REGULATORY REQUIREMENTS FOR GOOD FAITH ESTIMATES UNDER THE NO SURPRISES ACT.

The following guidance comes from Title 45, section 149.610 of the Code of Federal Regulations.[1] The requirements of this section apply to uninsured persons, as well as person who do not intend to make a claim with their insurance provider. The regulations are somewhat cumbersome, and require that a great deal of information being included, especially in the good faith estimate. You initially asked us to determine whether your current language would be enough to comply with the act. We conclude it would not. Among other issues, as you will see in SECTION C of this paper, the good faith estimate requires that a number of disclaimers be included. Those disclaimers are proscribed by the regulations, and must be complied with in their entirety.

a) Applicability—Uninsured Person and Persons choosing not to use their Insurance;

As a threshold matter, it should be noted that the requirement to provide good faith estimates applies under this rule only when a patient either (i) lacks health insurance and will be paying out-of-pocket, or (ii) chooses not to use their government or private-sponsored health insurance (the person does not seek to have a claim submitted to their insurance provider). *See* Section (a)(1), Scope and definitions; *see also* Section (a)(2)(xiii). As used throughout this paper, "Patient" refers to a person who falls within these purviews. In addition, good faith estimates must be provided to those persons defined above in two situations: (i) upon request or (ii) upon scheduling an item or service. *Id.*

b) Requirements for Providers and Facilities. Section (b)(1)

Below is a list of certain obligations that attach to you as a medical provider. Among other things, you are required to post certain notices, on your website and in-person at your office. The Department of Health and Human Services has promulgated model language that you may wish to adapt. https://www.cms.gov/regulations-and-guidancelegislationpaperworkreductionactof1995pra-listing/cms-10791

a. You must determine whether an individual is uninsured (or self-paying) by:
   i. Inquiring whether an individual is enrolled in any of the following: a group health plan, group or individual health insurance coverage offered by a health insurance issuer, Federal health care program, or a health benefits plan;
   ii. Inquiring whether an individual who is enrolled in any above health plan is seeking to have a claim submitted for the primary item/service with such plan or coverage; *and*
   iii. Inform all uninsured (or self-pay) individuals of the availability of a good faith estimate of expected charges up scheduling an item/service or upon request;

[1] The entire regulatory framework can be viewed here: https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-B/part-149/subpart-G/section-149.610.

1. **Information regarding the availability of good faith estimates for uninsured (or self-pay) individuals must be:**
    a. **Written in clear and understandable manner, prominently displayed (and easily searchable from a public search engine): (i) on your website, (ii) in the office, *and* (iii) on-site where scheduling or questions about cost of items or services occur**;
    b. Orally provided when scheduling an item or service or when question about the cost of items or services occur; and
    c. Made available in accessible formats, and in the languages spoken by individual(s) considering or scheduling items/services with you.

iv. You should consider any discussion or inquiry regarding the potential costs of items or services from the patient to be a request for a good faith estimate.

b. Upon request for a good faith estimate, or upon scheduling a primary item or service to be furnished, you must contact, no later than 1 business day of such scheduling or request, all co-providers and co-facilities who are reasonably expected to provide items/services in conjunction with and in support of the primary item/service and request that the co-providers or co-facilities submit good faith estimate information (as specified in the regulations) to you; the request must also include the date that the good faith information must be received by you.

c) <u>Requirements of a "Good Faith" estimate.</u>

a. Definition.

As defined in the regulations, a "Good faith estimate" includes a notification of expected charges for a scheduled or requested service or item, which includes items or services that are expected to be provided along with the scheduled or requested item/service, provided by a convening provider, conveying facility, co-provider, or co-facility.[2] *See* Section (a)(2)(vi).

You will be considered compliant with these regulation despite making an error or omission to a good faith estimate, so long as you correct—as soon as is practicable—any information which you provide in an estimate which results in the error or omission. Section (f)(3). It should be noted, however, that items/services provided before an error is address may subject you to the patient-provider dispute resolution process if the actual billed charges are substantially in excess of the good faith estimate. *Id.*

[2] A "convening health care provider or convening health care facility" mean a provider or facility who receives the initial request for a good faith estimate, or would be responsible for scheduling the primary item or service. *See* Section (a)(2)(ii).

