FAQS ABOUT CONSOLIDATED APPROPRIATIONS ACT, 2021 IMPLEMENTATION – GOOD FAITH ESTIMATES (GFEs) FOR UNINSURED (OR SELF-PAY) INDIVIDUALS – PART 4

December 27, 2022

Set out below are Frequently Asked Questions (FAQs) regarding implementation of Section 112 of Title I (the No Surprises Act (NSA)) of Division BB of the Consolidated Appropriations Act, 2021 (CAA 2021), and implementing regulations published in the Federal Register on October 7, 2021, as part of interim final rules with comment period, titled "Requirements Related to Surprise Billing; Part II." These FAQs have been prepared by the Department of Health and Human Services (HHS) to address the provision of GFEs for uninsured (or self-pay) individuals, as described in Public Health Service Act (PHS Act) section 2799B-6 and implementing regulations at 45 CFR 149.610.

Additional FAQs related to GFEs for uninsured (or self-pay) individuals are available at https://www.cms.gov/cciio/resources/regulations-and-guidance#Good_Faith_Estimates.

Q1: How can Federally Qualified Health Centers (FQHCs) and other providers and facilities that offer sliding fee discounts comply with GFE requirements?

A1: PHS Act section 2799B-6 and implementing regulations at 45 CFR 149.610(c)(1) generally require providers and facilities, when scheduling an item or service at least 3 business days in advance of furnishing the item or service, or upon request, to provide a GFE that includes, among other information, a description of the primary item or service; an itemized list of items or services, grouped by each provider or facility, reasonably expected to be furnished in conjunction with the primary item or service for that period of care; applicable diagnosis codes; expected service codes; and expected charges associated with each listed item or service. GFE regulations at 45 CFR 149.610(a)(2)(v) specify that the expected charges must reflect any discounts. However, HHS recognizes that FQHCs and other providers and facilities offering sliding fee discounts ("sliding fee discount providers and facilities")[1] face unique challenges in meeting these requirements.

Thus, HHS will consider providers and facilities that offer sliding fee discounts based on an individual's income and family size to be in compliance with GFE requirements for uninsured (or self-pay) individuals under the following conditions:

[1] Other providers that offer sliding fee discounts include, but are not limited to, FQHC Look-Alikes, Tribal/Urban Indian Health Centers, Ryan White HIV/AIDS Program Grantees, Children's Hospitals, Critical Access Hospitals, and Title X Family Planning Clinics.

1) New patients

For new patients who are uninsured (or self-pay) individuals, sliding fee discount providers and facilities must provide GFEs in accordance with 45 CFR 149.610, including the itemized list of items or services under 45 CFR 149.610(c)(1)(iii). However, if the sliding fee discount provider or facility does not know the expected charges associated with each listed item or service because it does not have sufficient information about the uninsured (or self-pay) individual (for example, income or family size) at the time the item or service is scheduled or the GFE is requested, it must, at a minimum, list the undiscounted price (for example, for FQHCs, typically the price for individuals and families with annual incomes above 200% of the Federal Poverty Guidelines) for each item or service included in the GFE.

HHS also encourages sliding fee discount providers and facilities who take this approach to include information about the provider's or facility's sliding fee schedule and any other financial protections it offers. For example, a sliding fee discount provider or facility may include with its GFE a copy of the provider's or facility's sliding fee schedule and a statement that no patient is denied services based on an inability to pay, even if that means reducing or waiving costs (if applicable).

As another example, a sliding fee discount provider or facility may demonstrate the expected charges associated with each scheduled or requested item or service as a schedule according to income and family size, with an expected charge per item or service displayed at each income tier. Below is an example of what such a schedule of expected charges might look like:

Sample Schedule of Expected Charges[2]

