

Update about No Surprises Act and the Good Faith Estimate – with added information as of 01/18/2022

(Changed from previous posts)

There have been many member questions and much anxiety about how to deal with No Surprises Act and the Good Faith Estimate (GFE). It's important to know that there is much conflicting, or seemingly conflicting, information available. It's important to read more than just the summaries given by the various sources to make sure you're getting full information. For example, the summary previously given by this committee about the GFE only included the fact that the ruling stated that they needed to be generated for insured as well as uninsured patients without including the fact that this is not being enforced yet for patients using their insurance. Reading the FAQ would have shown that this was correct but incomplete.

Based on what we're seeing from the Department of Labor (DoL) FAQ, supplying a GFE is incumbent on both providers and facilities and is for both insured and uninsured patients regardless of whether the patients intend to use their insurance or not. In the case of insured patients the expectation will be that the GFE will be sent to the insurance company, though this provision has not been enacted yet because the exact details of how this is going to be accomplished have not been worked out. For uninsured patients, or patients choosing not to use their insurance, the GFE would be supplied to the patient. The relevant section of the FAQ is:

Good Faith Estimate

PHS Act section 2799B–6, as added by section 112 of division BB of the CAA, requires providers and facilities, upon an individual's scheduling of items or services, or upon request, to inquire if the individual is enrolled in a health plan or health insurance coverage, and to provide a notification of the good faith estimate of the expected charges for furnishing the scheduled item or service and 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. **If the individual is enrolled in a health plan or coverage (and is seeking to have a claim for the item or service submitted to the plan or coverage), the provider must provide this notification to the individual's plan or coverage. In the case that the individual is not enrolled in a health plan or coverage or does not seek to have a claim for the item or service submitted to the plan or coverage, the provider must provide this notification to the individual.** These provisions apply with respect to plan years (in the individual market, policy years) beginning on or after January 1, 2022. However, further in the FAQ it says **"...until rulemaking to fully implement this requirement to provide such a good faith estimate to an individual's plan or coverage under is adopted and applicable, HHS will defer enforcement of the requirement that providers and facilities provide good faith estimate information for individuals enrolled in a health plan or coverage and seeking to submit a claim for scheduled items or services to their plan or coverage."** In other words, for insured individuals who will be using their insurance there is no need at present to create a GFE. This view is supported by the Clinical Social Work Association (CSWA).

Here is a link to the full text of the DoL FAQ:

<https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-49.pdf>

Additionally, here is a page of resources from the Center for Medicare Services (CMS):

<https://www.cms.gov/nosurprises>

And a page that contains a zip (compressed) file from CMS that contains all the forms that are and/or might be needed to complete the GFE

<https://www.cms.gov/regulations-and-guidance/legislation/paperworkreductionactof1995/practice-listing/cms-10791>

Those were official federal government sources. The resources that follow are unofficial, are interpretations of the federal rule and are presented for the purpose of information.

The CSWA has a form for the GFE that's available to everyone on their home page:

<https://clinicalsocialworkassociation.org/>

In addition, there is information available from the American Psychological Association (APA) that answers questions: https://www.apaservices.org/practice/legal/managed/billing-disclosure-requirements?_ga=2.248326343.1708176819.1640276072-1312356229.1640276072

There is also information for consumers available on the Department of Financial Services (DFS) website:

- https://www.dfs.ny.gov/consumers/health_insurance/surprise_medical_bills
- https://www.dfs.ny.gov/consumers/health_insurance/emergency_physician_hospital_services_idr_faq

With a nod to Margaret Schiliro for posting the link, we have a link to an article from Barbara Griswold, LMFT about the Act, the GFE and their implications. We have mentioned Barbara Griswold's website, [Navigating the Insurance Maze](#), and the blog that she keeps there, several times in the past. **Please note:** although her blog and subscribing to it are free, she is a commercial enterprise and sells things on her website. Our listing her here does not constitute an endorsement of her or her business by the NYSSCW, nor do we have any financial or other interest in her business. We are not affiliated with her in any way. I just find her blog extremely useful and informative, and personally recommend the forms package she sells as useful for people both just setting up their practices and for those who are dealing with the changing rules. She mentions it in the article and I personally, again with no endorsement by the NYSSCW, recommend at least looking at what she has there. Here is the link to the article: <https://theinsurancemaze.com/nosurprisesact/>

PLEASE NOTE: In addition, both the APA and the CSWA are recommending that clinicians who were not already using an Employer Identification Number (EIN) instead of their Social Security Number (SSN) on claim forms obtain and use an EIN immediately. This is because, they say, that as part of the Transparency Act, patients will be able to see the information claim forms, including our NPI and whichever identifier (either EIN or SSN) that we use. They recommend shifting to using an EIN prevent possible identity theft. The APA also suggests that using an EIN can be advantageous for businesses in

other ways, such as obtaining business loans. We have been advocating for some time for our members to obtain and use EINs for all business purposes protect their privacy. This is just more fuel to that fire: <https://www.apaservices.org/practice/business/finances/employer-identification-numbers>.

We hope this answers some of the questions and addresses some of the confusion.

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