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October 24, 2023

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-9890-P
P.O. Box 8016
Baltimore, MD 21244-8016

Submitted online via www.regulations.gov

Re: File Code CMS-9890-P Federal Independent Dispute Resolution (IDR) Process Administrative Fee and Certified IDR Entity Fee Ranges Proposed Rule

Dear Sir/Madam:

On behalf of the American Association of Oral and Maxillofacial Surgeons (AAOMS), which represents more than 9,000 oral and maxillofacial surgeons (OMSs) in the United States, thank you for the opportunity to comment on the Federal Independent Dispute Resolution (IDR) Process Administrative Fee and Certified IDR Entity Fee Ranges Proposed Rule, as published in the September 26, 2023, *Federal Register* (*Vol. 88, No. 185, pages 65888-65907*). While AAOMS appreciates Agency efforts to detail a method for setting and updating the fees linked to the IDR process, we have reservations about the proposed rule's omission of clear guidelines regarding the batching of claims for arbitration.

One of the key provisions of the No Surprises Act (the Act)[1] is the establishment of an independent dispute resolution process, wherein healthcare providers and insurers can resolve payment disputes through arbitration. While the IDR process aims to offer an equitable and streamlined way to resolve payment disagreements, its practical implications have proven challenging for many healthcare providers. Aside from the operational and financial burdens associated with the IDR, many of the process rules and requirements may effectively limit a provider's ability to seek payment resolution under certain circumstances or even discourage providers from pursing arbitration altogether.

Navigating the complexities of batching eligible items and services for consideration in a single payment dispute has been one such obstacle. The Act outlines general batching criteria under the IDR process which includes, among other things, that items or services may be considered as part of a single determination when "related to the treatment of a similar condition". The regulatory batching standard

[1] Public Law 116-260, Consolidated Appropriations Act, 2021- Division BB- Private Health Insurance and Public Health Provisions Title I- No Surprises Act. https://www.congress.gov/116/plaws/publ260/PLAW-116publ260.pdf

related to same or similar items or services, as established through the 2021 interim final rules[2] and subsequent guidance[3] effectively narrowed the Act's provisions on batching, limiting eligible items and services to those billed under the same or comparable service codes. HHS and the Departments of Labor and Treasury (the Departments) have indicated this standard was adopted to avoid combinations of unrelated or dissimilar claims through the IDR and to decrease the complexity of eligibility and payment determinations for arbitrators.

Although the batching standard for the IDR process has recently changed, AAOMS notes the same or similar batching rules have been particularly challenging for OMSs rendering services that fall within the scope of the NSA. For example, many uniquely oral and maxillofacial surgical procedures, such as the surgical correction of congenital craniofacial anomalies, orthognathic surgery and reconstructive procedures of the face and jaws to correct accidental injury, involve the billing and reporting of multiple, distinct procedure and diagnosis codes. In the event of a payment dispute comprising several of the items or services involved in this episode of care, the regulatory batching rules would prohibit an OMS from seeking resolution as a single determination despite the fact the services were furnished to treat the same condition or diagnosis. Such limitations on the availability of the IDR process are both administratively challenging and cost prohibitive, particularly for smaller practices or independent practitioners.

The change in the batching standard, as indicated in the proposed rule would require IDR entities to rely solely on statutory language[4] to determine what items and services may be eligible for batching. AAOMS believes clarification on batching with respect to this language, as well as updated guidance for disputing parties and IDR entities may be warranted.

An "episode of care" or "care incident" is a concept that describes a series or group of related healthcare services provided to a patient based on a particular medical condition or treatment need over a specific

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[2] Requirements Related to Surprise Billing; Part I (published July 13, 2021)
https://www.federalregister.gov/documents/2021/07/13/2021-14379/requirements-related-to-surprise-billing-part-i
Requirements Related to Surprise Billing; Part II (published October 7, 2021)
https://www.federalregister.gov/documents/2021/10/07/2021-21441/requirements-related-to-surprise-billing-part-ii

[3] Federal Independent Dispute Resolution (IDR) Process Guidance for Certified IDR Entities (issued August 2022)
https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/Technical-Assistance-IDR-Entities-August-2022.pdf
Federal Independent Dispute Resolution (IDR) Process Guidance for Disputing Parties (issued October 2022).
https://www.cms.gov/files/document/rev-102822-idr-guidance-disputing-parties.pdf

[4] As outlined under the No Surprises Act: In General—Under the IDR process, the Secretary shall specify criteria under which multiple qualified IDR dispute items and services are permitted to be considered jointly as part of a single determination by an entity for purposes of encouraging the efficiency (including minimizing costs) of the IDR process. Such items and services may be so considered only if— ''(i) such items and services to be included in such determination are furnished by the same provider or facility; ''(ii) payment for such items and services is required to be made by the same group health plan or health insurance issuer; ''(iii) such items and services are related to the treatment of a similar condition; and ''(iv) such items and services were furnished during the 30 day period following the date on which the first item or service included with respect to such determination was furnished or an alternative period as determined by the Secretary, for use in limited situations, such as by the consent of the parties or in the case of low-volume items and services, to encourage procedural efficiency and minimize health plan and provider administrative costs. https://www.congress.gov/116/bills/hr133/BILLS-116hr133enr.pdf

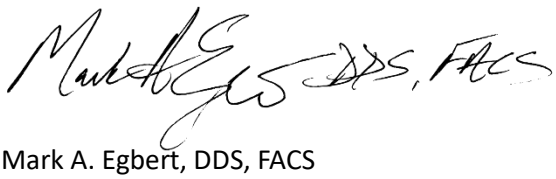
period. Instead of viewing healthcare services as isolated events, an episode of care looks at them in aggregate, a concept familiar to both providers and payers. Batching rules based on "episodes of care" would align with the statutory language of the Act and may provide a more holistic and individualized framework for addressing disputes in the federal IDR process. It may also mitigate several of the operational and financial challenges heretofore experienced by providers seeking arbitration for batched items and services related to a single incident of care. This includes the submission of often duplicative information required to support separate payment disputes for multiple, distinct services furnished during a single incident of care, as well as potential cost limitations with initiating single disputes for smaller-value claims or services. As such, **AAOMS encourages HHS and the Departments of Labor and Treasury to consider parameters to clarify "*treatment of a similar condition*" as an episode of care in relation to treatment of the patient's condition or diagnosis.**

We are also concerned that higher administrative fees may preclude many healthcare providers from participation in the IDR process. If the administrative fee is significant, especially relative to the disputed amount, providers may be dissuaded from pursuing the IDR process, regardless of whether the payment determination is for a single service or a batched episode of care. This is particularly true for smaller claims where the fee might offset any potential gains from a favorable resolution.

Further, the inherent uncertainty in the IDR process means that providers run the risk of not receiving the payment they believe to be appropriate, even after incurring the costs of the dispute resolution. While larger healthcare entities might have the financial resources to absorb higher administrative fees and lower reimbursements as routine costs of doing business, it may not be tenable for smaller providers or individual practitioners, such as many OMSs are.

Thank you for your consideration of these comments. Please contact Patricia Serpico, AAOMS Director of Health Policy, Quality and Reimbursement, with any questions at 800-822-6637, ext. 4394 or pserpico@aaoms.org.

Sincerely,



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