of the August Final Rule](#)
2. A [document](#) reflecting the NSA regulations (45 C.F.R. Part 149), which demonstrates, in redlines, the few modifications made to the NSA regulations per the August Final Rule. As evidenced by these redlines, no changes were made to the general balance billing regulations (including the notice and consent component of these regulations), nor to the good faith estimate regulations.
3. [The Departments' FAQ](#), issued August 19, 2022
4. Our summary of the August Final Rule: [Departments Issue Final Rule Implementing Certain No Surprises Act Provisions](#)

## ADDITIONAL NOTES REGARDING THE MODEL DISCLOSURE NOTICE AND NOTICE AND CONSENT DOCUMENTS FROM IFR PART I

The same day the August Final Rule was issued, the Departments also issued another Frequently Asked Questions (FAQ) document addressing certain components of the NSA, a copy of which can be [found here](#). In response to FAQ #13, the Department of Health and Human Services (HHS) clarified which versions of the model Disclosure Notice and the notice and consent (to balance bill) forms should be used by providers and facilities:

1. **Model Disclosure Notice** (*McDermott Note: providers and facilities may use HHS's model disclosure notice to notify individuals of their protections against balance billing*)
  1. **During Calendar Year 2022:** Providers and facilities may use either the initial version of this Disclosure Notice (Appendix I) or the revised Disclosure Notice (Appendix III) for making disclosures during calendar year 2022.
  2. **After January 1, 2023:** HHS will consider providers' and facilities' use of only the revised version of the model Disclosure Notice (Appendix III) to be good faith compliance for disclosures made on or after January 1, 2023.

2. **Notice and Consent** (*McDermott Note: providers and facilities must use HHS's notice and consent when providing notice and seeking consent from individuals to waive their protections against surprise bills*)
  1. **During Calendar Year 2022:** Providers and facilities may use either the initial version of the standard notice and consent form (Appendix II) or the revised version (Appendix IV) for items and services furnished during calendar year 2022.
  2. **After January 1, 2023:** Providers and facilities may only use the revised version of the standard notice and consent form (Appendix IV) for items and services furnished on or after January 1, 2023.

With respect to these forms referenced in the FAQ, please note the following:

#### 1. Model Disclosure Notice:

1. Appendix III (referred to in the FAQ, above) is the same version that was released on CMS's website back in December 2021. [Click here](#) to view a copy of Appendix III.
2. The only difference between this version and the previous version issued in December 2021 is the addition of the "05/31/2025" expiration date in the instructions to the notice.
3. *To the extent your Disclosure Notice was prepared based on the December 2021 form, then there is nothing you need to do other than be aware of the expiration date of this form for your records.*

#### 1. Notice and Consent:

1. Appendix IV (referred to in the FAQ, above) is the same notice and consent form issued in December 2021, except for the addition of the OMB control number and an expiration date for the form (05/31/2025).
  1. A copy of this standard notice and consent document [can be found here](#).
  2. We have also [compiled a comparison](#) between the December 2021 document and this Appendix IV, which reflects that nothing substantively has changed.
2. *If you are still utilizing the older version of these forms (Appendix II), then you may continue doing so for Calendar Year 2022, but you should begin preparing forms in accordance with Appendix IV for use on January 1, 2023.*
  1. To see the differences between Appendix II and Appendix IV (the initial vs. revised standard and consent), [click here](#).

Questions about the No Surprises Act?

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