

BILH PERFORMANCE NETWORK PRACTICE CHECKLIST
FOR THE FEDERAL NO SURPRISES ACT AND MASSACHUSETTS PATIENTS FIRST
LAWS

READINESS ASSESSMENT

- ✓ Ensure you are able to identify those health plans for which you do not have a contractual relationship (i.e., you are out of network). The majority of the provisions of both laws seek to protect patients who receive items or services from an out-of-network health care provider.
- ✓ Ensure you have updated your website, posted signage, and provide written notices to patients as described below.
- ✓ Train your scheduling staff on the specific obligations that apply at the time of scheduling.
- ✓ When in doubt as to whether a patient received the necessary disclosures and, if applicable, provided written consent, ensure your billing staff do not balance bill the patient.
- ✓ Ensure you are able to identify patients who are uninsured or self-pay and have the ability to provide them a good faith estimate of expected charges.
- ✓ Prepare to engage in the patient-provider dispute resolution process.
- ✓ Confirm the network status of other providers to which you typically refer patients so the necessary disclosures may be made as described below.
- ✓ Retain records of the patient notice and consent to balance bill or good faith estimate.

This information is intended to serve as a general resource and should not be construed as legal advice. Attorneys with knowledge of the surprise billing laws should be consulted regarding the application of these laws to specific situations.

All health care providers have the following obligations under the federal and Massachusetts laws:

SCHEDULING OBLIGATIONS FOR NON-EMERGENCY SERVICES UNDER MASSACHUSETTS PATIENTS FIRST LAW

- ✓ **Disclose Network Status.** At the time of scheduling, inform all insured patients whether you participate in their health plan’s network or not.
- ✓ **In-Network.** If you are in-network, inform the patient that they may request disclosure of the allowed amount (including any applicable facility fee) and may obtain additional information on their out of pocket costs from their health plan.
- ✓ **Out-of-Network.** If you are out-of-network, you must:
 - inform the patient of the expected charges for the service, that the patient is responsible for the amount of any charges not covered by the patient’s health plan, and that the patient may be able to obtain the service from an in-network provider at a lower charge by; and
 - re-inforce the initial notification made to the patient at the time of scheduling in *writing and verbally* not less than 7 days before the date of service.¹ If you fail to provide this written and verbal notification, you must bill the patient as you would a patient for whom you are in-network.

REFERRAL OBLIGATIONS UNDER MASSACHUSETTS PATIENTS FIRST LAW

- ✓ If you refer a patient to another provider, you must disclose if that provider is part of the same contracting entity as you (e.g., same PHO, same IPA, etc.), the possibility that the provider to whom you are referring the patient does not participate in the patient’s health plan and that, if so, out-of-network rates may apply, and that the patient has the opportunity to verify the provider’s network status and the patient’s out of pocket costs with the patient’s health plan.

¹ If scheduled less than 7 days before the date of service, the provider is obligated to verbally inform the patient not less than 2 days before the date of service and provide written notification to the patient upon arrival for the service.

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- ✓ If you directly schedule, order or arrange for a service on a patient's behalf, you must verify whether the provider to whom you are referring the patient participates in the patient's health plan and notify the patient if the provider is out-of-network or if the provider's network status cannot be verified.

GOOD FAITH ESTIMATE REQUIREMENT FOR UNINSURED OR SELF PAY PATIENTS UNDER THE FEDERAL NO SURPRISES ACT

- ✓ Written & Verbal Disclosure Requirements.
 - Must [post information on the availability of a good faith estimate](#) on your website, in your office, and on-site where scheduling or questions about the cost of items and services occur.
 - At the time of scheduling or upon a patient's request, you must verbally inform the uninsured or self-pay patient of the availability of a good faith estimate of expected charges.
- ✓ Provide a [good faith estimate](#) of expected charges to uninsured and self-pay patients via paper or electronic delivery within 3 business days of scheduling or request².
 - If you are the scheduling provider, the good faith estimate must include the expected charges from other providers and facilities involved in the patient's care effective January 1, 2023.
- ✓ Provide an updated good faith estimate to an uninsured or self-pay patient if there any changes anticipated up to 1 day before the date of service.
- ✓ Prepare to engage in the [patient-provider dispute resolution process](#) with a patient who is charged more than \$400 than the good faith estimate you provided.
- ✓ Retain the good faith estimate in the patient's medical record and provide a copy to the patient upon request.

In addition, if you provide items or services in connection with a patient's visit to a Hospital or Ambulatory Surgery Center (regardless of whether you are on-site), you have the following obligations to non-government insured patients only:

² If a service is scheduled or a request is made between 3-10 days prior to the date of service, the good faith estimate must be provided 1 business day after the date of scheduling or request.

