



March 7, 2022

The Honorable Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare and Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244

**Re: CMS–10791; Agency Information Collection Activities: Proposed Collection; Comment Request; Requirements Related to Surprise Billing; Part II**

Dear Administrator Brooks-LaSure:

On behalf of the American Academy of Family Physicians (AAFP), representing more than 133,500 family physicians and medical students across the country, I write in response to the comment request on Requirements Related to Surprise Billing Part II in the January 7, 2022, *Federal Register*. **The AAFP urges CMS to delay enforcement of the good faith estimate (GFE) requirement and make several modifications in the final rule to avert care delays and reduce the unnecessary burden this requirement imposed on primary care practices, including Direct Primary Care (DPC) practices.**

The Requirements Related to Surprise Billing; Part II interim final rule (IFR) requires physician practices and facilities to inquire about each patient's health insurance status or whether they are seeking to have a claim submitted to their insurance for the care they are seeking. The practice or facility must provide a GFE of expected charges for items and services to an uninsured or self-pay individual. An uninsured or self-pay individual is defined as an individual who:

1. Does not have benefits for an item or service under a group health plan, group or individual health insurance coverage offered by a health insurance issuer, federal health care program; or
2. Has benefits for such items/services under a group health plan, group or individual health insurance coverage offered by a health insurance issuer, or a health benefits plan under chapter 89 of title 5, United States Code, but does not seek to have a claim submitted to their plan, issuer, or carrier for the item or service.

The GFE must include expected charges for the items or services that are reasonably expected to be provided together with the primary item or service, including items or services that may be provided by other clinicians and facilities. These requirements went into effect on January 1, 2022.

**Delay Enforcement of Burdensome GFE Requirements**

The AAFP agrees that providing a GFE to uninsured or self-pay patients will improve patients' understanding of the costs of their care and may help avert some unexpected medical bills.

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However, since the GFE requirement went into effect in January, family physicians report that it is adding to their administrative burden.

Many practices have noted that they cannot provide an accurate GFE of charges for new patients or patients with new medical problems. To predict what level of outpatient evaluation and management (E/M) service they will provide, physician practices need detailed information about a patient's medical history, co-occurring conditions, current symptoms, as well as other outstanding services that might be provided during the visit. In a family medicine practice, where physicians provide comprehensive primary care services to patients across the lifespan, the relevant conditions, history, and symptoms can be quite extensive. Other services can include a wide array of screenings, vaccinations, routine lab testing, and other preventive care services, in addition to chronic care management services and minor procedures. It is unreasonable and inappropriate to require administrative staff to try to obtain this level of information about a patient's condition and history over the phone when they are scheduling an appointment. Many patients are also uncomfortable with sharing their private health information with administrative and clinical staff with whom they do not have an established, trusting relationship. Accordingly, primary care practices struggle to provide an accurate good faith estimate to new patients or those that are experiencing a new condition.

We recognize that the regulations and resulting guidance provide flexibility for omitting diagnosis and procedure codes that the practice could not reasonably expect would be furnished when the appointment was scheduled. The AAFP also understands practices may not face any direct financial repercussions to providing inaccurate GFEs (provided the difference between the GFE and actual cost is less than \$400, per the IFR). However, receiving inaccurate GFEs can result in a frustrating experience for patients and may ultimately erode patients' trust in their primary care physician. The current regulations require practices to list diagnosis and procedure codes on the GFE, even if they do not have adequate information to make those determinations. Additional flexibility is needed to protect the patient-physician relationship.

**The AAFP is particularly concerned that the GFE requirement may result in care delays for patients.** Practices may be forced to schedule appointments further out to provide adequate time to gather the necessary information to provide a GFE within the required timeframe. CMS also [notes](#) that if the practice is notified of a change in scope of the GFE, a new GFE must be furnished no later than one business day before the scheduled appointment. We are concerned practices will have to postpone appointments in order to provide an updated GFE within this timeframe.

Practices [report](#) that the requirement to provide a specific clinician's NPI on the GFE contributes to the burden imposed by the GFE requirements. This requirement may cause care delays and confusion if a different clinician from the same practice needs to see the patient due to unforeseen circumstances. The AAFP is also concerned that the requirement to specify which clinician will see the patient could undermine team-based care and flexible scheduling arrangements, which [improve](#) care for patients and can [lessen](#) physician burnout.

Further, physician practices have had to implement new processes to comply with the GFE requirements at a time when they are already struggling to hire and retain staff. Physician practices [rank](#) staffing shortages as their primary challenge in 2022. Some practices report they have had to hire or reassign staff to comply with the GFE requirements, which could worsen staffing shortages and result in care delays as practices continue to respond to the COVID-19 pandemic.

