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HHS Tables Co-Provider Part of Good Faith Estimate in No Surprises Act; RFI Had Impact

By Nina Youngstrom

For the foreseeable future, HHS has freed hospitals and other "convening" providers from a requirement in the No Surprises Act affecting good-faith cost estimates that would have been enforced Jan. 1, according to guidance posted Dec. 2.[1] Although providers must continue to give uninsured and self-pay patients good-faith estimates (GFE) of their own services, for now, they don't have to worry about incorporating the costs of associated services from co-providers.

"HHS is extending enforcement discretion, pending future rulemaking, for situations where GFEs for uninsured (or self-pay) individuals do not include expected charges from co-providers or co-facilities," HHS said in an answer to a frequently asked question (FAQ).

"This is definitely a holiday present for everyone," said attorney David Glaser with Fredrikson & Byron in Minneapolis. There's more to come as the government weighs how to make the GFE requirement and advanced explanation of benefits (EOB)—which relates to insured patients—more viable for facilities and providers, said former CMS chief legal officer Brenna Jenny, with Sidley Austin LLP in Washington, D.C. They should stay tuned for two final regulations on the subject.

The Dec. 2 reprieve doesn't change the fundamental GFE requirement, which is in effect for patients who pay cash or are uninsured. "The focus right now is on furnishing estimates for the provider's own services," she noted. Eventually, the GFE requirement will kick in for patients with insurance. Last year, HHS delayed the effective date for enforcing the GFE requirement with respect to insured patients until rulemaking is completed.