

## Introduction

This document is intended to help consumer advocates in determining whether a consumer received the appropriate notice and consent forms that could allow them to be balance billed. For more information on notice and consent, see [When the Notice and Consent Exception Applies and When it Doesn't: Guidelines for Use](#) and [No Surprises: Health Care Notice and Consent Form: What to know before you sign](#). For definitions of terms used in this document, refer to the [No Surprises Act Consumer Advocate Toolkit Glossary](#).

The No Surprises Act generally protects consumers covered under group health plans and group and individual health insurance coverage. This includes consumers with a plan or coverage through an employer, the Federal Employees Health Benefits Program, the Health Insurance Marketplace<sup>1</sup>, or an individual plan purchased directly from an insurance company. For a more complete list of the types of health coverage subject to the No Surprises Act, see [No Surprises Act: Overview of Key Consumer Protections](#).

In certain circumstances, when a consumer receives items or services that are covered by their health plan from an out-of-network provider, out-of-network air ambulance provider, or an out-of-network emergency facility, the No Surprises Act will prohibit surprise billing and limit the consumer's out of pocket costs.

An out-of-network provider or out-of-network emergency facility can ask a consumer to voluntarily give up their legal protections from higher bills for certain services by signing a "notice and consent" form in certain circumstances. For example, consumers may elect to waive their rights in order to see an out-of-network provider such as a specialist. The form furnished by the out-of-network provider or emergency facility must always include a good faith estimate of the charges, as well as certain other information required by law.

A provider or facility can refuse to treat an individual who does not consent to waive their balance billing protections if doing so is allowed under state law. No fees can be imposed on an individual for cancelling an appointment if they don't consent to waive their No Surprises Act protections.

Below is a decision tree for determining when the notice and consent exception applies.

## Where can I go for help?

Contact the No Surprises Help Desk at 1-800-985-3059 or you can submit a complaint online at: <https://www.cms.gov/medical-bill-rights/help/submit-a-complaint>. For more information on contacting the No Surprises Help Desk, see [No Surprises Act: How to Get Help and File a Complaint](#).

State Consumer Assistance Programs (CAPs) may also help with surprise billing questions. To see if your state has a CAP, please visit this [state listing](#).



<sup>1</sup> Health Insurance Marketplace<sup>®</sup> is a registered service mark of the U.S. Department of Health & Human Services.

# Decision Tree: Notice and Consent

## Notice and consent is permitted in the following cases:

**SCENARIO 1:** If a consumer schedules certain non-emergency services at an in-network facility from a non-participating provider, and the out-of-network provider or in-network facility follows all requirements for notice and consent, and complies with state laws.<sup>2</sup>

**SCENARIO 2:** If a consumer needs care after an emergency medical condition (called post-stabilization care<sup>3</sup>) and the following are true:

- ✓ The attending emergency physician or treating provider determines that the consumer is stable enough to travel using nonmedical or nonemergency medical transport to an in-network provider/facility located within a reasonable distance, given their medical condition;
- ✓ The consumer or their authorized representative is able to understand the information and provide informed consent (as determined by the attending emergency physician or treating provider using appropriate medical judgment); and
- ✓ The out-of-network provider or facility follows all requirements<sup>4</sup> for notice and consent and complies with state laws.

## Notice and Consent is **NEVER** allowed for:

- Emergency services before a consumer is stabilized.
- Non-emergency ancillary services at an in-network health care facility.

## Timing and Method of Delivery Requirements for Notice and Consent Forms:

- The form must be given separately from other forms. It may not be attached to other forms, hidden among other forms, or incorporated into any other documents.
- The form generally must be available in the 15 most common languages in the state or facility service area. Interpreters must be provided to consumers who cannot understand the form.
- The form must be provided on paper or electronically, consistent with the consumer's choice.
- The consumer must receive a copy of the signed form in-person, by mail, or via email, consistent with their choice.
- If a consumer makes an appointment at least 72 hours in advance, the form must be provided at least 72 hours before the date of the appointment.
- If the consumer makes an appointment less than 72 hours in advance, the form must be provided on the day the appointment is scheduled.
- If the consumer makes an appointment on the same day the items or services are scheduled to be provided, the form must be provided at least three hours in advance.



