

# NO SURPRISES ACT (NSA)

## Who We Represent

### I. Who Qualifies Under the No Surprises Act (NSA)

A service must fall into one of these three statutory categories (42 U.S.C. § 300gg-111(a)):

#### 1. Provider that does Emergency Services at Out Of Network (OON) facility

- Emergency facilities include
  - o Hospitals
  - o Hospital Outpatient Departments
  - o Critical Access Hospitals
  - o Ambulatory Surgical Centers
  - o Freestanding Emergency Departments
- Emergency Services include
  - o Pre-screening services and examinations
  - o Treatment
  - o Post-stabilization services

• Services have to be “[w]ithin the capabilities of the staff and facilities available at the hospital or independent freestanding emergency department.” (45 CFR § 149.110(c)(2))

#### 2. Non-Emergency Services by OON Providers at In-Network Facilities a Patient went to, but did not know would be involved in Patient’s treatment

- Patient treats at In-Network facility for non-emergency services, and an OON provider does work for patient, and no NSA notice-and-consent waiver form signed
- These are “facility-based non-emergency services,” including:
  - o Anesthesiology
  - o Radiology
  - o Pathology

- o Neonatology
- o Hospitalists3. o Intensivists
- o Assistant surgeons
- o Many surgical specialists if the hospital is in-network but the surgeon is OON

#### Out of Network Air Ambulance Services

## II. What Counts as an “Emergency Medical Condition” under NSA?

The NSA incorporates the federal “prudent layperson” emergency standard.

**Under 42 U.S.C. § 300gg-111(a)(3)(B), an “Emergency Medical Condition” means:**

A medical condition **manifesting with acute symptoms of sufficient severity** (including severe pain) such that a **prudent layperson**, with average knowledge of health and medicine, **could reasonably expect that without immediate medical attention**, one of the following would occur:

- (I) Serious jeopardy to the health of the individual (or, for a pregnant woman, her unborn child);
- (II) Serious impairment to bodily functions; or
- (III) Serious dysfunction of any bodily organ or part.

**Key features of this definition:**

- It applies based on **presenting symptoms**, not final diagnosis.
- Includes **mental health crises** and **substance-use emergencies**.

## III. Best Providers to Represent

### 1. Air Ambulance Providers

- High charges are standard
- Win rate is high because QPAs are not aligned with market reality.
- NSA explicitly covers them.

## 2. Hospital Emergency Departments

- Including freestanding emergency hospital facilities

## 3. Hospital-Based OON Specialty Physicians

- Anesthesiology
- Radiology• Pathology
- Neonatology
- Hospitalists
- Intensivists
- Assistant surgeons
- Emergency imaging interpreters

## 4. Surgical Specialists Operating in In-Network Hospitals

Even routine surgeries become NSA-eligible when the surgeon is OON.

### **Specialties:**

- Orthopedics
- Neurosurgery
- Cardiothoracic surgery
- General surgery
- ENT
- Urology

## 5. Freestanding Emergency Departments (FSEDs)

- Can treat emergency conditions that often can't be treated at an Urgent Care Center

### **Not Great Clients**

- Urgent Care Centers
  - o Some can provide emergency services, but not many
- Chiropractors
- PT Clinics
- Family Medicine
- Most Clinics
- Outpatient surgery centers (unless tied to emergency episode)