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June 6, 2022

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244-1850

RE: Follow-Up Request Supplementing Comments to Requirements Related to Surprise Billing, Part II (CMS-9908-IFC; RIN 1210-AB00)

Dear Administrator Brooks-LaSure:

AMGA appreciates the opportunity to expand upon our comments¹ on the Requirements Related to Surprise Billing; Part II (86 FR 55980) of the Interim Final Rule (IFR) issued by the Department of Health and Human Services (HHS), Treasury, and Labor, and the Office of Personnel Management on September 30, 2021. Specifically, we would like to address requirements that providers offer a good faith estimate (GFE) of the cost of items and services provided to uninsured or self-pay patients.

Founded in 1950, AMGA represents more than 440 multispecialty medical groups and integrated delivery systems, representing about 175,000 physicians who care for one in three Americans. Our member medical groups work diligently to provide high-quality, cost-effective, and patient-centered medical care.

AMGA supports the spirit of the transparency provisions in the No Surprises Act (NSA) and has continued to partner with the Centers of Medicare & Medicaid Services (CMS), HHS, and other Departments to implement critical patient protections. Our member groups appreciate the value of developing a culture of transparency to empower patients to make informed decisions about their healthcare. Transparency leads to better and more consistent quality care in the medical community and helps strengthen relationships between patients and providers to improve care outcomes and patient satisfaction. ***AMGA fully supports efforts to increase transparency and believes that quality patient care with improved outcomes and better satisfaction should continue to be a CMS priority.***

However, we are concerned that the current implementation of GFE requirements under the NSA has and will continue to impair patient access to timely medically necessary services. Rigid GFE timeliness notification standards fail to account for provider workflows, nor do they afford

¹ AMGA Comments on CMS-2021-0156-0001 (Dec. 6, 2021). <https://www.regulations.gov/comment/CMS-2021-0156-5005>.

sufficient time to gather required information. These standards have resulted in significant challenges for our members to effectively schedule, coordinate, and deliver care for the patient communities they serve.

While we appreciate that HHS implemented the GFE requirement as part of an IFR with a comment period, this short window did not permit AMGA members the time to fully assess workflows, conduct staff training, and understand operational impacts sufficient to provide effective feedback on GFE provisions. ***Therefore, AMGA strongly urges HHS to exercise enforcement discretion² in additional areas, such as for services scheduled three to nine days in advance³ and to work with the provider community to develop policies that meet our shared goals of transparency while also providing patients with meaningful information on their expected costs.***

Specific Asks

We support the goal of transparency to provide patients with the tools and information they need to make informed decisions about their care, but it is equally important to ensure appropriate infrastructure is in place with clear guidance to facilitate the timely delivery of necessary medical care.

AMGA respectfully requests:

- A meeting with CMS to discuss GFE barriers and potential solutions,
- That HHS exercise enforcement discretion in additional areas, such as for items or services scheduled three to nine days in advance,
- That HHS provide updated guidance clearly outlining when GFEs are required and the extent of reasonable and expected services for which cost estimates are required, and
- That HHS work with stakeholders to clarify GFE guidelines, address staffing shortages, and help to provide a cost-effective infrastructure for GFEs.

Key Concerns

We applaud HHS' efforts to promote transparency, but we believe there is a misunderstanding as to the infrastructure needed to satisfy GFE requirements in a timely matter. AMGA members have raised concerns with GFE requirements in three key areas: confusing and conflicting guidance, staffing constraints, and the cost and lack of infrastructure to complete GFEs under current requirements:

- **Unclear Guidance.** Guidelines issued to providers are either confusing or conflicting, and providers have raised questions about the circumstances necessitating the delivery of a GFE to a patient.
- **Staffing Constraints.** AMGA members report that non-medical staff are required to allocate a significant number of hours to complete GFEs.

² HHS has indicated it will exercise enforcement discretion in limited situations where a GFE is provided to an uninsured or self-pay patient that does not include expected charges from co-providers or co-facilities. <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Guidance-Good-Faith-Estimate-Patient-Provider-Dispute-Resolution-Process-for-Providers-Facilities-CMS-9908-IFC.pdf>.

³ The IFR requires a GFE to be delivered to an uninsured or self-pay patient within one business day for services scheduled between three and nine days in advance.

- **Cost and Infrastructure Barriers.** Our members report a significant expense associated with completing GFEs. In addition, there is currently no realistic way to complete GFEs electronically. Members are developing workflows and infrastructure to support GFEs, but doing so diverts scarce resources from other priorities, particularly during the ongoing public health emergency. This includes reassigning staff from other duties to complete GFEs

Our detailed comments are included below.

Unclear Guidance

AMGA members are concerned about unclear guidance outlining when a GFE is required. While we appreciate the information and resources HHS has made available, there are inconsistencies between guidance for providers and for patients. For example, patient guidance⁴ states: “[i]f you schedule the item or service at least 10 business days before the date you will receive it, or request cost information about an item or service, the provider or facility must give you a good faith estimate no later than 3 business days after scheduling or requesting[;]” however, this does not account for services requested by a patient less than 3 business days in advance. Similarly, Part II of the GFE FAQs⁵ indicate that a GFE is not required for items or services scheduled fewer than 3 business days before the expected date they are expected to be furnished, but this does not address situations in which a GFE is expressly requested by a patient.