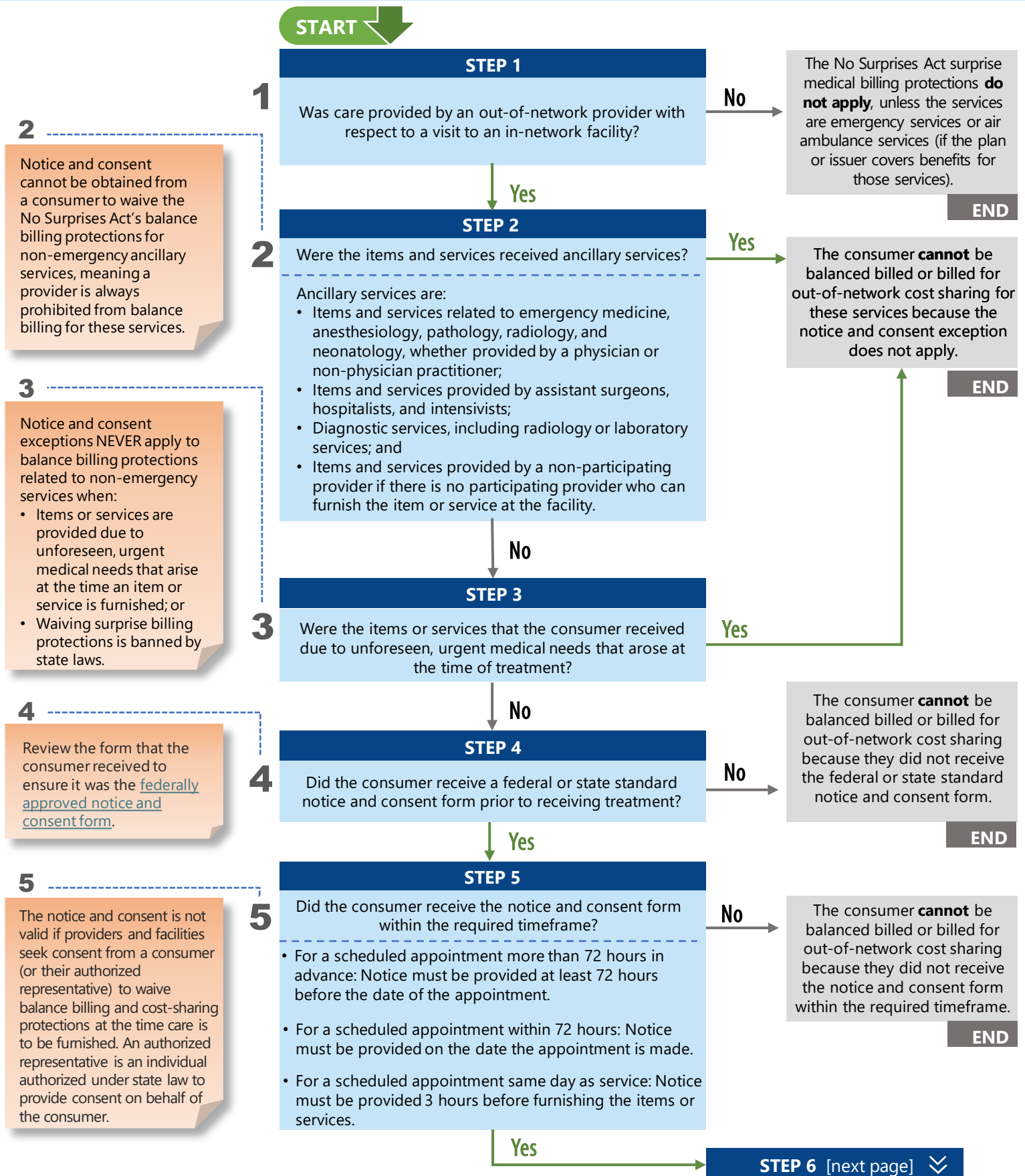
<sup>2</sup> Notice and consent is not permitted in these circumstances for ancillary and certain other services or for items or services provided due to unforeseen urgent medical needs in the course of care delivery.

<sup>3</sup> Emergency services include any additional items and services that are covered under a plan or coverage after a participant, beneficiary, or enrollee is stabilized (referred to as post-stabilization services) and that are furnished as part of outpatient observation or an inpatient or outpatient stay with respect to the visit in which the pre-stabilization services are furnished, unless certain notice and consent requirements are met. The notice and consent exception to post-stabilization services does not apply to services furnished as a result of unforeseen, urgent medical needs that arise at the time a post-stabilization service is furnished.

