# State of Affairs: No Surprises Act

**What is this?**
Effective January 1, 2022, the No Surprises Act and its implementing regulations includes a provision that requires that a **Good Faith Estimate (GFE)** be provided to any patient presenting either with no insurance or choosing not to bill insurance for the visit. Implementing the requirement is raising many questions among private practice PTs, and PPS is offering this State of Affairs document to keep you apprised of what clarifications CMS is providing regarding the new rules and what PPS is doing to advocate for you in making them work better. This document will be updated periodically, but if you have any questions related to this new requirement, please feel free to contact PPS staff at info@ppsapta.org.

**Key Elements of the Good Faith Estimate:**

- You can provide separate estimates for the evaluation and then any follow up visits in an episode of care; this will be particularly useful for direct access patients.
- You can use your standard per-visit/evaluation rates.
- CMS has provided template forms to use (see below).
- The estimate is based upon what care is reasonably expected to be provided at the time the estimate is issued. If there are significant changes to the plan of care due to changing circumstances, you can reissue an estimate.
- Your estimate doesn't have to be exact. To protect yourself from a potential dispute resolution process, the actual cost must not be $400 or more than your estimate.
- This regulation does not impact situations where your patients are using their Medicare, other federal or private insurance coverage.
- At this time the penalties for non-compliance are not defined.

**CMS resources:**

- CMS-created Good Faith Estimate standard form: https://omb.report/icr/202109-0938-015/doc/115259501
- FAQ: https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Guidance-Good-Faith-Estimates-FAQ.pdf
- CMS No Surprises Act website: https://www.cms.gov/nosurprises/policies-and-resources/provider-requirements-and-resources

**APTA Resources:**

- APTA Practice Advisory: Good Faith Estimate for Uninsured or Self-Pay Patients – provides more details on this requirement as well as resources on providing cash-based services.

**What is PPS doing?**

- PPS is working with APTA to seek clarification from CMS on a number of challenges that private practitioners will face when attempting to meet this regulation's requirements.

The following queries have been received by CMS based on §149.610 Requirements for provision of good faith estimates of expected charges for uninsured (or self-pay) individuals--Subpart G (https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-B/part-149/subpart-G):

- §149.610 (b)(1)(ii) would require providers to ask patients with private health insurance if they wanted to use their insurance or self-pay. However, it is common practice for a contract between an independent healthcare provider and private insurance company to require that all services covered by the insurance be billed to that insurance. Following the regulation's requirement may result in a provider being in violation of state contract law.
- Does §149.610 (b)(1)(iii)(A) effectively require the posting of the practice's complete fee structure online, in the office, and onsite? Would posting a fee range for each CPT code be allowed? If a provider does not have a website, is the online posting requirement waived, or would this regulation require the development of a website just for the purpose of posting its entire fee structure?
- §149.610 (b)(1)(iii)(C): How does CMS plan to support the requirement that the form be in the language spoken by the patient? Will CMS provide template documents in every language so that a provider who does not speak the language of the patient will be able to provide a written document in the patient's language?
- §149.610 (c)(1)(iv) In the case of direct access, a PT would not be able to provide a good faith estimate which contains CPT codes or ICD10 codes until AFTER an evaluation took place. At the same time, in some states diagnosis is outside the scope of a physical therapy license; as a result, physical therapists in those states would not be able to be in compliance with the template provided by CMS.
- §149.610 (c)(1)(v): The requirement that the GFE must include the name, NPI, and TIN of each provider and facility represented would either result in a clinic listing the names and NPI of all of its providers or taking the risk that the provider listed (because they are the person most likely to provide the care) might be out or unavailable on the day of the scheduled service. How would a clinic be able to avoid this risk without simply listing the names and NPI of all providers in their employment?
- In light of these questions and the need for further clarification before all licensed providers would be able to comply with these regulations, would CMS be willing to delay the implementation of Subpart G?

- Until these questions are answered and clarifications published, many providers will be unable to fully comply with this regulation.
- PPS is participating in stakeholder calls with CMS to bring attention to the elements of the regulation that don't align with the business model of non-facility-based out-patient health care providers.
- PPS has asked CMS to delay the implementation of the Good Faith Estimate requirements (see above) because at this time there are too many outstanding questions. However, no such delay has been granted yet.
- PPS will alert members and post updated information on the PPS website as clarifications are provided by CMS.

**Update - Advocacy Action Week of 1/31-2/4**
There is a good deal of frustration among health care provider groups over the timing, rollout, communication, and handling of the GFE by HHS. APTA, along with other provider groups, have been communicating with CMS to outline a long list of concerns, questions, and recommendations regarding the GFE following issuance of the CMS FAQ document. Additional formal guidance has yet to be issued from the agency since their Dec. 22, 2021 FAQ document which was updated Jan. 1, 2022 and is available here.

Provider groups in DC are engaged in discussions regarding the GFE, and are coordinating a united effort to push HHS to engage with stakeholders to address concerns with the GFE, as well as our collective recommendations for exemptions and improvements to it. Recently APTA joined with provider colleagues in the Patient Access to Responsible Care Alliance (PARCA) in a coalition letter to HHS Secretary Becerra expressing collective concerns and recommendations regarding the GFE. A copy of the letter is available here, and the letter is also being shared with Congressional offices that have shared concerns on the implementation of the GFE.