September 4, 2024

The Honorable Xavier Becerra
Secretary
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Re: No Surprises Act Good Faith Estimation/Advanced Explanation of Benefits Diagnosis Code Issue

Dear Secretary Becerra:

The Workgroup for Electronic Data Interchange (WEDI) writes today to inform the Secretary regarding the results of industry deliberations on the issue of including diagnosis codes in the No Surprises Act-required Good Faith Estimation (GFE) and Advanced Explanation of Benefits (AEOB) for insured patients.

WEDI was formed in 1991 by then HHS Secretary Dr. Louis Sullivan to identify opportunities to improve the efficiency of health data exchange. WEDI was named in the HIPAA legislation as an advisor to the Secretary of the Department of Health and Human Services (HHS). Recognized and trusted as a formal advisor to the Secretary, WEDI is the leading authority on the use of health information technology (IT) to efficiently improve health information exchange, enhance care quality, and reduce costs. With a focus on advancing standards for electronic administrative transactions, and promoting data privacy and security, WEDI's broad membership includes health plans, providers, standards development organizations, vendors, federal and state government, and patient advocacy organizations.

In response to passage of the No Surprises Act (incorporated into the Consolidated Appropriations Act)[1], WEDI established a No Surprises Act Task Group to educate the industry on the legislation and subsequent regulations, discuss the data exchange provisions included in the No Surprises Act, develop industry best practices, and submit recommendations to the federal government. The Task Group reviewed the topic of including diagnosis codes in the GFE and AEOB and identified the following issues and recommendations.

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[1] *Title I (No Surprises Act) of Division BB of the Consolidated Appropriations Act, 2021 amended title XXVII of the Public Health Service Act.*

Background
The No Surprises Act introduced new requirements for providers, facilities, and providers of air ambulance services to protect individuals from surprise medical bills. Included in the legislation was a requirement that providers and facilities provide a GFE of charges for care to uninsured or self-pay individuals upon scheduling care or on request, and for individuals with certain types of coverage, to submit a GFE to the individual's plan or issuer.

According the Act, the GFE for uninsured or self-pay patients must include: (i) Patient name and date of birth; (ii) Description of the primary item or service in clear and understandable language (and if applicable, the date the primary item or service is scheduled); (iii) Itemized list of items or services, grouped by each provider or facility, reasonably expected to be furnished for the primary item or service, and items or services reasonably expected to be furnished in conjunction with the primary item or service, for that period of care including both: (a) Items or services reasonably expected to be furnished by the convening provider or convening facility for the period of care; and (b) Items or services reasonably expected to be furnished by co-providers or co-facilities; (iv) Applicable diagnosis codes, expected service codes, and expected charges associated with each listed item or service; and (v) 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.

The Centers for Medicare & Medicare Services (CMS) released guidance in April 2022 that includes the following frequently asked question:

Question. *[For uninsured and self-pay patients] Must a GFE include diagnosis codes, even if the provider or facility does not know the patient's diagnosis at the time of scheduling, such as for initial screening visits and check ups, or in instances when there is not a relevant diagnosis code?*

Answer. *No. A provider or facility is required to provide diagnosis codes only where one is required for the calculation of the GFE. For example, in situations in which a provider or facility has not determined a diagnosis, such as for initial screening visits or evaluation and management visits; or if there is not a relevant diagnosis code for an item or service, such as for certain dental screenings or procedures, providers and facilities are not required to include diagnosis codes on a GFE. However, the provider or facility must include the expected charges and service codes for the items and services to be furnished during that visit, even when no diagnosis is available.*

Issue
With this as the background, the WEDI Task Group examined if diagnosis codes should be required for GFEs sent to health plans by health care providers and facilities on behalf of insured patients.

Discussion
As part of the No Surprises Act requirements, when an insured patient requests an estimate, a provider must create a GFE and send it to the health plan. The patient's health plan will then process the GFE and create an AEOB to inform the patient of their financial responsibility for the requested items. The purpose of the AEOB is to inform the patient of the total anticipated cost and the amount the patient will be responsible for paying so that patients will be able to make financial decisions and without surprises. Accordingly, accuracy of the GFE and final AEOB is critical to satisfy that purpose.

With CMS issuing guidance for uninsured patients that the provider-created GFE does not need to include diagnosis codes if those codes are not necessary to determine charges, the WEDI NSA Task Group discussed the need for diagnosis codes for the insured patient GFE and the effect on the accuracy of the subsequent AEOB. We note that diagnoses codes are required to be present on electronic and paper claims because they provide additional information on the circumstances that a health plan uses to determine whether the service is covered under the individual's benefit plan and/or appropriate payment. For example, an estimate for cosmetic surgery to treat a burn may be paid, but the same surgery for elective reasons may not be paid at all.

