



December 6, 2021

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

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

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

Re: Requirements Related to Surprise Billing; Part II

Dear Secretaries Becerra, Walsh, and Yellen:

On behalf of the undersigned osteopathic specialty and state organizations, and the more than 168,000 osteopathic physicians (DOs) and medical students we represent, we are writing to express our strong concerns regarding provisions implementing the independent dispute resolution (IDR) process in the Requirements Related to Surprise Billing; Part II interim final rules (IFR) with request for comments.

The IDR process is a critical component of the No Surprises Act (NSA) and central to promoting fairness in payment disputes for out-of-network health care services and items. The NSA allows an IDR entity (IDRE) the discretion to evaluate all relevant information submitted by both providers and payers, including median in-network rates, prior contracted rates during the previous four plan years, the relative market share of both parties involved, the provider's training and experience, the patient's acuity, the complexity of furnishing the item or service, and in the case of a provider that is a facility, its teaching status, case mix and scope of services, agreement, and other items.

In the IFR, your Departments direct the IDRE to select the offer closest to the Qualified Payment Amount (QPA) as the appropriate out-of-network rate when making financial decisions for items or services under consideration, unless credible information submitted by the parties clearly demonstrates that the QPA is materially different from the out-of-network rate, based on additional circumstances allowed. Our organizations strongly disagree with this approach and believe it will be particularly burdensome for physician practices.

Establishing the QPA as the presumptive target for out-of-network payment misinterprets the NSA and Congress' intent. The NSA explicitly directs the IDRE to consider the QPA during the IDR process in tandem with other relevant information when selecting an offer submitted by the parties to avoid any one factor from being taken into consideration more than other factors.

While the QPA is meant to represent the median contracted rate for a specific service, we are concerned that the QPA calculation methodology may erroneously result in much lower payment amounts. By "anchoring" the out-of-network rates to the QPA, the presumption is that IDR outcomes will be more predictable, and parties may be encouraged to reach an agreement outside of the dispute resolution process to avoid administrative costs. The IFR also presumes that anchoring the QPA will help reduce prices that "may have been inflated due to the practice of surprise billing" before the NSA was enacted and may prevent plan enrollees from incurring higher out-of-network charges if plans were to pass along higher costs through increased premiums.

The NSA was intentionally drafted to protect patients from surprise billing while ensuring important checks and balances on the provider-insurer contracting process. We are concerned that anchoring the QPA will skew the IDR process and make it more difficult for physicians to receive reasonable payment for out-of-network services and enter into meaningful contract negotiations with payers. We also fear that the anchoring approach will result in a significant reduction in contracts being offered by health plans to many physicians in the coming years, particularly hospital-based physicians. Thus, the IDR, as defined in the IFR, may create a disincentive for insurers to negotiate in good faith to bring providers in-network.

In conclusion, we strongly disagree with the Departments interpretation of the NSA as it relates to the use of the QPA in the IDR process. We urge you to make every effort to ensure the IDR process is fair and balanced so that physicians, particularly individual and small group practices, and practices in rural and under-served areas are able to negotiate and receive reasonable payments for their services. This will ultimately preserve access to care and avoid burdening patients with escalating healthcare expenses via surprise billing.

Thank you for your consideration,

American Osteopathic Association
Alaska Osteopathic Medical Association
American Academy of Osteopathy
American College of Osteopathic Emergency Physicians
American College of Osteopathic Internists
American College of Osteopathic Neurologists and Psychiatrists
American College of Osteopathic Obstetricians and Gynecologists
American College of Osteopathic Pediatricians
American College of Osteopathic Surgeons
American Osteopathic Academy of Orthopedics
American Osteopathic Assoc of Prolotherapy Regenerative Medicine
American Osteopathic College of Dermatology
American Osteopathic College of Occupational and Preventive Medicine
American Osteopathic College of Pathologists
American Osteopathic College of Physical Medicine & Rehabilitation
American Osteopathic College of Radiology
American Osteopathic College of Anesthesiologists
Arizona Osteopathic Medical Association
Association of Military Osteopathic Physicians & Surgeons

Colorado Society of Osteopathic Medicine
Connecticut Osteopathic Medical Society
Florida Osteopathic Medical Association
Florida Society of the American College of Osteopathic Family Physicians
Idaho Osteopathic Physicians Association
Illinois Osteopathic Medical Society
Indiana Osteopathic Association
Iowa Osteopathic Medical Association
Kansas Association of Osteopathic Medicine
Kentucky Osteopathic Medical Association
Louisiana Osteopathic Medical Association
Maine Osteopathic Association
Maryland Association of Osteopathic Physicians
Massachusetts Osteopathic Society
Michigan Osteopathic Association
Minnesota Osteopathic Medical Society
Missouri Association of Osteopathic Physicians and Surgeons
Ohio Osteopathic Association
Osteopathic Physicians & Surgeons of California
Osteopathic Physicians and Surgeons of Oregon
Pennsylvania Osteopathic Medical Association
Rhode Island Society of Osteopathic Physicians and Surgeons
Tennessee Osteopathic Medical Association
Texas Osteopathic Medical Association
Washington Osteopathic Medical Association
Wisconsin Association of Osteopathic Physicians and Surgeons