Further, to the extent you need information from any other entity or individual to make your good faith estimate, relying on that information to arrive at a good faith estimate which turns out to be off shall not make you deem you non-compliant with the regulations, provided you did not know, or should not have reasonably known, that the information was incomplete or inaccurate. Section (f)(4). If you learn that information you relied on is incomplete or inaccurate, you must provide the corrected information to the patient as soon as practicable. It should be noted, however, that items/services provided before an error is address may subject you to the patient-provider dispute resolution process if the actual billed charges are substantially in excess of the good faith estimate. *Id.*

b. Content Requirements

In addition to complying with the above descriptions, you must provide the information listed below in your good faith estimate, in the format requested by the patient (electronic or print), within the timetables proscribed. The footnotes below provide additional definitions, taken from the regulations, which are intended to further clarify the meaning of certain items which must be included in the estimate.

The following information must be included in the Estimate (see Section(c)(1)).

- Patient name and birth date.
- Description, in clear and understandable language, of the primary item or service to be rendered (and, if applicable, the date it is scheduled).
- Itemized list of items or services, grouped by each provider or facility, expected to be furnished for the primary service or item, and items or services reasonably expected to be furnished along with the primary item or service, including:
    - Items/services expected to be furnished by the convening provider or convening facility for the period of care; and
    - Items/services expected to be furnished by co-providers or co-facilities[3]
- Applicable diagnosis codes, expected service codes, and expected charges associated with each listed item or service.[4]

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[3] As defined, "co-provider" or "co-facility" means a provider/facility other than a convening provider/facility that furnishes items or services that are customarily provided in conjunction with a primary item or service. Section (a)(2)(iii).

[4] "Diagnosis code" is the code that describes the individual's disease, disorder, injury, or other related health conditions using the International Classification of Diseases (IDC) code set;

"Service code" means the code that identifies and describes an item or service using the Current Procedural Terminology (CPT), Healthcare Common Procedure Coding System (HCPCS), Diagnosis-Related Group (DRG) or National Drug Codes (NDC) code sets;

"Expected charge" means the cash pay rate or rate established by a provider or facility for an insured (or self-pay) individual, reflecting discounts for such individuals, where the good faith estimate is being provided to an uninsured (or self-pay) individual; *or* the amount the provider or facility would expect to charge if the provider or

- Name, National Provider Identifier, and Tax Identification Number of each provider or facility represented in the good faith estimate, and the State(s) and office or facility location(s) where the items or services are expected to be furnished by such provider or facility.
- List of items or services that the convening provider or convening facility anticipates will require separate scheduling and that are expected to occur before or following the expected period of care for the primary item or service.
    - The good faith estimate must include a disclaimer directly above this list that includes the following information: Separate good faith estimates will be issued to an uninsured (or self-pay) individual upon scheduling or upon request of the listed items or services; notification that for items or services included in this list, information such as diagnosis codes, service codes, expected charges and provider or facility identifiers do not need to be included as that information will be provided in separate good faith estimates upon scheduling or upon request of such items or services; and include instructions for how an uninsured (or self-pay) individual can obtain good faith estimates for such items or services
- **A disclaimer** that informs the patient 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 and are not reflected in the good faith estimate.
- **A disclaimer** that informs the patient that the information provided in the good faith estimate is only an estimate regarding items or services reasonably expected to be furnished at the time the good faith estimate is issued to the uninsured (or self-pay) individual and that actual items, services, or charges may differ from the good faith estimate.
- **A disclaimer** that informs patient of patient's right to initiate the patient-provider dispute resolution process if the actual billed charges are substantially in excess of the expected charges included in the good faith estimate, as specified in § 149.620.
    - This disclaimer must include instructions for where an uninsured (or self-pay) individual can find information about how to initiate the patient-provider dispute resolution process and state that the initiation of the patient-provider dispute resolution 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 good faith estimate is not a contract and does not require the uninsured (or self-pay) individual to obtain the items or

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facility intended to bill a plan or issuer directly for such item or service when the good faith estimate is being furnished to a plan or issuer.

services from any of the providers or facilities identified in the good faith estimate.

c. Written or Electronic Format Requirement.