<sup>4</sup> Requirements as defined in "Requirements Related to Surprise Billing; Part 1," Federal Register 86, No. 131 (July 13, 2021): 36872; §149.410(b)-(d) <https://www.govinfo.gov/content/pkg/FR-2021-07-13/pdf/2021-14379.pdf>.

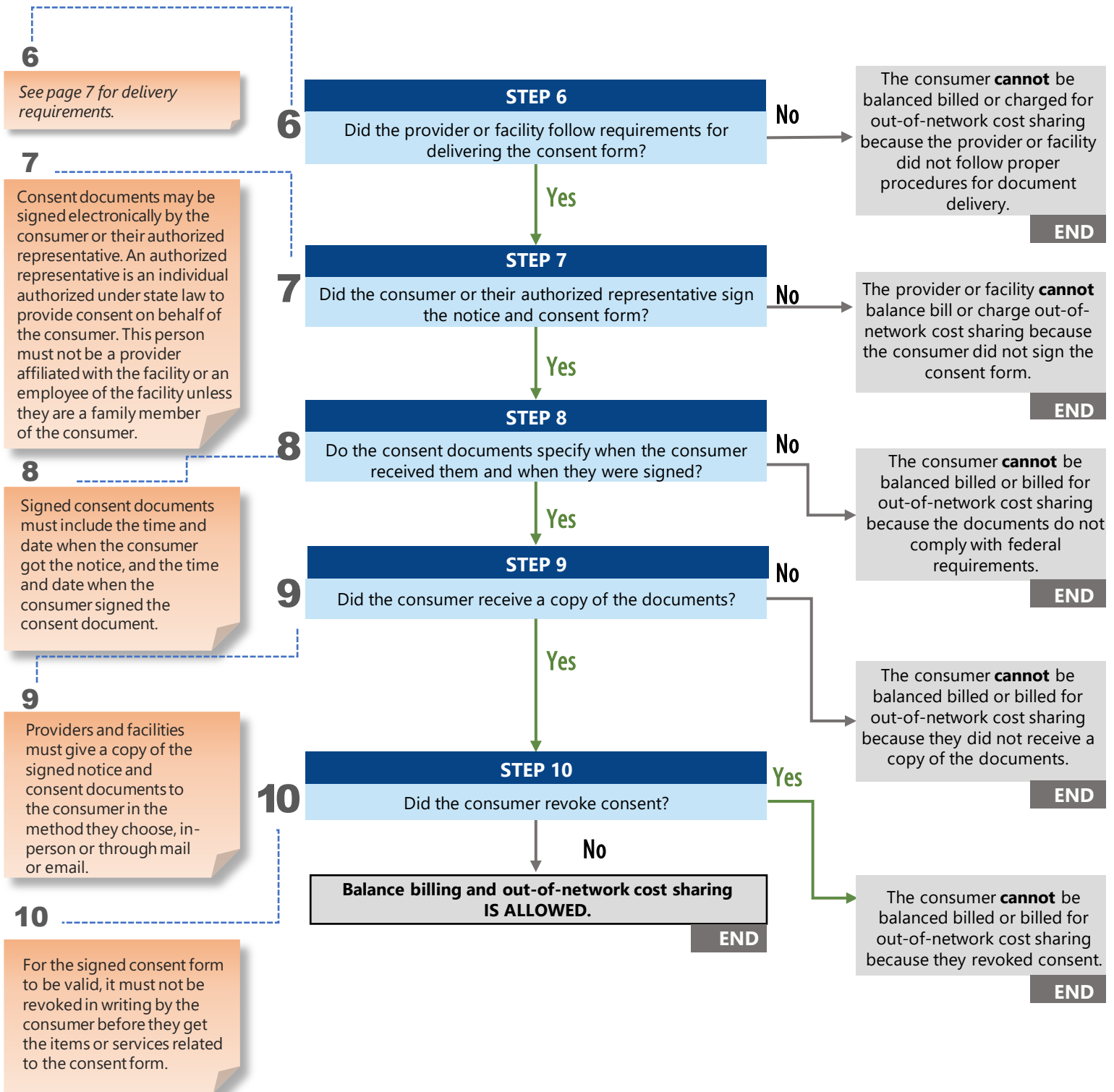
# Decision Tree: Notice and Consent

## Scenario 1: Notice and Consent Exceptions for Non-Emergency Services



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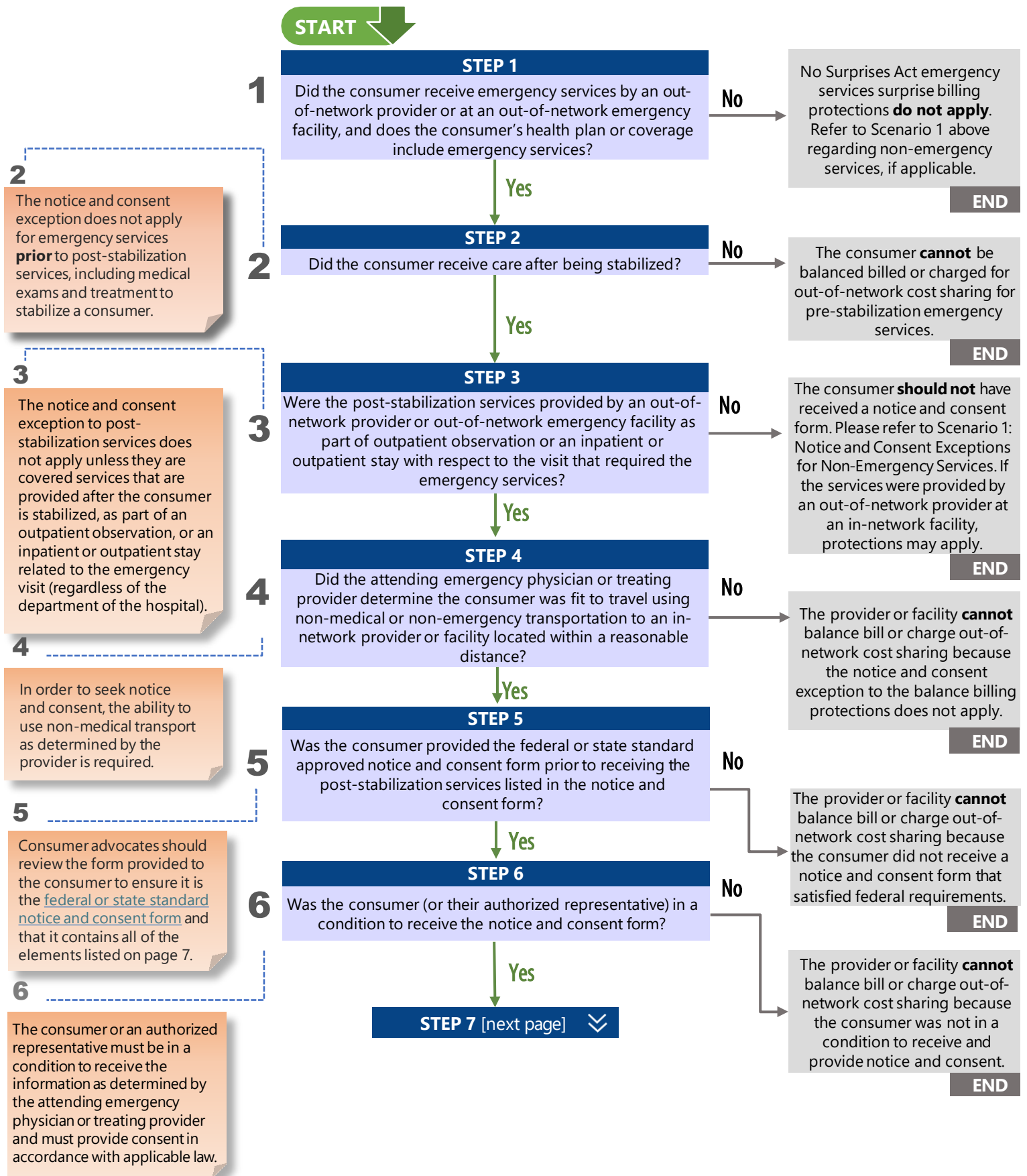
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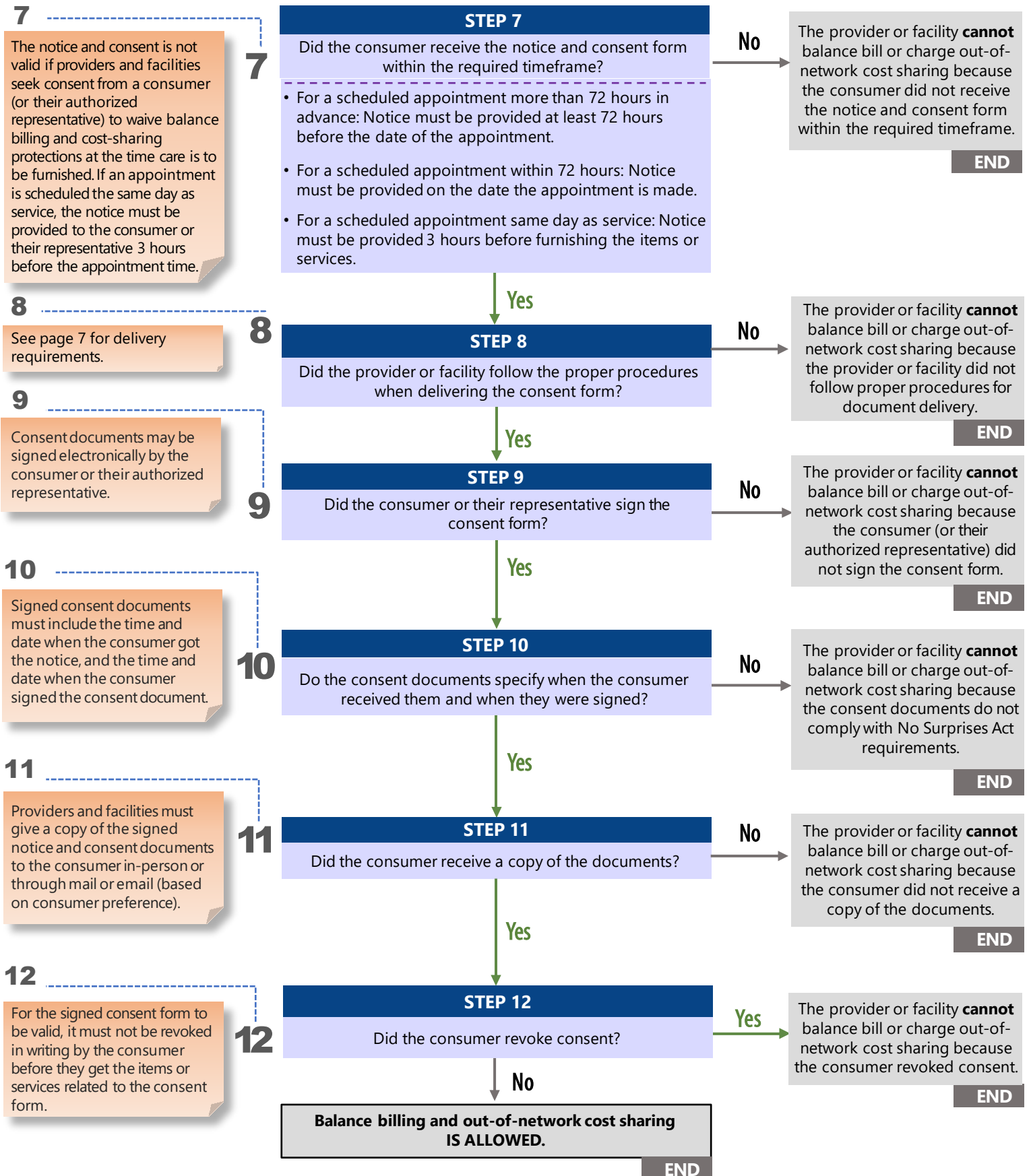
# Decision Tree: Notice and Consent

## Scenario 2: Notice and Consent Exception for Emergency Condition Post-Stabilization Services



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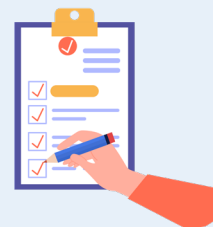
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## How Notice and Consent Forms Must Be Delivered:

- Must be delivered together. They cannot be attached or incorporated into other documents or hidden among other forms.
- Must be delivered in the method preferred by the consumer (either on paper or electronically).
- Must generally be available in the 15 most common languages in the state or a facility's geographic service region. If the individual's preferred language is not among the 15 most common languages and the consumer can't understand any of the languages in which the notice and consent documents are provided, they can't give consent unless a provider or facility provides a qualified interpreter to get consent.

## What Notice and Consent Forms Must Contain:

- Consumer Name
- Out-of-network provider(s) or facility name
- Statement that the health care provider is an out-of-network provider, with respect to the health plan or coverage
- Good faith estimates of the amount the consumer may be charged for items or services delivered by the out-of-network provider(s) or facility
- Statement that prior authorization or other care management limitations may be required
- For post-stabilization services furnished by an out-of-network provider in an in-network emergency facility: A list of in-network providers at the facility able to deliver needed items or services.



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