Several health plans participating in our Task Group have indicated they expect to implement the AEOB by modifying their claims adjudication systems to produce an AEOB stopping short of producing an actual payment and accompanying remittance advice. These systems require diagnosis codes, among other elements, to calculate proper claim payment and, similarly, will be needed to accurately develop the price estimation. Without inclusion of diagnosis codes, it is anticipated that health plan adjudication systems will need significant modifications, with some plans being required to implement entirely new systems to calculate the AEOB. Health plans have consistently indicated that without the diagnosis codes, AEOBs may be wildly inaccurate and mislead the patient.

Creating GFEs and AEOBs with placeholder or inaccurate diagnosis codes understandably raises concerns with patients, health plans, and providers who must retain all GFEs – containing those 'inaccurate diagnosis codes' with the patient record - even if care was never scheduled or delivered. However, we note that the issue usually resolves itself if care is scheduled. At that time and following the evaluation of the patient by the provider, the precise diagnosis will typically be available, along with other patient-specific information necessary to determine pricing. Therefore, the final GFE and AEOB can be produced with a higher degree of accuracy.

Last, is a 'shopping scenario.' This is when the patient requests an estimate (potentially from multiple providers) without ever having first met directly with or consulted with any provider. In these circumstances, the exact diagnosis will be unknown to the provider asked to prepare the GFE.

Recommendations
WEDI strongly supports the goal of providing the patient with the ability to gain pricing info for shopping services. With that in mind, WEDI strongly recommends that diagnosis codes be provided on GFEs for scheduled services where the diagnosis is suspected or

known to ensure the highest chance of accuracy on the resulting AEOB. However, we recognize that not all GFEs/AEOBs should have the same expectation of accuracy. When a patient schedules specific care with a provider, after being appropriately assessed by that provider, the diagnosis would typically be identified and could therefore be included in the GFE to be sent to the payer.

WEDI also strongly recommends that diagnosis codes be provided on GFEs for shopping services where the diagnosis is suspected or known to ensure the highest chance of accuracy on the resulting AEOB. In other instances, such as an unscheduled phone consultation (i.e., a shopping scenario), a diagnosis may not be known until after the visit takes place and potentially after diagnostic tests have been performed. Establishing a reasonable diagnosis in this situation, however, may result in a delay in the provider establishing an accurate diagnosis and including it on a GFE and could result in the provider not meeting the established deadlines for sending the GFE to the payer for AEOB development. Understanding the need for timely communication of the GFE to the payer, WEDI recommends that inclusion of diagnosis codes on a GFE developed in a shopping scenario be strongly encouraged but not required.

In addition, there should be recognition that GFEs and AEOBs without diagnosis information may not be as accurate as those that include one or more diagnosis codes. Patients should be clearly informed that without an appropriate consultation with a provider, the GFE/AEOB may not be accurate. However, patients should also be informed that a new (and likely more accurate) GFE/AEOB will be provided to them once the service is scheduled.

We therefor recommend the following guidance be developed regarding the GFE/AEOB for insured patients:

- Diagnosis codes should be included on the GFE for insured patients when services are scheduled. It is expected that providers will usually know the appropriate diagnosis codes at this point.
- If known, diagnosis codes should be included on the GFE for shopping services. Providers should be encouraged to identify the diagnosis codes when a patient requests a GFE.
- When a request for a GFE is made and the provider cannot determine appropriate diagnosis codes, the GFE can be sent, but the patient should be advised that the AEOB may not be accurate due to the lack of a diagnosis.

WEDI concludes that the patient’s high expectation of accuracy (reinforced by the formal patient-specific transmission of the AEOB) is not suited to the GFE/AEOB model as it is currently defined. Diagnosis, location, and many other variables inform accurate pricing, and this information may not always be known to the degree necessary by the provider to reliably produce an AEOB that is accurate enough to satisfy its purpose.

We recommend that the federal government explore if current price transparency tools can be leveraged to meet this need. WEDI encourages CMS and partner agencies to work closely with our organization and other industry stakeholders to find the best

methods and tools to achieve accurate price estimation for shopping patients who request price estimates.

We appreciate the opportunity to share our perspectives on the issue of including diagnosis codes in GFEs and AEOBs for insured patients. WEDI continues to convene the industry to identify a pathway forward that permits patients to have the accurate pricing information they need to appropriately manage their health care while minimizing the administrative burden on providers and health plans. Please contact Charles Stellar, WEDI President & CEO, at cstellar@WEDI.org to discuss these recommendations and/or explore opportunities to work together to educate health care stakeholders on the No Surprises Act.

Sincerely,
/s/
Ed Hafner
Chair, WEDI

cc: Chiquita Brooks-LaSure, Administrator, Centers for Medicare & Medicaid Services
WEDI Board of Directors