The Patient may elect to have a good faith estimate provided either in writing or electronically. Section (e)(1). When the estimate is provided electronically, it must be provided in a way which the patient can both save and print. Id. The estimate needs to be written in "clear and understandable language an in a manner calculated to be understood by the average uninsured (or self-pay) individual. Id If the patient requests a good faith estimate in a format other than paper or electronic, you may provide the estimate orally; however, you are still required to issue the estimate in either an electronic or written format. Section (e)(2).

d. Timing of Good Faith Estimate. Section (b)(vi)

Generally: Where a primary item/service is *scheduled at least three (3) business days before* the date the item or service is scheduled to be furnished, a good faith estimate must be provided no later than one (1) business day after the date of scheduling. Where a primary item/service is *scheduled at least ten (10) business days before* such item or service is to be scheduled, a good faith estimate must be provided no later than 3 business days after the date of scheduling. When a good faith estimate is requested by a patient, the estimate must be provided no later than three (3) business days after the date of the request.

Anticipated or Known change to Scope of Earlier Good Faith Estimate: If you are notified or anticipate any change to the scope of a good faith estimate (including anticipated changes to the expected charges, items, services, frequency, recurrences, duration, providers, or facilities) previously furnished at the time of scheduling, you must issue a new good faith estimate no later than one (1) business day before the items/services are scheduled to be furnished.

- If any changes in expected providers or facilities represented in a good faith estimate occur less than 1 business day before the item or service is scheduled to be furnished, the replacement provider or facility must accept as its good faith estimate of expected charges the good faith estimate for the relevant items or services included in the good faith estimate for the items or services being furnished that was provided by the replaced provider or facility.

e. Multiple Estimates; recurring treatment

If you provided a good faith estimate at the *request* of the patient, following the scheduling of the requested item/service, you must provide the patient with a new faith estimate for the scheduled item/service within the timeframes described above.

A provider may issue a single good faith estimate for recurring primary items/services if certain additional requirements are met, in addition to those described elsewhere in this paper: [see Section (b)(1)(x)]

- The good faith estimate for recurring items/services must include, in a clear and understandable manner, the expected scope of the recurring primary items/services (such as timeframes, frequency, and total number of recurring items or services); and
- The scope of the good faith estimate for recurring primary items/services must not exceed twelve (12) months. If you plan to render additional services beyond 12 months, you must provide the patient with a new good faith estimate, and that estimate must communicate such changes (including timeframes, frequency, and total number of recurring items or services) to help the patient understand what has changed between the initial good faith estimate and the new good faith estimate.

f. Additional Compliance Provisions

A good faith estimate issued to a patient should be treated as part of that patient's medical record and must be maintained in the same manner as other medical records. Section (f)(1). Upon request from the patient, you must provide any good faith estimate issued within the last 6 years. *Id.* Additionally, issuing an estimate that is in compliance with State processes does not excuse compliance with this rule. Section (f)(3).

g. Applicability.

The regulation applies to good faith estimates requested on or after January 1, 2022 or for good faith estimates required to be provided in connection with items or services scheduled on or after January 1, 2022.

CONCLUSION

The information provide above conveys the requirements of the No Surprises Act that are directly applicable to Urban Wellness. The good faith estimate, which must be provided at the time of scheduling or by request to persons who are uninsured or plan to forgo submitting a claim to their health insurance provider, must be provided and these regulations complied with in their entirety. While HHS does intend to further promulgate rules which will impact billing practice beyond the uninsured, at this time HHS has stated that they are deferring such enforcement.[5] Thus, by following the above-described procedures when dealing with the uninsured and other described persons, Urban Wellness will be in compliance with its obligations under these rules.

[5] "These interim final rules do not include requirements regarding PHS Act section 2799B-6(2)(A), which require providers and facilities to furnish good faith estimates to plans or issuers." 86 FR 55980.