

When the Notice and Consent Exception Applies and When it Doesn't: Guidelines for Use

Under the No Surprises Act, a health care provider or facility can ask a consumer to waive their surprise billing and in-network cost-sharing protections in certain circumstances and if specific requirements are met by the provider or facility. This is called the “notice and consent exception.” For more information, see the [Decision Tree: Notice and Consent](#). For definitions of terms used in this document, refer to the [No Surprises Act Consumer Advocate Toolkit Glossary](#).

Notice and Consent Exception for Emergency Condition Post-Stabilization Services

When the Notice and Consent Exception **Can Be Applied**:

When a nonparticipating provider or nonparticipating emergency facility provides post-stabilization services and all the following requirements are met:

- The attending emergency physician or treating provider determines that a consumer is stable enough to travel using nonmedical or nonemergency medical transport to an available participating health care facility located within a reasonable travel distance given the consumer's medical condition.
- The consumer or their authorized representative is in a condition (as determined by the attending emergency physician or treating provider using appropriate medical judgment) where they can receive information and provide informed consent.
- The provider/facility provides written notice and obtains written consent from the consumer to waive surprise billing protections under the No Surprises Act, in compliance with all related statutory and regulatory requirements.
- The provider/facility complies with applicable state laws.



When the Notice and Consent Exception **Cannot Be Applied**:

- When a nonparticipating provider or nonparticipating emergency facility provides emergency services prior to stabilization, including medical exams and treatment to stabilize a consumer, in connection with those services.
- The items or services are furnished as a result of unforeseen, urgent medical needs that arise at the time an item or service is furnished.
- If any one of the requirements listed in the box above are not met.
- Additional situations banned by state law.



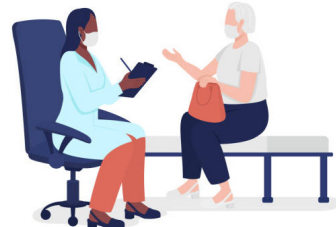
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Notice and Consent Exceptions for Non-Emergency Services

When the Notice and Consent Exception **Can Be Applied**:

When a nonparticipating provider provides non-emergency services that are for a patient visit to an in-network health care facility and all the following are true:

- The items or services do **not** meet the definition of ancillary services (see below); and
- The items or services were **not** furnished as a result of unforeseen, urgent medical needs that arose during the time the item or service was furnished; and
- The provider gives written notice and gets written consent from the consumer to waive the surprise billing protections under the No Surprises Act, in compliance with all related statutory and regulatory requirements.



When the Notice and Consent Exception **Cannot Be Applied**:

- The items and services are ancillary services, defined as:
 - Items and services related to emergency medicine, anesthesiology, pathology, radiology, neonatology, whether provided by a physician or non-physician practitioner.
 - Items and services provided by assistant surgeons, hospitalists, and intensivists.
 - Diagnostic services, including radiology and laboratory services.
 - Items and services provided by an out-of-network provider if there is no in-network provider who can provide the item or service at the in-network health care facility.
- The items or services are provided as a result of unforeseen, urgent medical needs that arise at the time an item or service is furnished.
- Additional situations banned by state law.

