



November 15, 2022

The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Ave NW
Washington, DC 20220

The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services
200 Independence Ave SW
Washington, DC 20201

The Honorable Martin Walsh
Secretary
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

The Honorable Kiran Ahuja
Director
U.S. Office of Personnel Management
1900 E St NW
Washington, DC 20415

Secretaries Yellen, Becerra, and Walsh and Director Ahuja:

Thank you for your ongoing efforts to ensure the effective implementation of the No Surprises Act (NSA). We write to offer comments on the Request for Information (RFI) on the Advanced Explanation of Benefits (AEOB) and Good Faith Estimate (GFE), both of which are important to informing patients of the expected costs associated with care they are seeking.

The undersigned organizations represent millions of patients and consumers facing serious, acute and chronic health conditions across the country, including individuals who rely on the patient protections provided under the No Surprises Act. Our organizations have a unique perspective on what patients need to prevent disease, cure illness and manage chronic health conditions. Our breadth enables us to draw upon a wealth of knowledge and expertise that can be an invaluable resource in this discussion.

In March 2017, our organizations agreed upon three overarching principles¹ to guide any work to reform and improve the nation's healthcare system. These principles state that: (1) healthcare should be accessible, meaning that coverage should be easy to understand and not pose a barrier to care; (2) healthcare should be affordable, enabling patients to access the treatments they need to live healthy and productive lives; and (3) healthcare must be adequate, meaning healthcare coverage should cover treatments patients need, including all the services in the essential health benefit (EHB) package.

Our organizations strongly supported enactment of the No Surprises Act and have engaged in the rulemaking and implementation of the consumer protections since enactment of this law. We are pleased that the NSA eliminates balance billing in most circumstances in which patients found themselves with a bill they had not anticipated and could not avoid. However, patients will still find they receive surprise bills for scheduled care not covered by the NSA when their explanation of benefits (EOB) includes care, billing codes or costs they did not expect, or denials of payment for care based on their failure to obtain prior authorization or follow other plan rules not known or well understood prior to receiving care.

The AEOB is an important tool to help patients better anticipate the costs of their care and the plan rules that affect whether or not their care will be covered. We also believe the AEOB has a critical role to play in helping patients understand and effectuate their rights under the NSA's balance billing prohibition. We therefore offer comments on ways to ensure AEOBs are as useful as possible for the patients we represent and will, we hope, inform your proposed rule. We are concerned that nine months after this provision took effect, the agencies are just now asking for comments to inform future rulemaking rather than having moved to the phase of issuing a proposed rule. We urge the Departments of Health and Human Services, Labor and Treasury ("departments") and the Office of Personnel Management (OPM) to issue a proposed rule as soon as possible, so this important consumer tool soon becomes a regular and reliable part of patients scheduling and receiving care. Below we offer comments on the content, timing, outreach and oversight of the AEOB.

AEOB Content

In implementing the requirement that all patients scheduling care receive an AEOB, we urge the departments and OPM to keep in mind that this is first and foremost a consumer-facing document. The RFI raises necessary technical and privacy issues regarding the transfer of data from providers to insurers and health plans to populate the AEOB. But if the document itself does not present the information in a clear and complete way, the goals and purpose of the AEOB will be undermined. It must be easy to understand and accurate enough for consumers to be able to rely on the information when making health care decisions and planning for their care.

¹ Consensus Health Reform Principles. Available at: <https://www.lung.org/getmedia/0912cd7f-c2f9-4112-aaa6-f54d690d6e65/ppc-coalition-principles-final.pdf>.

As with the Summary of Benefits and Coverage, we urge the departments and OPM to develop a standardized format for the AEOB, so that it is uniform across payers and providers. We also strongly support a requirement that AEOB use plain language, and expect plans to provide meaningful access for individuals with limited English proficiency and effective communication for individuals with disabilities. To ensure this, we believe it is appropriate to apply the same standards required under Section 1557. Many of the providers and payers subject to the AEOB requirements will also be covered entities under Section 1557; however, even those not considered covered entities for Section 1557 should be required to meet the same standards, so that patients can rely upon uniform access to this tool. We have provided support for strong standards in our comments on the Section 1557 proposed rule.² Furthermore, to ensure that those patients with limited English proficiency fully understand their AEOBs, we recommend the departments and OPM develop additional model AEOBs for common languages in the United States as well as develop quality standards for translation services that can be used in compliance determinations. Once an individual has indicated a preferred mode of communication, their plan or insurer must accommodate that request with all AEOBs issued to the plan participant or enrollee from that point onward.

Regarding the specific information to be included in the AEOB, we believe the names of the facility and providers included in the estimate must be clear and reflect the name a patient would recognize for their role in the patient's care (i.e., not solely a corporate owner's or medical practice's name). The estimate should also take into account any coverage under a secondary or tertiary plan if such a plan has a coordination of benefits requirement.