	100% FPL and Under	101 - 135% FPL	136 - 150% FPL	151 - 200% FPL	Above 200% FPL
New Patient Visit (with Exam)	**$10**	**$20**	**$30**	**$40**	**$200**
Routine Lab Work	**$5**	**$7**	**$10**	**$13**	**$25**
Expected Total Cost	**$15**	**$27**	**$40**	**$53**	**$225**
Family Size	Income range	Income range	Income range	Income range	Income range
1	$0 - $13,590	$13,591 - $18,347	$18,348 - $20,385	$20,386 - $27,180	$27,181 and above
2	$0 - $18,310	$18,311 - $24,719	$24,720 - $27,465	$27,466 - $36,620	$36,621 and above
3	$0 - $23,030	$23,031 - $31,091	$31,092 - $34,545	$34,546 - $46,060	$46,061 and above
4	$0 - $27,750	$27,751 - $37,463	$37,464 - $41,625	$41,626 - $55,500	$55,501 and above
5	$0 - $32,470	$32,471 - $43,835	$43,836 - $48,705	$48,706 - $64,940	$64,941 and above
6	$0 - $37,190	$37,191 - $50,207	$50,208 - $55,785	$55,786 - $74,380	$74,381 and above
7	$0 - $41,910	$41,911 - $56,579	$56,580 - $62,865	$62,866 - $83,820	$83,821 and above
8	$0 - $46,630	$46,631 - $62,951	$62,952 - $69,945	$69,946 - $93,260	$93,261 and above

These examples are not exhaustive. Sliding fee discount providers and facilities have flexibility to determine how best to demonstrate the expected charges associated with each listed item or service, and to determine what additional information to include (if any).

[2] The most recent *U.S. Federal Poverty Guidelines Used to Determine Financial Eligibility for Certain Programs* can be found at: https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines.

To be considered in compliance with GFE regulations, sliding fee discount providers and facilities taking this approach must comply with other requirements under 45 CFR 149.610, including methods of delivery and timing requirements.

2) Established patients

Sliding fee discount providers and facilities must provide GFEs in accordance with all of the requirements of 45 CFR 149.610 for established patients who are uninsured (or self-pay) and whose income and family size are already on file with the provider or facility. This includes listing the expected charges (reflecting any discounts for the patient) associated with each listed item or service.

We recognize that an individual's income or family size may change between the time of their initial financial counseling session and subsequent visits. Under this exercise of enforcement discretion, if an established patient informs a sliding fee discount provider or facility at the time of scheduling an item or service or requesting a GFE that their income or family size has changed from the information on file, the provider or facility may either rely on the patient's income and family size information on file to generate the "established patient" GFE or generate a "new patient" GFE that lists the undiscounted price of the items or services. We believe that providers and facilities are in the best position to determine which GFE is most appropriate based on the circumstances and on the sliding fee discount provider's or facility's policy regarding reassessing patients' income and family size. For any "established patient" GFE, we recommend that sliding fee discount providers and facilities include a disclaimer on the GFE indicating that this estimate is based on financial information on file with the sliding fee discount provider or facility and actual charges may differ based on changes in the individual's financial circumstances.

3) Patient-Provider Dispute Resolution (PPDR) Process

An uninsured (or self-pay) individual with a "new patient" GFE from a sliding fee discount provider or facility may initiate the PPDR process if their bill from that provider or facility is at least $400 more than the undiscounted price listed in the GFE. An uninsured (or self-pay) individual with an "existing patient" GFE from a sliding fee discount provider or facility that is consistent with all of the requirements of 45 CFR 149.610 may initiate the PPDR process as discussed in 45 CFR 149.610 and 149.620.

Sliding fee discount providers and facilities may choose to provide all uninsured (or self-pay) individuals with GFEs in accordance with all of the requirements of 45 CFR 149.610.

HHS encourages states that are primary enforcers of GFE requirements to take a similar enforcement approach and will not determine that a state is failing to substantially enforce this requirement if it takes such an approach.

Q2: How can providers comply with the GFE requirements if they do not expect to bill uninsured (or self-pay) individuals for scheduled (or requested) items or services?

A2: PHS Act section 2799B-6 and implementing regulations at 45 CFR 149.610(c)(1) generally require providers and facilities, when scheduling an item or service at least 3 business days in advance of furnishing the item or service, or upon request, to provide a GFE that includes, among other information, a description of the primary item or service; an itemized list of items or services, grouped by each provider or facility, reasonably expected to be furnished in conjunction with the primary item or service for that period of care; applicable diagnosis codes; expected service codes; and expected charges associated with each listed item or service. However, HHS recognizes that most providers and facilities that do not expect to bill uninsured (or self-pay) individuals for scheduled (or requested) items or services have limited resources to provide individualized GFEs to patients they do not expect to charge. Additionally, a full GFE with a detailed estimate listing each item and service, with disclaimers about unexpected costs for care, may not be appropriate in instances where a provider has indicated they do not expect to charge for care.