In addition, provider guidance⁶ indicates that GFEs should include charges for items and services “reasonably expected to be provided as part of the primary item or service, and items and services reasonably expected to be furnished in conjunction with the primary item or service” for a certain period of care. Part I of the GFE FAQs⁷ expanded on this and reiterated that GFEs do not need “to include charges for unanticipated items or services that are not reasonably expected and that could occur due to unforeseen events.”

However, the scope of items and services that are ‘reasonably expected’ in a period of care is far reaching. Take, for example, a radiological exam that identifies a suspect abnormality that could result in any number of reasonably expected outcomes and treatment plans. Within this period

⁴ HHS. Learn more about the Good Faith Estimate and the Patient-Provider Dispute Resolution (PPDR) process for people without insurance or who plan to pay for the costs themselves. Dec. 21, 2021. <https://www.cms.gov/ccio/resources/regulations-and-guidance/downloads/good-faith-estimate-patient-provider-dispute-resolution-process-for-uninsured-or-self-pay-individuals.pdf>.

⁵ HHS. FAQs about Consolidated Appropriations Act, 2021 Implementation – Good Faith Estimates (FGE) for Uninsured (or Self-Pay) Individuals – Part 2. April 5, 2022. <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Guidance-Good-Faith-Estimates-FAQ-Part-2.pdf>.

⁶ HHS. Guidance on Good Faith Estimates and the Patient-Provider Dispute Resolution (PPDR) Process for Providers and Facilities as Established in Surprise Billing, Part II; Interim Final Rule with Comment Period (CMS 9908-IFC). Dec. 21, 2021. <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Guidance-Good-Faith-Estimate-Patient-Provider-Dispute-Resolution-Process-for-Providers-Facilities-CMS-9908-IFC.pdf>

⁷ HHS. Frequently Asked Questions (FAQs) about Consolidated Appropriations Act, 2021 Implementation-Good Faith Estimates. Retrieved May 16, 2022. <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Guidance-Good-Faith-Estimates-FAQ.pdf>.

of care, the potential items and services that could be “reasonably expected” are prodigious. Further, anticipating the type of services that may be reasonably expected and determining good faith estimates for any and all of these services requires for an incredible amount of coordination of not only non-clinical staff, but practitioners as well.

With unclear guidelines, our member groups struggle to implement an efficient workflow to comply with the GFE requirements.

Staffing

We are facing a healthcare workforce crisis unlike any other, and AMGA members are experiencing significant staffing needs and recruitment challenges. This pandemic has only exacerbated these challenges, and attracting and retaining a skilled and robust workforce has become critically difficult for our members. Current GFE requirements impose additional tasks to an already strained healthcare workforce, which further risks impairing patient access to timely and necessary medical care.

Staff fulfilling GFE responsibilities need to be knowledgeable about multiple aspects of health care (e.g., coding, facilities, providers, schedulers, and fee schedules) and as discussed above, need to effectively coordinate with multiple provider departments. In addition, staff will need to be excellent communicators in order to effectively discuss GFEs with patients. Further, the skill set to perform this work (i.e., knowledge about clinical, coding, and financial issues) is not something most employees collectively have.

Given these challenges, we believe that the complexity of GFEs and associated impacts upon providers’ ability to schedule, coordinate, and provide timely care has not been entirely realized. These considerations have required AMGA members to reassign more qualified staff from other critical responsibilities to manage GFEs.

Cost and Infrastructure

To comply with GFE provisions, AMGA members have needed to invest in significant infrastructural changes to provide GFEs to uninsured and self-pay patients. For example, one member has a team working to build a system to provide the GFEs; however, that effort involves more than 40 individuals devoting about eight hours per week to plan and develop a system and workflow to respond to GFE requests. This time does account for the additional hours spent data gathering and data validation. Members also report the additional expense of having to mail hard copies of the estimates, along with storing them in electronic health records (EHRs). As discussed above, AMGA members have been forced to hire or reassign staff to comply with the GFE requirements, which could worsen staffing shortages and result in care delays. AMGA members are also concerned about the time and resources necessary to provide accurate GFEs and the potential for confusing patients with inaccurate estimates. Inaccurate estimates may result in cumbersome and potentially costly patient-provider dispute resolution (PPDR) processes, as well as result in a frustrating experience that could ultimately erode patients' trust in their providers.

Supporting Transparency Efforts

AMGA supports the intent behind the GFE requirement and appreciates the need for improved

price transparency in healthcare. AMGA recommends that CMS work with stakeholders to determine a process in which GFEs are beneficial for patients while not causing additional administrative burdens to providers. AMGA also recommends that CMS work with stakeholders to clarify GFE guidelines, address staffing shortages, and help to provide a cost-effective infrastructure for GFEs. AMGA requests a meeting with CMS officials discuss the barriers and complexities of GFEs further along with potential solutions.

Thank you for your consideration of these comments. AMGA stands ready to work with HHS, CMS, and other Departments to ensure surprise billing regulations protect patients without causing care delays or adding to provider administrative burdens. Should you have any questions, please do not hesitate to contact Darryl M. Drevna, Senior Director, Regulatory Affairs at ddrevna@amga.org or at 703.838.0033 ext. 339.

Sincerely,

A handwritten signature in cursive script that reads "Jerry Penso".

Jerry Penso, M.D., M.B.A.
President and Chief Executive Officer, AMGA