APPLICATION OF SURPRISE BALANCE BILLING LAW

In order for Virginia law to apply, services must be:
(1) covered under the plan;
(2) received from a provider subject to Virginia law;
(3) provided through a plan subject to Virginia's balance billing law; and
(4) protected services under Virginia's balance billing law (all identified below).

If all four categories are not met for Virginia, services may be protected by the Federal No Surprises Act (NSA) if the services meet all of the below Federal NSA requirements for coverage and protected services. Note that when either the coverage or the service is provided in another state, that other state law and/or the NSA may apply.

Virginia balance billing law applies to:	**Federal NSA applies to:**	**Neither Virginia balance billing law nor Federal NSA protections apply to:**
○ Fully- insured managed care plans issued in Virginia, including grandfathered plans and those bought through HealthCare.gov or Virginia's Insurance Marketplace ○ Self-insured group and non-federal governmental plans that opt-in to Virginia law* ○ State employee health insurance plans ○ Short-term limited-duration plans that use a network *Search Elective Group Health Plans | Balance Billing (virginia.gov)	○ Fully-insured managed care plans issued in any state, including grandfathered plans and those bought through HealthCare.gov or Virginia's Insurance Marketplace ○ Self-insured group and non-federal governmental plans ○ State employee health insurance plans ○ Federal Employee Health Benefit Plan (FEHB) participants ○ Church plans ○ Student health insurance coverage NOTE: Uninsured, self-pay, or individuals in plans (i) with no network; (ii) that do not provide comprehensive benefits; or (iii) that solely provide a health reimbursement arrangement or other account-based plan that is not tied to a comprehensive health plan, who receive protected services have the right to receive (a) a good faith estimate of charges for chosen services, and (b) an independent dispute resolution process for estimates that prove to be incorrect.	○ Government-sponsored health plans such as: Medicare, Medicaid, the Children's Health Insurance Program, TRICARE, Veterans' Affairs Health Care (These programs have other protections against medical billing.) ○ Health reimbursement arrangements, or other account-based plans (However, these could be tied to comprehensive health plans that are subject to balance billing protections) ○ Excepted benefit plans, such as fixed indemnity, specified disease, vision/dental and supplemental plans

Protected Services	
Virginia protected services:	**Federal NSA protected services :**

○ Emergency covered services received at either an in-network or out-of-network hospital, not including post-stabilization services received at an out-of-network hospital
○ Related to mental health or substance use services, emergency covered services rendered at a behavioral health crisis service provider
○ Nonemergency covered surgical or ancillary services received at an in-network facility
  ○ Surgical or ancillary services means any professional services, including surgery, anesthesiology, pathology, radiology, or hospitalist services and laboratory services.
  ○ Facility means an institution providing health care related services or a health setting, including hospital or other licensed inpatient center; ambulatory surgical or treatment center; skilled nursing center; residential treatment center; diagnostic, lab, or imaging center; rehabilitation and other therapeutic health setting.
 	
Virginia law does not allow a patient to waive and does not allow a provider to ask a patient to waive their rights to balance billing protections for Virginia protected services.
	○ Emergency covered services received at either an in-network or out-of-network hospital or an independent freestanding emergency department, including post-stabilization services received at an out-of-network hospital
	○ Non-emergency covered items and services received as part of a visit to an in-network facility. Covered items and services include equipment and devices, imaging services, telemedicine services, lab services, preoperative and postoperative services, and ancillary services
	  ○ Ancillary services means items and services related to emergency medicine, anesthesiology, pathology, radiology, and neonatology, provided by either a physician or non-physician practitioner; items and services provided by assistant surgeons, hospitalists, and intensivists; diagnostic services, including radiology and laboratory services; and items and services provided by an out-of-network provider when there is no in-network provider who can provide the item or service at the in-network health care facility.
	  ○ Facility means a hospital, hospital outpatient department, critical access hospital, ambulatory surgical center or any other facility, specified by the HHS Secretary.
	○ Out-of-network air ambulance emergency services (not including ground ambulances)
	
	Note that the above list only addresses those services and providers subject to surprise balance billing protections. Other requirements of the federal Consolidated Appropriations Act (CAA), such as transparency and notice, may apply to other items and services and other situations. For example, generally, all providers and facilities that schedule items or services for an uninsured or self-pay individual or receive a request for a good faith estimate from an uninsured or self-pay individual must provide it for any item or service scheduled.
	
	In limited situations, the No Surprises Act allows some out-of-network providers and facilities to seek written consent from individuals to voluntarily waive their protection against balance billing for post-stabilization services or non-ancillary, non-emergency services.

The circumstances of the situation may be a factor in determining which law applies. Some examples are provided below.

