

CMS DELAYS LOOMING GOOD FAITH ESTIMATE CO-PROVIDER REQUIREMENT

The Centers for Medicare and Medicaid Services ("CMS") published [FAQ](#) guidance on December 2, 2022, indefinitely extending the current enforcement discretion for non-compliance with the No Surprises Act requirement that Good Faith Estimates ("GFEs") for uninsured or self-pay patients include expected charges from co-providers or co-facilities until future rulemaking is issued.

Since January 1, 2022, the law has required providers and facilities to issue a GFE of expected charges to uninsured and self-pay individuals upon request or at the time of scheduling a health care item or service. Importantly, the No Surprises Act and its implementing regulations also require each GFE to include expected charges for any item or service that is reasonably expected to be provided in conjunction with the scheduled or requested item or service, including those provided by *co-providers or co-facilities*. Please see Hall Render's prior [client alert](#) for a more detailed discussion of this GFE requirement.

The Department of Health and Human Services ("HHS") delayed enforcement of the GFE co-provider requirement for one year to allow providers and facilities to develop systems and processes for the exchange of required information between (i) the providers/facilities with which the primary service was initially scheduled or from which the GFE was initially requested and (ii) co-providers/co-facilities. That one-year delay, however, proved insufficient as facilities and providers struggled for months to develop and implement solutions to comply with the GFE co-provider requirement in advance of the January 1, 2023 enforcement deadline, without any sub-regulatory or interpretive guidance from HHS.

In response to industry comments, HHS issued updated guidance in the form of an FAQ, which now delays enforcement of the GFE co-provider requirement until HHS issues additional guidance through formal rulemaking. This means there is no new enforcement deadline, and according to the FAQ, any future rulemaking will include a prospective applicability date that gives providers and facilities "a reasonable amount of time to comply with any new requirements."

The delay is not the only encouraging news in the new FAQ. In explaining the need for the delay, HHS acknowledged that complying with the GFE co-provider requirement involved substantial technical infrastructure and business practice complexities. HHS agreed with industry advocates that the issue necessitates an automated standard technology or transaction solution. HHS believes this will necessitate a market-wide adoption of a standards-based application programming interface ("API"). This API will be the focus of future rulemaking and will hopefully provide hospitals and other providers with a more workable solution for complying with the GFE co-provider requirement.

The FAQ does note that some states chose to be the primary enforcers of the GFE requirements, rather than the federal government. Those states do not technically have to follow HHS's lead to delay enforcement of the co-provider requirement, though HHS did state that it encourages states to take a similar enforcement delay approach. Providers in states that are enforcing the GFE rules directly may want to confirm with the relevant state agency that the state is also delaying enforcement.

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