



January 26, 2022

The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services
200 Independence Ave, SW
Washington, DC 20201

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
200 Independence Ave, SW
Washington, DC 20201

RE: Enforcement Discretion for Uninsured or Self-Pay Good Faith Estimate Requirements

Dear Secretary Becerra and Administrator Brooks-LaSure:

On behalf of our member medical group practices, the Medical Group Management Association (MGMA) urges you to use the U.S. Department of Health and Human Services (HHS) and the Centers for Medicare and Medicaid Services' (CMS's) **enforcement discretion for the uninsured or self-pay good faith estimate (GFE) requirements for providers, fully implementing the requirement at the same time the advanced explanation of benefit (AEOB) requirement is finalized.**

With a membership of more than 60,000 medical practice administrators, executives, and leaders, MGMA represents more than 15,000 medical groups comprising more than 350,000 physicians. These groups range from small independent practices in remote and other underserved areas to large regional and national health systems that cover the full spectrum of physician specialties.

The uninsured or self-pay GFE requirement has only been in effect for less than a month, however, 90% of medical practices indicated in a recent survey that it has already increased the administrative burden on their practices. In the same survey, many practices stated they must hire new employees, devote hours a day to understand the new requirements, and have already experienced delays in patient care due to the new uninsured or self-pay GFE requirements.¹

MGMA is particularly concerned with the added administrative burden and unforeseen delays these requirements create for uninsured or self-pay patients. We are also concerned with the disproportionate impact this policy will have on patients in rural and underserved areas, as well as racial and ethnic minorities. **To ensure all patients continue to receive the highest quality care, MGMA urges HHS and CMS to delay the enforcement of the uninsured or self-pay GFE requirements until practices have the appropriate time to understand and implement the new requirements.**

¹ MGMA survey of member group practices, "Implementation of Surprise Billing Requirements." January 25, 2022.

Ongoing COVID-19 Public Health Emergency

The COVID-19 public health emergency (PHE) continues to greatly impact patients, providers, and group practices. On Jan. 16, 2022, Secretary Becerra affirmed the continued impact of the pandemic on the nation by once again renewing the COVID-19 PHE. The stress the pandemic continues to have on the healthcare system has been well documented. Practices of all sizes, from small rural private practices to large national health systems, are not only experiencing significant shortages in clinical personnel, but also in administrative staff that are critical to ensuring practices and clinics remain open for patients.

A September 2021 MGMA [Stat poll](#) revealed that **73% of medical practices ranked staffing as their biggest pandemic challenge heading into 2022**. Again, in December 2021, as the Omicron variant surged across the country, medical practices [raised concerns](#) about increases in staff shortages due to significant spikes in exposure. In the aforementioned survey, 41% of group practices stated that patient appointments are typically scheduled between 3-10 business days in advance, requiring practices to furnish uninsured or self-pay patient GFEs within one business day of scheduling. However, with the increased administrative burden and serious staffing shortages, practices will not have the capacity to provide GFEs within one business day and will instead be potentially forced to schedule services much farther in advance to comply with the strict timing requirements.

While MGMA supports the spirit of the transparency provisions in the No Surprises Act and has continued to partner with HHS, CMS, and other Departments to implement critical patient protections, **the administrative burden during the continuing COVID-19 pandemic and Omicron surge places unnecessary pressure on group practices to implement cost estimate mechanisms to meet the prescriptive requirements set forth by the Department**. MGMA urges HHS and CMS to use its available enforcement discretion to delay the implementation of the uninsured or self-pay GFE requirements, permitting group practices to leverage existing cost estimate tools as our members continue to combat the pandemic on the frontlines.

Continued Implementation Uncertainty

The new requirements for providers to issue an uninsured or self-pay GFE began on Jan. 1, 2022. And while HHS and CMS have issued the final regulations and provided template documents, many questions remain about the requirements. Establishing new processes within a practice to ensure eligible patients have access to GFE documentation is a difficult and resource-intensive process; administrators must understand and communicate the new requirements with clinicians in order to provide accurate cost estimate information to patients prior to a visit, provide training to administrative staff to understand the necessary disclosures, and incorporate new processes to track and retain GFE documentation. **To ensure the implementation of these new requirements is as efficient and effective as possible, practices require complete understanding and direct guidance from the overseeing agency.**

Delaying the enforcement of the new uninsured or self-pay GFE requirements will provide practices with necessary time to engage with the agency and fully understand the new requirements without having to duplicate efforts as new information becomes available and requirements are made clear.

Consistent with Other Enforcement Discretion

MGMA appreciates the enforcement delays HHS has already provided for convening providers, co-facilities, and co-providers, as well as the enforcement delays announced for the AEOB requirements. In statements released by HHS, these enforcement delays were due to complexities in implementing the requirements and

recognition by the Department that the technology and workflows necessary would require more than three months to implement.

MGMA urges HHS and CMS to employ the same critical evaluation of the uninsured or self-pay GFE requirements to understand the time, staff, and resources it takes to appropriately implement these new requirements. The three months practices had to implement the GFE requirements is utterly insufficient to appropriately and practically implement any new significant process.

Further, implementing the GFE requirements for uninsured and self-pay patients, as well as for insured patients at one time will eliminate significant confusion for both patients and practices. As MGMA has informed members of the currently available surprise billing federal resources, many of our members have reached out with clarifying questions about determining insurance status and providing the most appropriate cost estimate to patients to prevent any confusion. If a patient does not fully understand their insurance coverage, they may not understand that they qualify for the uninsured or self-pay GFE for certain items or services until later. If a practice later learns of the insurance status, this could lead to delays in patient care for the practice to ensure they are in complete compliance with the GFE requirements. Unless all GFE requirements are in place for uninsured, self-pay, or insured patients, confusion will persist and unintended delays in care may result.

MGMA is committed to continuing to partner with HHS and CMS to empower patients to have the information necessary to actively participate in their care plan. If you have any additional questions, please do not hesitate to contact Kelsey Haag, Associate Director of Government Affairs, at khaag@mgma.org or (202) 887-0798.

Sincerely,

/s/

Anders Gilberg, MGA
Senior Vice President, Government Affairs
Medical Group Management Association