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Client Alert

Business Information for Clients and Friends of Shumaker

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No Surprises Act: Good Faith Estimate Requirements

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The No Surprises Act (NSA) imposes numerous requirements on health care facilities and other providers regarding protections against surprise billings. The requirements include posting and delivering notices regarding the consumer protections of the NSA, providing good-faith estimates (GFE) of services and procedures, and limitations on billing for those services under certain circumstances. This alert addresses only the GFE requirements. While much of the NSA applies only to certain facilities, such as hospitals and surgery centers, the GFE requirements have a much broader application to include physician practices. These requirements were effective January 1, 2022, and those health care providers who are subject to the NSA, must take action immediately to comply with the NSA

Simply put, the NSA requires providers to provide a notice of certain of the NSA consumer protections and a GFE of the expected charges (including any discounts) for items or services to self-pay patients. Additionally, the provider must provide a GFE to a self-pay patient who is merely shopping for items or services—prior to scheduling any services.

Who are "self-pay patients?"

"Self-pay patients" are those who do not have health care coverage from a health insurance issuer nor receive benefits from a governmental health benefit plan. The definition of self-pay patients also includes, however, insured patients who choose not to use their benefits for a particular service or item. Also, if a patient has coverage that does not provide for out of network coverage, the individual is considered "self-pay" as to the out of network provider. A patient is, however, an insured individual if the coverage includes out of network coverage, albeit with higher deductibles or copays (unless they choose not to use the coverage). Practically speaking, the health care provider now must inquire and determine the patient's status as insured or self-pay—including whether the patient wishes not to use any applicable health care coverage or benefit.

What Items or services are subject to the NSA?

The GFE must be provided with regard to any service or item provided by the provider. This includes physician services, testing, durable medical equipment, therapy, such as physical therapy or infusion services, and procedures. For example, if an individual with no insurance or governmental health benefit calls a physician practice to schedule an appointment, the GFE requirements are triggered. Typically, these requirements are triggered only for services provided by the provider and not by another provider. For example, if the self-pay patient calls a physician practice to inquire about the cost of an imaging test ordered by the doctor, but to be provided and scheduled by an independent diagnostic facility, the health care provider does not have a duty to provide a GFE for the imaging study.

What health care providers are subject to the GFE requirements of the NSA?

Providers of health care services are broadly defined as physicians or other health care providers acting within the scope of their state licenses, along with institutions, such as hospitals, surgery centers, laboratories, federally qualified health care centers, and diagnostic testing facilities – any facility requiring a state license to provide services must comply with the GFE requirements.

"Convening providers" must provide the notice and the GFEs. A "convening provider" is one who is responsible for scheduling the primary service or item or who receives a request from an individual shopping for health care items or services provided by that provider or other providers who provide services related to the primary service. If a self-pay patient calls a physician practice to inquire about the cost of a procedure at a surgery center to be performed by a physician in the practice, the physician practice is the convening provider. The convening provider and surgery center are considered "co-providers" and will need to coordinate the provision of the GFE, as more fully described below.

What notice must be provided?

The provider must give both oral and written information. When a self-pay patient calls regarding the cost or availability of a health care service or item, or to schedule a service or item, the provider must tell the self-pay patient that he may obtain a GFE. The provider must display a notice about the availability of the GFE in the office where scheduling occurs and on the website of the provider. The Center for Medicare & Medicaid Services (CMS) has provided a model notice, available at https://www.cms.gov/regulations-and-guidancelegislationpaperworkreductionactof1995pra-listing/cms-10791. In addition, the provider must provide a GFE. The GFE must be provided in paper format or electronically according to the patient's wishes, even if the patient requests the estimate orally. The notice must be provided in easily understandable format and in languages spoken by the self-pay patients. The self-pay patient must be able to save and print the GFE.

What must the GFE include?

CMS has made available a model form to be used by providers, available at the link above. CMS does not mandate use of the form, but if a provider in good faith uses the model form, it will be deemed in compliance with the NSA. The GFE must include the patient's name and date of birth, a description of the primary item or service, a list of other items or services reasonably expected to be provided with the primary item or service, diagnostic and expected service codes, expected charges, the name and National Provider Identifier (NPI) number of the provider, the state and location of the place where services are to be provided, a description of items or services that the provider believes may require separate scheduling, either before or after the primary services (e.g., lab work prior to surgery), and a statement that a GFE estimate of such additional services would be provided upon scheduling or request. The GFE must include certain disclaimers to include that there may be additional items or service not included in the GFE, that the GFE is only an estimate based on what is reasonably expected at the time of the service, and that the charges could differ. The provider must also notify the patient of a dispute resolution process if the expected charges are substantially in excess of the estimate. The provider must inform the self-pay patient that the GFE is not a contract and that the patient is not required to obtain the services from the provider.

When must the GFE be provided?

If a patient requests a GFE for an item or service, and is not yet attempting to schedule the item or service, the provider must furnish the GFE within three business days of the request.

If the primary item or service is scheduled for less than three business days from the date of the scheduling, no GFE is required.

If the primary item or service is scheduled between three and nine days after the date of the scheduling, the provider must furnish the GFE within one business day of the scheduling.

If the primary item or service is scheduled 10 days or more after the date of the scheduling, the provider must furnish the GFE no later than three days after the date the primary item or service is scheduled.

What if the patient requires multiple visits or services?

The provider may issue a GFE for recurring primary items or services for up to 12 months. The GFE must provide details of the frequency, the time frame, and the total number of expected recurrences. The providers must issue a new GFE at the end of the 12 months.

How must changes or updates be provided?

If the information in a GFE needs to be updated or changed, the convening provider must notify self-pay patient of the change or update no less than one day before the scheduled service or item. With regard to a GFE provided to a self-pay patient who was merely shopping for services, the updated GFE should be provided in the time frames stated above if the patient then schedules the services.

What are the requirements for co-providers?

CMS recognizes that the coordination efforts required of co-providers are complex and may require additional time for the co-providers to create processes and procedures to ensure compliance. Thus CMS will exercise its enforcement discretion for the fiscal year 2022 with respect to these requirements. Co-providers must coordinate their efforts to provide the GFE to patients. For example, when a physician practice is scheduling a procedure at a surgery center, both providers have a duty to provide a GFE to the self-pay patients, and the convening provider must coordinate the provision of the GFE. Within one business day of receiving a request for a GFE or scheduling an item or service, the convening provider must contact all co-providers who are reasonably expected to provide a service in connection with the primary item or service. The convening provider must inform the co-providers of the obligaton to respond with the following information within one day of the request: patient's name and date of birth, an itemized list of items or services reasonably expected to be provided by the co- provider, diagnosis and expected service codes, expected charges, the name and NPI number of the provider, state and location of services, and a disclaimer that the GFE is not a contract and that the patient is not required to obtain the services from the co-provider. Changes and updated information must be provided to a convening provider. If there is any change in the co-providers less than one day before the service is scheduled, the replacement co-provider must accept the expected charges listed in the GFE by the original co-provider.

What are the consequences of noncompliance?

CMS may impose a penalty of up to $10,000 per violation. If the actual billed charges exceed the estimate by $400 or more, the self-pay patient may engage in dispute resolution process defined in the regulations. If it is determined that the provider should have known of the inaccuracy, the charges will be adjusted accordingly.

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