

November 11, 2022

Submitted electronically via: <https://www.regulations.gov/>

The Honorable Xavier Becerra
Department of Health and Services
Humbert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

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

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

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

Re: Request for Information; Advanced Explanation of Benefits and Good Faith Estimate for Covered Individuals (RIN 0937-AU96)

Dear Secretary Becerra, Secretary Walsh, Secretary Yellen and Director Ahuja,

Vizient, Inc. appreciates the opportunity to comment on the Office of Personnel Management (OPM), Department of the Treasury (Treasury), Department of Labor (DoL), and Department of Health and Human Services (HHS) (the Departments) request for information (CMS-990-NC) regarding the advanced explanation of benefits (AEOBs) and good faith estimate (GFE) for covered individuals (hereinafter, "RFI"). Many of the topics in the RFI have a significant impact on our members and the patients they serve. Vizient appreciates the Departments' efforts to increase transparency and support patients. As the Departments develop regulations, we recommend careful consideration of the potential provider burden that may be associated with compliance and opportunities to reduce that burden by building from current processes providers use when billing insurers and relying on standards to minimize disruption and miscommunication.

Background

Vizient, Inc. provides solutions and services that improve the delivery of high-value care by aligning cost, quality, and market performance for more than 60% of the nation's acute care providers, including 97% of the nation's academic medical centers, and more than 20% of ambulatory providers. Vizient provides expertise, analytics, and advisory services, as well as a contract portfolio that represents more than \$130 billion in annual purchasing volume, to improve patient outcomes and lower costs. Headquartered in Irving, Texas, Vizient has offices throughout the United States.

Recommendations

In our comments, we respond to various issues and questions provided in the RFI. We thank the Departments for the opportunity to share recommendations related to the AEOB and GFE for covered individuals. In addition, we offer insights for the Departments' consideration to inform future rulemaking.

Upcoming Good Faith Estimate Deadlines

Regarding upcoming deadlines that are not specifically addressed in the RFI but related to the No Surprises Act (NSA), Vizient urges the Departments to reconsider enforcement timelines associated with GFE requirements from the convening provider for uninsured and self-pay individuals. While we appreciate the decision to defer enforcement to January 1, 2023, the significant requirements that convening

providers exchange with co-providers and co-facilities to create a comprehensive GFE for uninsured/self-pay individuals demands that more flexibility be provided given the changes to workflow, potential technology changes, and additional administrative burden. For example, co-providers (e.g., those providers involved in the course of treatment but not responsible for scheduling the service) may have different levels of understanding of the rule or preferred mechanisms of communicating. This more basic information sharing takes additional time to establish, in addition to determining an agreed upon approach to compliance (e.g., standards for transmitting information from providers to the convening provider). At minimum, an additional one-year delay is warranted for further assessment and, more generally, Vizient recommends that the Departments extend the current enforcement discretion timeline until technical solutions can be effectively utilized.

Transferring Data from Providers and Facilities to Plans, Issuers, and Carriers

In the RFI, the Departments note that regulatory standards for the transfer of GFE data from providers and facilities to plans, issuers, and carriers have yet to be established. Vizient notes that there are also challenges for the seamless sharing of GFEs with convening providers or facilities. Vizient encourages the Departments to work with providers to identify long-term solutions that minimize their administrative burdens so that they can better focus on patient care. We also believe the Departments should aim to minimize disruptions to current workflow and consider the additional training demands that such policies impose on providers.

As policies are weighed to encourage real-time exchange of the AEOB and GFE data, Vizient urges the Departments to minimize provider burden. To compile the information for uninsured/self-pay GFEs, providers are currently working amongst themselves to identify communication options and processes which do not align with typical communications and billing processes that occur when a patient is insured. As a result, it will create significant, additional workload on the convening provider to submit all GFE data to the plan for purposes of the AEOB. To help providers develop long-term plans that consider both communications with other providers and payers, including potential real-time information exchange, it is important that a more coordinated approach to both compliance requirements are considered given the variability and differences in current communications and billing frameworks. Such efforts will help minimize burden, confusion and unnecessary duplication.