To help reduce burden on these providers and ensure that individuals receiving services from such providers have access to the PPDR process[3] if they are ultimately billed an amount that is substantially in excess of zero dollars from the provider or facility,[4] HHS will consider providers and facilities that know in advance that they do not expect to bill an uninsured (or self-pay) individual for items and services to be in compliance with GFE requirements for uninsured (or self-pay) individuals under the following conditions and provided they meet all other requirements under 45 CFR 149.610:

- They provide uninsured (or self-pay) individuals with an abbreviated GFE (discussed further below);
- They do not bill uninsured or (self-pay) individuals who receive an abbreviated GFE, provided they meet all other requirements under 45 CFR 149.610 and
- No items or services included in the abbreviated GFE are expected to be furnished by co-providers or co-facilities in conjunction with the primary items or services.[5]

Under this exercise of enforcement discretion, the abbreviated GFE must include all of the following elements (also as shown in the sample abbreviated GFE template in Appendix 1 below):

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[3] PHS Act section 2799B-7, as added by section 112 of division BB of CAA 2021, directs the Secretary of HHS to establish a process under which uninsured (or self-pay) individuals can avail themselves of a patient-provider dispute resolution process (referred to in this guidance as the PPDR process) if their billed charges after receiving an item or service are substantially in excess of the expected charges listed in the GFE furnished by the provider or facility, pursuant to PHS Act section 2799B-6. Requirements related to the PPDR process were promulgated in *Requirements Related to Surprise Billing; Part II*, 86 Fed. Reg. 55980 (October 7, 2021), codified at 45 CFR 149.610 & 149.620.

[4] An uninsured (or self-pay) individual may be eligible for PPDR if the total billed charges (by the particular convening provider, convening facility, or co-provider or co-facility listed in the good faith estimate) are substantially in excess of the total expected charges for that specific provider or facility listed on the good faith estimate. 45 CFR 149.620(b)(1). Under 45 CFR 149.620(a)(2)(ii), "substantially in excess" is interpreted to be $400 or more.

[5] This applies during the exercise of enforcement discretion in situations where a GFE for uninsured (or self-pay) individuals does not include expected charges from co-providers, and it will continue to apply once the co-provider requirement with respect to the complete GFE in accordance with all of the requirements in 45 CFR 149.610 is enforced.

- Patient name and date of birth;
- Name, National Provider Identifier (NPI), and Taxpayer Identification Number (TIN) of the provider or facility, and the state(s) and office or facility location(s) where the items or services are expected to be furnished by the provider or facility;
- If scheduled, the date(s) the items or services are scheduled to be furnished;
- A statement that the provider or facility will not bill the individual for any items or services furnished on the date(s) the scheduled items or services are scheduled to be furnished (if scheduled) **or** that the provider or facility will not bill the individual for any items or services (if no date(s) of service is scheduled and the GFE is being provided upon request);
- A disclaimer that informs the uninsured (or self-pay) individual of their right to initiate the PPDR process if the individual is charged by the provider or facility for items or services furnished on the date(s) listed on the abbreviated GFE (or in the case of a GFE based on request, if the individual is charged by the provider or facility for any items or services), and the actual billed charges are $400 or more. This disclaimer must include instructions for where an uninsured (or self-pay) individual can find information about how to initiate the PPDR process and state that the initiation of this process will not adversely affect the quality of health care services furnished to an uninsured (or self-pay) individual by a provider or facility;
- A disclaimer that the GFE is not a contract and does not require the uninsured (or self-pay) individual to obtain the items or services from any of the providers or facilities identified in the GFE; and
- A disclaimer that informs the uninsured (or self-pay) individual that there may be additional items or services the convening provider or convening facility recommends as part of the course of care that must be scheduled or requested separately.

As discussed in Q4 below, HHS strongly encourages providers and facilities to also include an email address and phone number for someone within the provider's or facility's office or organization that has the authority to represent the provider or facility in a billing dispute.

Providers and facilities that do not expect to bill for items or services are reminded that nothing in this enforcement discretion prohibits them from providing uninsured (or self-pay) individuals with complete GFEs in accordance with all of the requirements in 45 CFR149.610.

