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Citing Inefficiency, HHS Proposes to Void Good Guidance Practices Rule

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In a theme emerging around agency guidance, HHS on Oct. 19 proposed to repeal recent rules on Good Guidance Practices (GGP) and fairness in enforcement^[1] a few months after the Department of Justice rescinded the 2018 Brand memo,^[2] which prohibited the use of subregulatory guidance to prove violations in affirmative civil enforcement cases unless it was rooted in laws or regulations.

In a nutshell, the GGP and enforcement regulations, which were published in the waning days of the Trump administration, require HHS to put “significant” guidance through notice and comment rulemaking and limit the use of subregulatory guidance in administrative enforcement actions.^[3] The GGP rule also allows interested parties, such as providers, to petition HHS to withdraw guidance that has purportedly strayed too far from a law or regulation, which is what led CMS to remove Medicare manual guidance on split/shared billing—and draft a replacement in the 2022 proposed Medicare Physician Fee Schedule rule.^[4]

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