The AAFP appreciates that CMS already delayed enforcement of the portions of the GFE requirements for convening providers, co-facilities, and co-providers, as well as the enforcement delays announced for the advanced explanation of benefits (AEOB) requirements. In delaying enforcement, CMS [cited](#) implementation complexities and agreed that practices would need more than a few months to implement the necessary workflows and technology. Based on reports from family physicians, we believe CMS should delay enforcement of the GFE requirements for the same reasons.

Aligning enforcement of the GFE requirements with the AEOB requirements would enable practices to more fully develop and test workflows to provide accurate GFEs for both insured and uninsured/self-pay patients. **To ensure patients have timely access to comprehensive care, the AAFP urges CMS to delay enforcement of the GFE requirements in the IFR until the AEOB provisions are finalized and implemented.**

#### Publish a Final Rule to Align GFE Requirements with Congressional Intent

The AAFP is [supportive](#) of ending surprise medical bills for patients and has long supported federal policies promoting price transparency and health care affordability. We are pleased that CMS implemented broad patient protections beginning on January 1, 2022. However, we note that the No Surprises Act largely focuses on unanticipated medical bills from air ambulance providers, hospitals, emergency departments, and out of network clinicians and facilities. **Congress did not intend for the No Surprises Act to impose burdensome regulatory requirements on primary care practices, who typically are in-network, provide high-value care to patients who have chosen to see them, and are already overburdened with administrative tasks. To more closely align the regulations with congressional intent, we recommend CMS publish a final rule with the following modifications to the GFE requirements:**

- 1) **Clarify that primary care practices are not required to provide a GFE when patients schedule an appointment that is less than three full business days from the time of scheduling.** This will ensure practices are not forced to delay care, including acute care appointments that are often scheduled on the same day, simply to comply with the GFE requirements.
- 2) **Remove the requirement for a specific clinician NPI to be included on the GFE.** This requirement is overly burdensome and undermines flexible scheduling and team-based care arrangements.
- 3) **Provide an exception in cases where the patient chooses to forgo receiving a GFE.** Patients may wish to waive the GFE for several reasons, including to avoid potential care delays caused by the GFE process. Given the purpose of the GFE is to inform patients of expected costs, practices should not be required to undergo the process of producing a GFE if the patient explicitly indicates they do not want the estimate.
- 4) **Allow primary care practices to provide an abbreviated GFE for new patients or in other situations where they cannot reasonably determine what the relevant diagnostic and procedure codes are.** The abbreviated GFE would include a range of expected charges but would not include diagnostic or procedure codes. This will lessen the potential for GFE requirements to cause care delays, address the unnecessary and inappropriate burden on patients and administrative staff, and result in a more positive experience for patients.

### Exempt Direct Primary Care Practices

As we noted in our [comments](#) on the IFR, the AAFP interprets the GFE requirement to apply to DPC practices. Recent CMS [guidance](#) confirms no particular practice or facility types are currently exempt from this requirement. Practices that use the DPC model typically charge patients a predetermined fee, under terms of a contract, in exchange for access to a broad range of primary care and medical administrative services. Patients pay their physician or practice directly in the form of periodic payments instead of the practice billing a patient's insurer. Based on the definition of a self-pay patient, we believe the GFE requirements apply to DPC practices.

The GFE requirement is both unnecessary and burdensome for DPC practices, given they have contracted with a patient to provide specific services for an agreed upon fee. Most DPC practices publicly post their prices online, and some states even require DPC practices to meet various price transparency requirements. The IFR specifies that the GFE must be separate of a contract, meaning that DPC practices will have to provide patients with a separate estimate of their costs each time they furnish primary care services even though the patient will have signed a contract and agreed to the flat payments required by the DPC practice. Further, DPC practices already alert patients when they require services that are not included in the agreed upon flat fee. Patients that choose to receive their care from a DPC practice do not need a GFE to notify them of the charges they have already agreed to.

**As such, we recommend HHS immediately clarify in subregulatory guidance that DPC practices are exempt from the GFE requirement when:**

- **all the items and services that are reasonably expected to be provided are already included in the flat fee paid by the patient or**
- **in the event additional services are reasonably expected to be provided that are not included in the flat fee and the patient opts to submit a claim to their insurer for those services.**

**In other words, the GFE requirement should only apply to DPC practices when there is a reasonable expectation that the primary service, and/or related items and services, are not included under the flat fee *and* the patient opts to pay entirely out of pocket for those additional services.**

**The AAFP also recommends that HHS clarify in future rulemaking that DPC practices are exempt from the GFE requirement unless there is a reasonable expectation that the primary service, and/or related items and services, are not included under the flat fee and the patient opts to pay entirely out of pocket for those additional services.**

Thank you for your consideration of these concerns. The AAFP stands ready to work with CMS to ensure surprise billing regulations protect patients without causing care delays or adding to physicians' administrative burden. Should you have any questions, please contact Meredith Yinger, Senior Regulatory Strategist, at [myinger@aafp.org](mailto:myinger@aafp.org) or 202-235-5126.

Sincerely,



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Board Chair, American Academy of Family Physicians