In addition to providing an abbreviated GFE upon an uninsured (or self-pay) individual's scheduling an item or service, providers and facilities may also provide an abbreviated GFE to comply with the requirement to provide a GFE upon an uninsured (or self-pay) individual's request for cost information. We remind providers and facilities that, in accordance with 45 CFR 149.610(b)(1)(ix), for GFEs provided upon request (including abbreviated GFEs), the convening provider or convening facility must provide the uninsured (or self-pay) individual with a new GFE upon the scheduling of the requested item or service. The new GFE provided upon the scheduling of an item or service may also be an abbreviated GFE as described above if the provider or facility knows at the time of scheduling that they do not expect to bill the uninsured (or self-pay) individual for items or services expected to be furnished on the date(s) listed in the new abbreviated GFE.

Except for the difference in content requirements discussed above, providers and facilities that intend to provide an abbreviated GFE under HHS's exercise of enforcement discretion must meet all other GFE requirements under 45 CFR 149.610. As a reminder, such requirements include the timeframes within which GFEs must be provided, and requirements that providers and facilities provide an uninsured (or self-pay) individual with a new GFE if the provider or facility anticipates or is notified of any changes to the scope of a GFE, including the scheduled date(s) of service.

HHS strongly recommends that only providers and facilities that furnish all items or services free of charge use an abbreviated GFE. Providers and facilities that do not expect to bill for items or services are reminded that nothing in this enforcement discretion prohibits them from providing uninsured (or self-pay) individuals with complete GFEs in accordance with all of the requirements in 45 CFR 149.610.

The applicable enforcement authority (HHS or a state) may take enforcement action against a provider or facility that does not comply with the conditions of this enforcement discretion or the requirements under 45 CFR 149.610. HHS encourages states that are primary enforcers of the GFE requirements under 45 CFR 149.610 to take a similar enforcement approach and will not determine that a state is failing to substantially enforce these requirements if the state takes such an approach.

Q3: When would an abbreviated GFE be subject to the PPDR process, and how would that process apply?

A3: Providers and facilities that provide an uninsured (or self-pay) individual with an abbreviated GFE pursuant to an individual's scheduling an item(s) or service(s) may be subject to the PPDR process if they bill an uninsured (or self-pay) individual $400 or more for items or services furnished on the expected date(s) of service included in the abbreviated GFE. As noted in Q2 above, because the abbreviated GFE does not list any specific items or services to be furnished, the GFE applies to any items or services furnished by the provider or facility on the date for which the items or services are scheduled. An uninsured (or self-pay) individual in this situation may initiate the PPDR process using the abbreviated GFE issued by the provider or facility.

Providers or facilities that provide an uninsured (or self-pay) individual an abbreviated GFE upon a request for cost information are not required to list any specific items or services to be furnished or to provide a specific date of service. If a provider or facility does not subsequently issue a GFE (including an abbreviated GFE) upon scheduling (because, for example, the individual schedules the item or service fewer than 3 days before the item or service is furnished), the uninsured (or self-pay) individual may be entitled to the PPDR process if **any** item or service furnished by the provider or facility subsequent to the date of the abbreviated GFE is $400 or more than the amount provided in the GFE issued upon request. The abbreviated GFE provided upon request is a commitment to not bill the patient for any items or services provided on any date subsequent to the date of the abbreviated GFE from that provider or

facility, until such time as the provider or facility provides a subsequent GFE that reflects the date(s) that the item(s) or service(s) are scheduled to be furnished.

We strongly encourage the Selected Dispute Resolution Entity (SDRE) in making a determination in PPDR cases with an abbreviated GFE to take into account the provider's or facility's representation in the abbreviated GFE that it would not bill the individual for any items or services furnished on the date(s) the items or services were scheduled to be furnished. For example, the SDRE might consider whether a provider or facility should be permitted to claim that the items or services on the bill were unforeseeable (which providers and facilities must do in order to prevail under 45 CFR 149.620(f)(3)(iii)), given that there are no items or services listed in the abbreviated GFE for comparison. In this circumstance, therefore, we strongly encourage the SDRE to weigh such statements in favor of treating items or services on the bill as foreseeable, such that the patient's responsibility would be $0.

We encourage providers and facilities that know in advance that they do not expect to bill an uninsured (or self-pay) individual to consider the potential implications of this enforcement discretion, including an individual's right to initiate the PPDR process using an abbreviated GFE that does not include a list of items or services expected to be furnished, and that may not include a specific date of service. For this reason, we strongly recommend providers who charge for some items or services but not others, or who charge certain individuals but not others, to prepare a complete GFE in accordance with 45 CFR 149.610, particularly in response to cost estimate requests. Providers and facilities may wish to consider whether to instead issue a GFE that meets all of the requirements under 45 CFR 149.610.

