

From APA

Dear colleagues,

Thank you for the robust dialogue and rapid feedback about the federal [No Surprises Act](#) (NSA). I appreciate and empathize with the concerns that have been raised about this legislation. I share many of them. The most prominent issues that have been raised are: (a) why did the NSA feel like a surprise to psychologists?, (b) are psychologists included in this legislation?, (c) what are the expected next steps for my practice?, and (d) what APA/APA Services (APASI) regulatory and legislative advocacy is needed? I will respond to all of these issues in this email below. I hope to offer some clarity and perhaps a bit of relief.

First, the NSA is voluminous and complicated. Katherine McGuire, APA's Chief Advocacy Officer, and I have personally continued to scrutinize the thousands of pages of NSA provisions even during the holidays. I am VERY pleased to say that we discovered a one-year period of "enforcement discretion" buried in the text, and we now believe that 2022 will be a grace period. Here is the language from the rule itself:

HHS [Health and Human Services Department] 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.

Q1: Why did the NSA feel like a surprise to psychologists?

The NSA was passed by Congress in December 2020 (one year ago) during the Trump administration. Its original purpose was to shield patients from surprise bills and establish an arbitration process to resolve billing disputes for out-of-network health services. Per standard protocol, the NSA legislation went through a rule-making process through the Health & Human Services (HHS) Department, whose strategies and staff were significantly modified and reshaped when the Biden administration took the reins in January 2021. APASI tracked this legislation and the rule-making progress and supported its general principles. However, once the rule-making was final in October 2021, the NSA regulations looked very different than the intent of the bill that passed Congress. Everyone was shocked by how different it was. In fact, in November 2021 (one month after the rule-making was finished) at the prompting of APA and a large coalition of medical associations and stakeholders, a bipartisan group of 152 U.S. Representatives – both Democrats and Republicans – wrote a formal letter identifying these problems and calling for the Biden Administration to reconsider its implementation of the NSA.

APASI has already joined efforts with medical associations and provider groups pressing Congress to engage on the point that the proposed interim final rule favors health insurance plans and deviates from the intent of the law as it was envisioned by Congress. It has long been an ethical standard of psychologists to be transparent about billing and compensation. The new version of the NSA misrepresents the principles of transparency and integrity that were originally intended by Congress and that APASI supported. There is no evidence that psychologists are part of the problem of surprise billing, and we are offended by this wrongheaded insinuation that is not supported by data.

Q2: Are psychologists included in the NSA legislation?

Yes, all licensed “providers” are included – that means all licensed psychologists. Those with a limited or provisional license are also likely included; more information is needed regarding trainees. In addition to APASI’s own legal and policy review of the NSA, we took the extra step of soliciting an external policy review about whether psychologists are included in these regulations. That review was conducted by Lesley Yeung, an attorney at Epstein Becker Green who specializes in these matters. Her review is below in blue text, including yellow highlights she added to draw attention to key points. In summary = a number of the NSA provisions do not include psychologists such as air ambulance, etc. The good-faith estimate (GFE) provision does include all healthcare “providers,” including psychologists, as defined in regulations. The GFE provision applies to all providers, not only to those who furnish services in a facility. As such, independent practitioners are included. See more details below.

Q3: Since psychologists are included in the NSA, what are the expected next steps for my practice?

Again, we believe there is an “enforcement discretion” grace period for 2022. APASI will continue our advocacy and engagement with policymakers and coalition partners to turn back the whole Act or work to eliminate or minimize any problematic impact for psychologists, including those in private practice. We will keep psychologists up-to-date about our advocacy strategies so that you can join this effort.

At the same time as we will be advocating to eliminate or change the NSA, APASI has a simultaneous duty to psychologists to offer guidance about how to manage the NSA as it currently stands. APASI’s initial guidance was developed for that purpose, and it can be found online here:

<https://www.apaservices.org/practice/legal/managed/billing-disclosure-requirements>. An FAQ is being developed and is expected early next week. APA will develop additional guidance and concrete resources by the end of the first quarter (i.e. March 2022) about steps psychologists can take in your practice. The guidance and resources will be shared freely.

Q4: What APA/APASI regulatory and legislative advocacy is needed?

APASI shares the serious concerns about the NSA as expressed in the U.S. Representatives’ letter, “...This approach [reflected in the NSA regulations] is contrary to statute and could incentivize insurance companies to set artificially low payment rates, which would narrow provider networks and jeopardize patient access to care – the exact opposite of the goal of the law. It could also have a broad impact on reimbursement for in-network services, which could exacerbate existing health disparities and patient access issues in rural and urban underserved communities.”

When Congress returns in January, APASI will turn our attention to elements of concern with the NSA that impact psychologists, including reporting requirements and discerning the interplay between the new federal law and established state regulations and laws. We estimate that 33 states have some form of relevant legislation/regulation.

In conclusion, we sincerely thank you for your significant engagement on division or SPTA listservs and directly with us. We will continue to fight for the profession of psychology and for the communities we serve. We will be in touch on these matters again soon. Until then, I hope the newly discovered grace period offers some solace. Have a restful and healthy New Year!

Best Regards,

Jared L. Skillings, PhD, ABPP

Chief of Professional Practice, American Psychological Association Services

Katherine B. McGuire

Chief Advocacy Officer, American Psychological Association Services

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