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BALANCE BILLING PROTECTIONS UNDER THE FEDERAL NO SURPRISES ACT FOR NON-GOVERNMENT INSURED PATIENTS RECEIVING SERVICES AT A HOSPITAL OR ASC

- ✓ Disclosure Requirements. If you provide any items or services to a non-government insured patient in connection with a visit at a Hospital or ASC, you must:
 - Post [information on balance billing protections](#) on your website and on a sign in your office; and
 - Provide each non-government insured patient with a [1 page notice](#) regarding balance billing protections in-person or through mail or e-mail prior to requesting payment.
 - Exception: you can enter into a brief written agreement with a Hospital or ASC under which the Hospital or ASC posts the required signage and provides patients with the 1 page notice on your behalf.

- ✓ In-Network. If you have a contractual relationship with the non-government insured patient's health plan (i.e., in-network), you have no further obligation under these provisions of the No Surprises Act.

- ✓ Out-of-Network. If you do not have a contractual relationship with the non-government insured patient's health plan (i.e., out-of-network), the following additional requirements apply:
 - You are prohibited from billing the non-government insured patient more than the in-network cost sharing amount unless the patient is given [advance notice and written consent](#) is obtained.
 - For emergency services, notice and consent is only permitted for post-stabilization services that meet certain requirements.
 - For non-emergency services, notice and consent is not permitted to be obtained by hospital-based specialists (e.g., anesthesiologist), for diagnostic services including radiology and laboratory services, and for certain other services.

 - There is a disconnect between the federal and Massachusetts laws in terms of the timing of the additional notification, and with respect to the federal law, consent requirement. In light of that, providers are urged to follow the more restrictive Massachusetts law provisions and provide advance notice and obtain

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consent not less than 7 days before the date of service if the service is scheduled at least 7 days in advance, or not less than 2 days before the date of service (or as soon as practicable) if the service is scheduled less than 7 days in advance.

- A copy of the signed notice and consent must be:
 - provided to the patient through mail or e-mail;
 - provided to the patient's health plan if the health plan will be billed; and
 - retained by you (or by the Hospital or ASC on your behalf) for a minimum of 7 years.

- If you dispute the rate a health plan has paid you as an out-of-network provider, you may be eligible to access the [independent dispute resolution](#) process to resolve the dispute.

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<u>Health Care Provider Providing Professional Services to:</u>	MASSACHUSETTS LAW		FEDERAL LAW				
	Scheduling Obligations	Referral Obligations	Balance Billing Disclosure	Balance Billing Prohibition Applies	Notice & Consent Required for Out-of- Network Provider to Balance Bill	Good Faith Estimate Disclosure	Provide Good Faith Estimate
Government Insured Patient in connection with an Emergency Visit at a Hospital or ASC							
Non-Government Insured Patient in connection with an Emergency Visit at a Hospital or ASC			X	X if provider is out-of-network only	X Narrow set of post- stabilization services only.		
Uninsured or Self-pay patient in connection with an Emergency Visit at a Hospital or ASC							

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	Scheduling Obligations	Referral Obligations	Balance Billing Disclosure	Balance Billing Prohibition Applies	Notice & Consent Required for Out-of- Network Provider to Balance Bill	Good Faith Estimate Disclosure	Provide Good Faith Estimate
Government Insured Patient in connection with a Non-Emergency Visit at a Hospital or ASC	X if provider is the scheduling the service	X if provider is making a referral					
Non-Government Insured Patient in connection with a Non- emergency Visit at a Hospital or ASC	X if provider is the scheduling the service	X if provider is making a referral	X	X if provider is out-of-network only	X Not an option for hospital- based specialists, diagnostic or laboratory services, and certain other services.		

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<u>Health Care Provider Providing Professional Services to:</u>	MASSACHUSETTS LAW		FEDERAL LAW				
	Scheduling Obligations	Referral Obligations	Balance Billing Disclosure	Balance Billing Prohibition Applies	Notice & Consent Required for Out-of-Network Provider to Balance Bill	Good Faith Estimate Disclosure	Provide Good Faith Estimate
Government Insured Patient in connection with a Non-Emergency Visit at a location other than a Hospital or ASC	X if provider is the scheduling the service	X if provider is making a referral					
Non-Government Insured Patient in connection with a Non-emergency Visit at a location other than a Hospital or ASC	X if provider is the scheduling the service	X if provider is making a referral					
Uninsured or Self-pay patient in connection with a non-emergency Visit at any location						X	X

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