Also, in the RFI, the Departments seek input regarding the use of standards-based application programming interface (API) technologies to support communications between providers and payers. The Departments also acknowledge that up to 46 percent of prior authorization (PA) requests are still submitted by fax and 60 percent require a telephone call during the PA process despite efforts to shift towards standards-based API technologies. This example helps demonstrate the significant time that may be needed to achieve broad adoption of standards-based API technologies. While hospitals and other providers have long advocated for reforms related to PA, including efforts to accelerate use of existing national standards for transactions, this shift has been slow. Further, there is a need to test technologies and use cases to ensure an electronic PA process is more efficient and accessible to a range of providers. Vizient notes this example as it sheds light on the significant work ahead as this standards-based API approach is being considered in the context of the NSA.

To support effective implementation, Vizient anticipates that providers may need additional flexibility to implement new technical systems and processes, particularly as more testing occurs. Given challenges associated with PA are felt across a range of providers, we also encourage the Departments to seek feedback from different types and sizes of providers and providers located in different geographies to better understand their implementation challenges before enforcement timelines are provided.

Further, during any testing or piloting processes, we believe it is imperative that the Departments work with providers to ensure that any standards selected or required communications do not result in patient care being delayed or otherwise hampered. Again, Vizient is concerned that the burdens placed on providers as these regulations are developed may ultimately impact how providers care for patients given their limited time and resources.

As different timelines, requirements and standards are identified, Vizient believes there is also a need for additional education, especially as these policies may also interact with state law. Given the degree of changes and significant need for effective coordination, Vizient urges the Departments to not rush implementation as it could create unnecessary burden and lead to additional confusion and errors which counters the aims of the NSA.

Other Policy Considerations

The Departments also seek comment on provider communications to plans. Vizient discourages the Departments from imposing excessive communication requirements on providers or strict timelines as it may add burden and potentially complicate care. For example, requiring the status of patient consent to be disclosed concurrently with the GFE may not fit into a provider's workflow. Where possible, we recommend that the Departments defer to providers' systems and processes.

In addition, regarding information included in the AEOB, Vizient suggests the Departments undergo vetting with patients to ensure materials are clear and easily understood, and also consider provider burden. For example, Vizient is concerned that including two sets of cost and benefit data (e.g., one set if consent is given and one set if consent is not given) may confuse patients if not clearly communicated. Similarly, we would have concerns if providers were required to proactively communicate with plans, including potential updates as patient circumstances may change, such as their consent decisions, for purposes of the AEOB.

Vizient is also concerned about potential expectations that providers outside of a plan's network communicate with plans on a variety of topics, such as the facility in which services are scheduled to be furnished. While this information may go beyond what would be included in the GFE, it also may be difficult for nonparticipating providers to actually reach a plan or easily determine the appropriate way to communicate. Given ongoing difficulties with communicating with plans, Vizient encourages the Departments to consider broader policies to improve how plans communicate with providers and more consistent communication mechanisms.

Vizient discourages the Departments from imposing additional burdens on providers, such as requiring them to verify whether an individual is uninsured, self-pay or enrolled in a health plan or coverage for AEOB and GFE purposes, verification of coverage of items and services or verification of coverage from multiple payers. While some providers and facilities may already do this type of work, we encourage the Department to provide flexibility (e.g., relying on a patient's representation) and consider this burden alongside potential impacts to patient care.

Conclusion

Vizient appreciates the Departments' efforts to gain additional feedback regarding the AEOB and GFE for covered individuals. Vizient membership includes a variety of hospitals ranging from independent, community-based hospitals to large, integrated health care systems that serve acute and non-acute care needs. In closing, on behalf of Vizient, I would like to thank the Departments for providing the opportunity to respond to this RFI. Please feel free to contact me, or Jenna Stern at jenna.stern@vizientinc.com, if you have any questions or if Vizient may provide any assistance as you consider these recommendations.

Respectfully submitted,



Shoshana Krilow
Senior Vice President of Public Policy and Government Relations
Vizient, Inc.