We also strongly recommend that the AEOB include information that can help inform a patient of their rights under the NSA prohibition on balance billing, including the right to withhold consent to be balance billed by an out-of-network provider and the right to revoke any consent given prior to obtaining services. The AEOB should include the patient's rights under both state and federal surprise billing protections. Furthermore, if a facility or provider has notified a patient's plan or insurer that they have waived their NSA rights, the AEOB should include that designation, the date the patient waived their NSA rights, along with information on how to revoke consent in a timely way. We also believe the AEOB for any care covered by the NSA should include the cost to obtain care with the balance billing protections (i.e., at in-network cost-sharing) and without (i.e., protections waived). Doing so will put into concrete terms the cost of waiving protections that would otherwise apply. Recognizing that including both estimates can be confusing to patients, we recommend the presentation of this information in particular, as well as other information on the AEOB, be consumer-tested for readability.

The AEOB should include information on the applicability of cost sharing (in-network or out-of-network) to a patient's deductible and out-of-pocket maximum, as well as the patient's progress in meeting their deductible or out-of-pocket maximum.

² Letter to Secretary Becerra re: Proposed Rule on Section 1557, Nondiscrimination in Health Programs and Activities. October 3, 2022. Available at <https://www.lung.org/getmedia/ed541fc1-0142-407f-90e0-982ecc7f406d/health-partners-section-1557-comments-final>.

Finally, we believe the AEOB should include information on a consumer assistance program, should the patient wish to get help understanding and accessing their rights, as well as a note that the facility may have a financial assistance policy.

Timing for Providing Patients with an AEOB

We are concerned that the timeframes required under law may not allow patients adequate time to act on the information included in an AEOB. For care scheduled to take place in 10 days, an AEOB must be issued within 6 business days. If a weekend occurs between the date the procedure was scheduled and when it is to occur, that could leave as few one or two days for a patient to receive and consider the AEOB before the procedure. We therefore strongly urge regulators to reduce those allowed timeframes as technology allows. Ideally, a patient would receive an AEOB as soon after scheduling as possible with the transfer of data from provider to plan. With more timely notice, patients are better able to optimize use of the AEOB.

On the question of whether the Secretaries should modify any timing requirements for a “specified item or service,” we see no rationale for singling out some services just because they have lower utilization or significant variation in cost. If the Secretaries chose to specify items or services, it should be in favor of consumer protections and there should be a process for public input on the items or services as well as regular updates to the list. In no case should providers and payers be allowed more time to generate an AEOB.

Public Education and Outreach

We urge the departments and OPM to conduct robust outreach and education on what the AEOB is, who is required to provide it and in what timeframe, how it can be requested or obtained, and how to use the information included in it. In addition, in order to ensure all covered individuals, particularly those from underserved or marginalized communities, are made aware of this new tool, we urge the departments and OPM to use outreach methods that go beyond mail, particularly leveraging community-based providers such as community health workers. The Departments should also leverage the agencies within HHS that fund or work with community-based entities such as the Administration for Community Living, Substance-Abuse and Mental Health Services Administration, and Health Resources and Services Administration. We also urge the departments and OPM to monitor and assess where there are populations or communities that are not receiving AEOBs, paying attention to whether there are differences based on plan type, geography or other demography.

Oversight

The AEOB is only an estimate of what a patient can expect their cost of care will be, and there will be times when the actual cost exceeds the estimate because of unforeseen care needs. However, the differences should be minimal and rare if the AEOB is to be a source of reliable, actionable information to patients. The departments and OPM should collect and make public data on how often actual costs exceed AEOB estimates, by what amount, and for what reasons. Recognizing that about one in three individuals could not cover an unexpected \$400 bill with

cash or savings, even relatively small amounts may be problematic for some patients.³ Regular and significant differences may indicate a compliance issue and a need for further rulemaking.

Thank you for the opportunity to provide input into the development of this regulation. For more information contact Rachel Patterson at the Epilepsy Foundation at rpatterson@efa.org.

Sincerely,

American Cancer Society Cancer Action Network
American Heart Association
American Heart Association
American Kidney Fund
American Liver Foundation
American Lung Association
Asthma and Allergy Foundation of America
Cancer Support Community
CancerCare
Cystic Fibrosis Foundation
Epilepsy Foundation
Hemophilia Federation of America
Lupus Foundation of America
Muscular Dystrophy Association
National Eczema Association
National Multiple Sclerosis Society
National Organization for Rare Disorders
National Patient Advocate Foundation
Susan G. Komen
The Leukemia & Lymphoma Society
The Mended Hearts, Inc.

³ Board of Governors of the Federal Reserve System, *Economic Well-Being of U.S. Households in 2020 – May 2021*, accessible at: <https://www.federalreserve.gov/publications/2021-economic-well-being-of-us-households-in-2020-dealing-with-unexpected-expenses.htm>