Q4: What types of contact information should providers and facilities include in a GFE for uninsured (or self-pay) individuals?

A4: Providers and facilities are required to provide certain identifying information in the GFE for uninsured (or self-pay) individuals, including the name, NPI, and TIN of each provider or facility represented in the GFE, and the state(s) and office or facility location(s) where the items or services listed in the GFE are expected to be furnished by such provider or facility, as specified in regulations at 45 CFR 149.610(c)(1)(v). HHS strongly encourages providers and facilities to also include an email address and phone number for someone within the provider's or facility's office or organization that has the authority to represent the provider or facility in a billing dispute (for example, a medical billing specialist, general counsel, or compliance officer). In the event that an uninsured (or self-pay) individual initiates the PPDR process, the SDRE would be able to reach the provider by using an email address and phone number more quickly than by using a physical mailing address.

Appendix 1: Abbreviated Good Faith Estimate

[*insert* NAME OF PROVIDER OR FACILITY]
Good Faith Estimate for <u>No-Cost</u> Health Care Items & Services

This provider/facility will not bill you for items or services scheduled to be provided on [*insert date(s)*] **[*If items or services have <u>not</u> been scheduled, replace with this:* This provider/facility will not bill you for items or services.]**		
Patient Name:	Patient Date of Birth:	
Patient Identifier (optional):		
Provider/Facility Name:		
Provider/Facility Street Address (where items or services are expected to be furnished):		
City:	State:	ZIP Code:
Provider/Facility Contact:	Phone:	
Email Address:		
National Provider Identifier (NPI):	Taxpayer Identification Number (TIN):	
Date of Good Faith Estimate:		

Disclaimer

The Good Faith Estimate is not a contract and does not require the uninsured (or self-pay) individual to obtain the items or services from any of the providers or facilities identified in the Good Faith Estimate.

There may be additional items or services the convening provider or convening facility recommends as part of the course of care that must be scheduled or requested separately.

If you are billed for more than this Good Faith Estimate, you may have the right to dispute the bill.

You may contact the health care provider or facility listed to let them know the billed charges are higher than the Good Faith Estimate. You can ask them to update the bill to match the Good Faith Estimate, ask to negotiate the bill, or ask if there is financial assistance available.

If you do receive a bill that is $400 or more, you may also start a dispute resolution process with the U.S. Department of Health and Human Services (HHS). If you choose to use the dispute resolution process, you must start the dispute process within 120 calendar days (about 4 months) of the date on the original bill. The initiation of this process will not adversely affect the quality of health care services furnished to an uninsured (or self-pay) individual by a provider or facility.

If you dispute your bill, the provider or facility cannot move the bill for the disputed item or service into collection or threaten to do so, or if the bill has already moved into collection, the provider or facility has to cease collection efforts. The provider or facility must also suspend the accrual of any late fees on unpaid bill amounts until after the dispute resolution process has concluded. The provider or facility cannot take or threaten to take any retributive action against you for disputing your bill.

For questions or more information about your right to a Good Faith Estimate, the dispute resolution process, or to get a form to start the dispute resolution process, visit www.cms.gov/nosurprises/consumers, email FederalPPDRQuestions@cms.hhs.gov, or call 1-800-985-3059.

Keep a copy of this Good Faith Estimate in a safe place or take pictures of it. You may need it if you are billed by the provider or facility.

PRIVACY ACT STATEMENT: CMS is authorized to collect the information on this form and any supporting documentation under section 2799B-7 of the Public Health Service Act, as added by section 112 of the No Surprises Act, title I of Division BB of the Consolidated Appropriations Act, 2021 (Pub. L. 116-260). We need the information on the form to process your request to initiate a payment dispute, verify the eligibility of your dispute for the PPDR process, and to determine whether any conflict of interest exists with the independent dispute resolution entity selected to decide your dispute. The information may also be used to: (1) support a decision on your dispute; (2) support the ongoing operation and oversight of the PPDR program; (3) evaluate selected IDR entity's compliance with program rules. Providing the requested information is voluntary. But failing to provide it may delay or prevent processing of your dispute, or it could cause your dispute to be decided in favor of the provider or facility.