

August 23, 2021

Departments of HHS, Labor, and Treasury Release FAQs on Transparency, No Surprises Act Regulations

The Departments of Health and Human Services, Labor, and Treasury (“the departments”) Aug. 20 released a set of [Frequently Asked Questions \(FAQs\)](#) related to provisions in the [No Surprises Act](#) and the [Transparency in Coverage final rule](#). As requested several times by the AHA, the departments announced they will be deferring enforcement of the good faith estimate requirements for insured patients, as well as the advanced explanation of benefit requirement. They also recognize the significant overlap between several of the No Surprises Act provisions and the transparency in coverage final regulations and plan to streamline requirements where appropriate. Finally, they identified several instances where they do not expect to issue regulations before a provision’s effective date, and addressed how they will monitor enforcement in those cases.

Key Takeaways

- The departments will defer enforcement of the No Surprises Act good faith estimates for insured patients and advanced explanation of benefit requirements.
- Providers and facilities will still be required to generate good faith estimates for the uninsured.
- The departments will delay enforcement of the insurer machine-readable files, required in the transparency in coverage final rule, until July 1, 2022.

AHA Take: The AHA supports the departments’ decision to delay enforcement of the good faith estimates for insured patients. We appreciate that the departments listened to our concerns on the significant operational issues with this requirement, and we look forward to working with them and other stakeholders to implement these provisions, including through the development of appropriate technical standards.

Highlights from the FAQs follow.

Good Faith Estimates and Advanced Explanation of Benefits. The departments are deferring enforcement of the good faith estimates for insured patients and the advanced explanations of benefit requirements until they are able to go through a notice and comment rulemaking process that includes “establishing appropriate data transfer

standards.” They note that they have heard from stakeholders about the infeasibility of implementing the requirements by Jan. 1, 2022, given the significant technical infrastructure needs. The departments indicate that they will go through the rulemaking process in the future in order to implement these requirements but do not give an expected timeline.

The departments still will require providers to provide good faith estimates directly to the patient starting Jan. 1, 2022 when the patient is uninsured or not planning to use their insurance for a scheduled service. The departments assert that the uninsured need the good faith estimate in order to avail themselves of the dispute resolution process established under the No Surprises Act that provides an avenue of redress for uninsured patients who are billed an amount “substantially in excess” of their good faith estimates.

In the FAQs, the departments state that these estimates will be required “upon an individual’s scheduling of items or services, or upon request.” In other words, we read the guidance as removing the ambiguity around when these estimates would be required; it appears that the departments are taking a broad reading of the statute to require good faith estimates be provided for every scheduled service, as well as if a patient requests an estimate prior to scheduling. We expect more detail on the scope and methodology of the good faith estimates in regulations expected to be released in early fall.

Transparency in Coverage Final Rule. The transparency in coverage final rule requires health plans to publish three machine-readable files beginning Jan. 1, 2022: (1) all in-network rates for covered items and services; (2) all out-of-network allowed amounts and billed charges for covered items and services; and (3) all negotiated rates and historical net prices for covered prescription drugs. Through these FAQs, the departments announced they will defer enforcement of the health plan machine-readable files to July 1, 2022. The departments also will use enforcement discretion to defer enforcement of the prescription drug pricing information until further rulemaking to take into consideration similar and potentially duplicative requirements in the No Surprises Act.

Similarly, the departments plan to propose rulemaking related to the duplicative nature of the transparency in coverage enrollee price estimator tools and the No Surprises Act price estimator tool requirements for health plans. Until they are able to go through the notice and comment rulemaking process to align the requirements, the departments will defer enforcement of the No Surprises Act price estimator tool requirement and will focus on “compliance assistance” instead. The transparency in coverage price estimator tool requirements begins to go into effect on Jan. 1, 2023.

Gag Clause on Price and Quality Data. The departments note that they will not be issuing regulations addressing the prohibition on gag clauses related to price or quality data in the No Surprises Act. However, they will issue implementation guidance on how health plans should submit their attestations of compliance, which the departments plan to begin collecting in 2022.

Provider Directories. The departments plan to undertake a notice and comment rulemaking process to develop regulations implementing the provider directory requirements from the No Surprises Act; however, they will not be proposing regulations before the requirements go into effect for plan years beginning on or after Jan. 1, 2022. Until further rulemaking is issued, the departments expect health plans to implement these provisions using “a good faith, reasonable interpretation of the statute.”

Balance Billing Disclosure. The departments do not plan to issue regulations addressing the balance billing disclosure requirements on health plans from the No Surprises Act before Jan. 1, 2022, though they may provide more details in future guidance or rulemaking. For now, the departments will consider use of the [model disclosure notice](#) to be in good faith compliance with the disclosure requirement, as long as all other applicable requirements are met.

Continuity of Care. The departments plan to issue notice and consent rulemaking to implement the continuity of care requirements from the No Surprises Act but do not plan to do so prior to the requirements going into effect for plan years beginning Jan. 1, 2022. Until the rulemaking process is complete, the departments expect providers and health plans to implement the requirements using “good faith, reasonable interpretations of the statute.” The future regulations will include a new, prospective applicability date in order to give providers and health plans time to comply.

Grandfathered Health Plans. The departments clarify that grandfathered health plans are generally subject to the No Surprises Act requirements.

FURTHER QUESTIONS

If you have further questions, contact Ariel Levin, AHA’s senior associate director of policy, at alevin@aha.org.