



Kim Stanger

Partner
 208.383.3913
 Boise
 kcstanger@hollandhart.com

HHS Extends Deadline for Co-Provider Requirements Under the No Surprise Billing Rules

Insight — December 5, 2022

As discussed in our November 28 client alert, the No Surprise Billing Rules (NSBR) require that convening providers contact co-providers and include co-provider fees in the convening provider's good faith estimate to uninsured (self-pay) patients. (45 CFR § 149.610(b)(v)). The US Department of Health and Human Services (HHS) had originally delayed enforcement of that requirement until January 1, 2023, to give providers time to comply. (86 FR 56023). On December 2, 2022, HHS issued additional guidance extending the deadline for compliance until future rulemaking. (HHS, FAQs About Good Faith Estimates—Part 3 (12/2/22) (“Guidance”), available [here](#).) Accordingly, for the foreseeable future, convening providers do not need to contact or include co-provider or co-facility fees in the convening provider's good faith estimates. The Guidance provides a very welcome respite from these otherwise overly burdensome requirements.

Three cautions are in order, however:

First, in its prior guidance, HHS encouraged convening providers to contact co-providers and include the co-provider fees in good faith estimates even though it was not enforcing that requirement. (See, e.g., 86 FR 56023). The NSBR requires co-providers to respond with specified information within one business day of the convening provider's request. (45 CFR § 149.610(b)(2)). HHS's December 2, 2022, Guidance does not address whether co-providers who are contacted must respond per the rules; however, given the Guidance, it is unlikely that HHS would enforce the rules against co-providers.

Second, under the NSBR, if a patient contacts a co-provider directly, the co-provider becomes a convening provider and must comply with the NSBR rules applicable to convening providers. (*Id.* at § 149.610(b)(2)(iv)).

Third, the Guidance only applies to HHS enforcement, not state enforcement. The No Surprises Act delegates primary enforcement authority to states. It is possible that states might decide to enforce the rules and/or similar state laws despite the HHS reprieve. In its Guidance, HHS encouraged states to follow HHS's lead and not enforce the co-provider rules, but providers should confirm the requirements and enforcement initiatives in their own states.

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