



Surprise Billing: CMS' RFI Details; Health System Group Meeting to Discuss a Response

September 16, 2022

In an unexpected twist, the agencies published a Request for Information (RFI) (click [here](#)) instead of a proposed rule on the requirements for good faith estimates (GFEs) and advanced explanation of benefits (AEOBs) for insured patients. Comments are due November 15, 2022.

As you know, HHS previously issued regulations implementing GFEs for uninsured (or self-pay) patients, but deferred enforcement of GFEs/AEOBs for insured patients in response to stakeholder requests that the Departments first establish standards for data transfer from providers and facilities to plans and issuers and give all parties enough time to build the infrastructure necessary to support the transfers. This RFI acknowledges that additional time is needed to sort through some remaining issues. As a result, it appears that we will not see a notice of proposed rulemaking on the enforcement of the statutory requirements to prepare GFEs and AEOBs for insured patients until the end of the year at the earliest.

IMPORTANT: We are inviting you to participate in a zoom call with our other health system clients to discuss crafting a multi-health system response to this RFI. There is strength in numbers and our clients all have various levels of expertise on these matters that would result in a more compelling letter. **Please reserve Monday, September 26 at 4 p.m. EST. We will email you a calendar notice shortly.**

You may wish to have your IT and Legal departments review the RFI since much of it relates to technical questions surrounding the standards for data transfer, privacy concerns around data transfer, and ONC Health IT Certification issues. The RFI raises questions about whether small or rural providers would incur additional burdens or barriers in complying with the technological requirements and seeks input on what type of flexibility could be offered.

The RFI also raises questions about:

- The extent to which the existing insurers' transparency requirements might be sufficient to meet the surprise billing requirements - notably there's no mention of whether the hospital price transparency requirements could be equally effective.
- What information should be provided to the payer when a patient consents to waiving the balance billing requirements and cost-sharing protections for certain post-stabilization services?

- Does the AEOB need to reflect differences between the federal law's requirements and any applicable state law?
- Whether plans should be required to provide the AEOB to the provider as well as the patient?
- How should secondary or tertiary payers be accounted for in GFEs and AEOBs?
- The requirement for providers to include a diagnosis code in the GFE.
- Whether providers should bear the burden of verifying the patient's insurance coverage before preparing a GFE.
- What unique barriers and challenges are presented for underserved and marginalized communities that should be addressed?

While we expect a proposed rule to follow the RFI, it seems likely that most of the thorny issues will be informed by this RFI, making providers' responses to this RFI especially important.

For additional information, please contact our General Counsel Diane Turpin at diane.turpin@shcare.net or 202-578-5444. This information is offered for the general education and knowledge of our clients. It is not offered as legal advice.