

No Surprises Act

written by Guest Author | January 4, 2022

The No Surprises Act is a Surprise to Many Psychotherapists

As many of you were surprised to discover, a new law that impacts the vast majority of all licensed health care providers, the No Surprises Act, went into effect on January 1, 2022.

The policy underlying the No Surprises Act (“NSA”) is to protect consumers from unanticipated and expensive bills for out-of-network treatment by requiring mandatory estimates of costs prior to services being rendered. In pursuit of this goal, the NSA broadly requires providers (specifically including all state-licensed psychotherapists) to 1) notify all patients of their right to receive a Good Faith Estimate (“GFE”) of the cost of any treatment and 2) provide a GFE both orally and in writing at time of scheduling or when requested by the patient.

Awaiting Guidance for Compliance with NSA

Although the new law is now in effect, the guidance from federal agencies has been limited. New guidance is expected to be forthcoming from various agencies as well as internally from insurance companies and attorneys for public and private entities. One good source for current and new guidance, along with templates for forms, is the website for the Centers for Medicare and Medicaid Services (“CMS”) at www.cms.gov/nosurprises.

The Department of Health and Human Services (“HHS”) in conjunction with various other agencies has announced that compliance and enforcement efforts related to the NSA requirements are being delayed for the insurance side as well as private practice. If you are an in-network/contracted provider for an insurance company or health plan you should await guidance relating to compliance with the NSA from the insurance company or health plan.

If you are treating a patient who is either uninsured or not using insurance you should attempt to comply with the NSA by providing the GFE notifications required (detailed below). In doing so, take comfort that you are not alone in trying to comply with a brand new and confusing regulatory scheme. As stated on the CMS website, “HHS understands that it may take time for providers and facilities to develop systems and processes for providing and receiving the required information from others. Therefore, for good faith estimates provided to uninsured (or self-pay) individuals from January 1, 2022, through December 31, 2022, HHS will exercise its enforcement discretion in situations where a good faith estimate provided to an uninsured (or self-pay) individual does not include expected charges from other providers and facilities that are involved in the individual’s care.” Translation is do your best to comply and you can expect lenient enforcement for at least the first year.

Complying with the NSA for Private Practice Psychotherapists

Prior to the implementation of the NSA, and continuing regardless of the new law, all psychotherapists already have/had an ethical obligation to provide advance notice of costs and fees for every patient. The NSA builds off of that and asks the private practice practitioner to provide further formal disclosures of anticipated fees.

To comply with the NSA, it is recommended to do the following with both new and current patients:

1. Ask if the patient has any kind of health insurance coverage, including government insurance and whether the patient intends to submit a claim for the service.
2. Tell the patient orally that a GFE is available and will be provided in writing. Orally share the anticipated costs of treatment including fees for late-canceled appointments.
3. Create a written document/add to disclosures for all uninsured and self-pay patients that provides the required notice that a GFE of expected charges is available and can be requested. A sample of the Notice of Availability of GFE and instructions provided by CMS is attached. Notice of availability of the GFE must be displayed on the provider's website and in the office.
4. Provide the GFE with the expected charges for a scheduled or requested service in written form. A sample of a GFE provided by CMS is also attached. In using the sample forms be mindful that some queries will be "not-applicable" depending on the circumstances of treatment.

Timeframes for Providing Good Faith Estimates

Psychotherapists might consider adopting a policy where the Notice of GFE availability and the GFE are generated and transmitted to the patient at the time of scheduling regardless of the timeframes below. However, the new law contains deadlines for providing GFEs as follows:

- If the treatment or service is scheduled at least 10 business days in advance, the GFE must be provided within three business days.
- If the treatment or service is scheduled at least three business days in advance, the GFE must be provided within one business day.
- If service is scheduled less than three business days before the appointment you should still offer an estimate and schedule of fees at the time of scheduling and provide in writing as soon as possible.

Providing Good Faith Estimates for Regular and Recurring Services

Some patients will have a specific defined service such as a psychological evaluation. However, many patients of psychotherapists will receive regular and recurring services. Providers and facilities that anticipate treating a patient throughout the year, may provide a single GFE to that patient for those services as long as the estimate includes the expected scope of the recurring treatment as will usually be the case.

The GFE can satisfy your obligations under the NSA but can only include recurring services for a maximum of one year. The provider or facility must offer a new estimate for additional services beyond

one year and discuss any changes between the initial and new estimate with the patient. The provider can choose a shorter period of time to provide GFEs but that could mean more paperwork.

Examples of Acceptable Good Faith Estimates for Psychotherapy Patients

For a psychotherapy patient who will require long-term treatment, a provider might state the following:

I anticipate your treatment will require weekly 50-minute psychotherapy sessions throughout the next 12 months at [insert fee per session] per session for a total of [x weeks] taking into consideration vacations, holidays, emergencies and sick time for an estimated total of [fee per session] x [number of weeks].

For some patients it will be difficult to anticipate the scope of services required or recommended and in those cases a provider might want to give a range for the number of sessions and the total cost as part of the GFE as follows:

Depending on [insert applicable factors], you may need between 15 to 30 more sessions this year. At [insert rate per session] the estimated total costs are between [15 x rate per session and 30 x rate per session].

Takeaway

The new NSA is certainly causing some confusion. Like with all regulations, it's important to put the time in to review and stay up to date with guidance from federal agencies as well as national and local associations offering advice and templates/forms for complying with the new law. If you make the effort to inform patients of your schedule of fees for services in the context of a couple of new forms with required disclosures; then you should be able to get back to what you do best: treating patients!

Written January 4, 2022

Todd C. Atkins

Licensed Attorney in California and CPH legal/ethical consultant

Resources:

[CMS-10791 - 1. Right to Receive a Good Faith Estimate of Expected Charges Notice](#)

[CMS-10791 - 2. Good Faith Estimate Template](#)