The New Jersey Hospital Association’s (“NJHA”) Federal/State Surprise Billing Requirements Toolkit (“Materials”) is intended to serve as tools that member hospitals may use to implement and comply with the requirements of both the New Jersey “Out-of-network Consumer Protection, Transparency, Cost Containment and Accountability Act” and the federal “No Surprises Act.” Member hospitals should not regard any information provided in these Materials as specific legal advice, and they should consult with their own legal counsel for additional guidance as appropriate. NJHA and any other party involved in creating, producing, or delivering these Materials shall not be liable for any direct, incidental, consequential, indirect, or punitive damages arising out of the use of these Materials. The further distribution of these Materials is prohibited without the prior written consent of NJHA.

The information contained within the Materials is provided to assist members’ compliance efforts to protect consumers from surprise medical bills as required by law effective Jan. 1, 2022. However, it must be noted that the federal law requirements were issued as interim final rules—that are subject to change and are only accurate as of the date released.

**Federal No Surprises Act**

**Good Faith Estimate for Uninsured/Self-Pay Patients**

The No Surprises Act established a requirement for providers to give patients good faith estimates (GFE). This is a new process that providers will need to implement beginning Jan. 1, 2022, for uninsured and self-pay patients.

The federal law defines a good faith estimate as:

“a notification of expected charges for a scheduled or requested item or service, including items or services that are reasonably expected to be provided in conjunction with such scheduled or requested item or service, provided by a convening provider, convening facility, co-provider, or co-facility.”

In the future, GFEs will also be required for insured, non-self-pay patients; however, federal agencies delayed enforcement of that requirement until new data transfer standards can be adopted.

Providers are required to orally inform all uninsured and self-pay patients of the availability of a GFE of expected charges when scheduling an item or service or when requested by self-pay patients.

Additionally, providers must prominently display a notice written in a clear and understandable manner on its website, in the office and on site where scheduling or questions about the cost of items or services occur. The written notice must be made available in accessible formats and in compliance with nondiscrimination laws.

The Centers for Medicare and Medicaid Services (CMS) has published a model notice CMS-10791 <https://www.cms.gov/regulations-and-guidancelegislationpaperworkreductionactof1995pra-listing/cms-10791>) for this purpose. The use of the model notice is not mandated, but CMS will consider its use good faith compliance with the notice requirement.

Following the oral notice, uninsured and self-pay patients (or their authorized representative) are entitled to receive a clear and understandable document with expected costs for the care that they are considering or scheduled to receive. The document must be provided to the individual in a manner they request - either on paper or electronically.

**For GFEs provided electronically, they must be provided in a manner that the individual can both save and print.**

CMS has also published a standard, non-mandatory, form CMS-10791 <https://www.cms.gov/regulations-and-guidancelegislationpaperworkreductionactof1995pra-listing/cms-1079> for providers to use in providing GFEs. CMS will consider its use good faith compliance with the requirement to inform an individual of expected charges. In the event a provider chooses not to utilize CMS’ form, they should educate themselves on the data elements and disclaimers that must be included.

Each GFE must cover a defined period of care (*e.g.*, from admission through discharge) and include expected costs for care. These costs must be representative of any expected discounts or adjustments such as a hospital’s financial assistance policy or any state laws that limit the amount a self-pay patient must pay.

The document must be provided to the patient within the following timeframes:

* If the item or service is scheduled at least 10 business days in advance, no later than three business days after the date of scheduling.
* If the item or service is scheduled at least three business days in advance, no later than one business day after the date of scheduling.
* If the individual requests such information, no later than three business days after the date of the request.

It is important to note that the regulations do not establish a GFE deadline if the item or service is to be provided in less than three business days.

The federal requirements also establish record keeping standards for the GFE. A GFE must be maintained in the same manner as the patient’s medical record. Upon the request of an uninsured of self-pay individual, convening providers and convening facilities must provide a copy of any previously issued GFE furnished within the last six (6) years to such uninsured or self-pay individual.

In the future, a single “convening provider” will be required to provide a single, comprehensive GFE to patients (rather than separate good faith estimates from each provider or facility involved in the care). The convening provider will coordinate with co-providers/facilities to create an all-inclusive GFE.

The convening provider/facility will be the provider or facility who receives the initial request for a good faith estimate from an uninsured (or self-pay) individual and who is or, in the case of a request, would be responsible for scheduling the primary item or service.”

The co-provider/facility will be any provider or facility other than the convening provider or a convening facility that furnishes items or services that are customarily provided in conjunction with a primary item or service.

However, the U.S. Department of Health and Human Services indicated that it will exercise its enforcement discretion in cases in which the GFE does not include expected charges from co-providers for 2022. This is in recognition of the time that may be necessary to establish systems and processes for coordination between convening providers/facilities and co-providers /co-facilities. Therefore, providers should begin considering implementing this upcoming requirement.

Finally, for purposes of the good faith estimate, the requirements apply to a broader group of facilities than for non-emergency services under the NSA. Specifically, these requirements apply to:

(1) “a physician or other health care provider who is acting within the scope of practice of that provider’s license or certification under applicable State law, including a provider of air ambulance services;” and (2) “an institution (such as a hospital or hospital outpatient department, critical access hospital, ambulatory surgical center, rural health center, federally qualified health center, laboratory, or imaging center) in any State in which State or applicable local law provides for the licensing of such an institution. . . . ”