Examples:

Scenario #1: Janita receives emergency services, including post-stabilization emergency services in a Virginia hospital. Janita is covered by a fully-insured plan issued in Virginia.

Conclusion: Payment for emergency services, excluding post-stabilization services and any dispute resolution process, would be subject to Virginia law. Payment and any dispute resolution process for post-stabilization services are protected by the federal NSA. Services are received in Virginia and coverage is provided by an arrangement subject to Virginia law, but post-stabilization emergency services are not services protected by Virginia law. Therefore, not all four tests described at the beginning of this document are met. The post-stabilization services are protected under the federal NSA.

Scenario #2: Stacey receives diagnostic lab services during a covered stay at a skilled nursing center located in Virginia. Stacey is covered by a self-funded plan that opted-in to Virginia's balance billing protections.

Conclusion: Payment for services and any dispute resolution would be subject only to Virginia balance billing protections. Skilled nursing centers are not considered facilities under the federal NSA.

Scenario #3: Mark is covered as a participant in the state employee health benefit plan. Mark wants to use his health benefits to receive surgery from an out-of-network surgeon at an in-network ambulatory surgical center in Virginia.

Conclusion: Mark's situation is subject to both Virginia balance billing protections and the federal NSA. As such, under Virginia protections, if Mark wants to use his health insurance for the surgery, he must not waive or be asked to waive his balance billing protections for surgical or ancillary services at an in-network facility in Virginia. The surgeon must not charge Mark any amount in excess of his in-network cost-share. If the surgeon provides the services, he must agree to either accept the carrier's in-network allowed amount or other payment offer as payment in full or dispute the carrier's claim payment and potentially arbitrate the claim.

The federal NSA requires the surgeon and the ambulatory surgical center, upon the scheduling of the surgery, or upon request, to inquire if the individual is enrolled in a health plan or health insurance coverage, and if the person is uninsured or does not want to use their health insurance to pay for the surgery, to provide a good faith estimate of the expected charges for the surgery along with any items or services reasonably expected to be provided in conjunction with those items and services, including those provided by another provider or facility, with the expected billing and diagnostic codes for these items and services.

Should the surgeon refuse to accept payment of a commercially reasonable amount and thus not agree to perform the surgery under Mark's health insurance, Mark may choose to not use health coverage and self-pay. As a self-pay, under the NSA, Mark is able to receive a good faith estimate for the cost of services and is eligible for independent dispute resolution if the estimate is not accurate.

Scenario #4: Same as #3 but Jerome is covered by the FEHBP.

Conclusion: Jerome's situation is not subject to Virginia law but is subject to the federal CAA. Because surgeons and scheduled nonemergency surgery are not protected under the federal NSA, Jerome may be balance billed by the surgeon but only after notice is provided and Jerome consents to receive the services. Jerome may also enter into an agreement with the surgeon to pay an additional amount above his in-network cost share. If Jerome chooses not to use his health benefits to pay for the surgery, the surgeon and facility must provide Jerome with a good faith estimate of his payment responsibility for the surgery and other expected items and services. If the final cost is greater than $400 above the estimate, Jerome may request a provider-patient dispute resolution.

Scenario #5: Maya is covered by a fully-insured plan issued in Virginia. Maya receives emergency services at a hospital outside Virginia that is not subject to Virginia law.

Conclusion: Maya may be protected from balance billing under the state law in which the services were received. To the extent Maya is not protected by another state's law, Maya is protected by the federal NSA. Payment for services, Maya's cost share responsibility and any dispute resolution process applicable to the provider and carrier are all determined by the other state's law or the federal NSA.

Scenario #6: Terrence is covered by the Virginia state employee health plan. Terrence receives emergency services at a Virginia independent freestanding emergency department that is out-of-network. Terrence's Explanation of Benefits incorrectly indicates that Terrence is responsible for amounts above the in-network cost share.

Conclusion: Terrence is entitled to the independent external review process under the NSA to resolve the balance billing issue. The insurer must provide information about this process to Terrence upon adjudication of the claim.

Scenario #7: Mary is covered by a fully-insured Virginia plan. Mary receives scheduled surgery at an in-network hospital in Virginia from an out-of-network surgeon. Mary wants to file the surgery expenses with her insurance company. The surgeon asks Mary to agree to pay $500 above the amount the person's health insurance will pay. Mary's health plan pays the surgeon at the median in-network contract rate for that service for that geographic area and indicates on the Explanation of Benefits that Mary cannot be balance billed. Mary's surgeon sends her a bill for the agreed upon amount above her cost share.

Conclusion: Mary is not responsible for amounts above the in-network cost share. The surgeon is prohibited under Virginia law to request that Mary waive her balance billing protections. Mary may submit a complaint to the Virginia Bureau of Insurance if she is required to pay the amount above her in-network cost share.