



March 28, 2022

CMS, Office of Strategic Operations and Regulatory Affairs,
Division of Regulations Development,
Attention: Document Identifier/OMB Control Number: CMS-10779
Room C4-26-05,
7500 Security Boulevard,
Baltimore, Maryland 21244-1850

Submitted online via www.regulations.gov

RE: CMS-10779—Complaints Submission Process under the No Surprises Act (OMB control number: 0938-1406)

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 Proposed Collection of Information related to Complaints Submission Process under the No Surprises Act; as published in the *Federal Register* on February 16, 2022.

OMSs – many of whom are part of small practices – are also an integral part of hospital systems, providing emergency department coverage, serving as essential members of trauma teams throughout the country and performing complex procedures at hospitals. AAOMS supports efforts to prevent patients from being unfairly surprised by an out-of-network bill, while ensuring providers still have a seat at the decision-making table.

First, we would like to thank the Centers for Medicare & Medicaid Services (CMS) for engaging all relevant stakeholders in the complaints submission process. As the Department of the Treasury, Department of Labor and Department of Health and Human Services (the Departments) have acknowledged, the impact the No Surprises Act (NSA) will have on the health sector, both economic and procedural, remains to be seen. Thus, allowing the opportunity to provide feedback as these novel processes evolve is essential to creating iterative and stakeholder-driven procedures that reduce burden and provide meaningful outcomes.

AAOMS is of the view that a comprehensive and intuitive complaints submission process will be integral for all stakeholders, but most especially providers in small practice settings. We appreciate CMS' recognition of the new and substantial administrative burden the NSA places on providers, as well as the steps the agency has taken thus far to mitigate it. However, the fact remains that site of service differentials between large health care organizations and small group practices, including

both economies of scale and staffing limitations, present unique administrative challenges for providers in small practices to meet compliance standards.

The Departments had previously sought comment on the expansion of the complaints process to include all consumer protections and balance billing requirements of the NSA, as compared to focusing solely on the application of the qualifying payment amount (QPA) as required in the statute. AAOMS agrees with the broader scope of the complaints process.

Many of the newly established provisions under the NSA, with the application of the QPA being just one, require collaboration between various stakeholders. Straightforward and purposeful interactions between providers and insurers are necessary, as is the underlying belief in the validity and equity of these processes. For instance, should the determination of the out-of-network rate proceed into open negotiation or to arbitration via the independent dispute resolution (IDR) process, there will be increased reliance on transparency, accuracy and efficiency from all parties. As such, regulatory oversight of all factors, through the complaints submission process, will be imperative to ensuring such pathways are both meaningful and fair and that all relevant parties are making good faith efforts to comply. Appropriate application of the QPA is incredibly important to providers, but an IDR process made more arduous by an insurer failing to operate within the given parameters, would be detrimental to providers and undercut the intent of the statute.

AAOMS is of the view that the No Surprises Help Desk Complaint Form, submitted via the CMS web portal, will be a valuable resource to providers moving forward. However, we encourage the Departments to consider the complaints submission process as one that is continually evolving and we stress the importance of continual stakeholder feedback as providers and insurers begin to engage in these new processes and utilize the complaints submission process. The data generated through such feedback has the potential to provide valuable insight into the effectiveness of the newly established provisions, utilization of the negotiation and arbitration processes, market impact as well as overall compliance. It may also aid in the judicious enforcement of the regulation, enhance consumer protection and improve the quality and utility of the processes themselves.

As significant as protections and requirements of the NSA are to patients, they are - and will likely continue to be - administratively and operationally challenging for providers as well as represent a drain on already scarce practice resources. As such, the complaints process must strike a delicate balance. There must, for example, be recognition of those providers making good faith efforts towards compliance as well as a mechanism to address those who are not. Additionally, providers have been given less than ample time to design and implement novel workflows in order to meet the newly established compliance standards; therefore, we strongly encourage HHS to utilize enforcement discretion with respect to providers in the complaints resolution process as complaints may initially reflect procedures and/or workflows that require further development rather than be viewed as blatant noncompliance.

AAOMS is of the view that, although necessary, the complaints submission process is representative of further administrative burden for providers, especially those in small practice settings. As such, we disagree with the Departments' estimate of the time it will take for a complainant to gather all relevant information required for complaint submission as well as the projected economic impact of the process. We understand that basic data collection is obligatory; however, for this process to be meaningful, it will require the provider's input and participation. For small, independent practices that lack the expert personnel and/or departments dedicated to ensuring compliance, it

will be the providers themselves who shoulder the increased administrative burden. As insignificant as this may seem for complaint submission, the scope of all of the changes required by the new regulations begins to outstrip a practice's ability to absorb them. This, combined with the notable economic impact the law and related regulatory compliance processes will have on providers, may leave independent provider practices, including OMS offices, with little choice but to abandon independent practice models, further reducing patient options for care.

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

Sincerely,

A handwritten signature in black ink that reads "James David Johnson, Jr. DDS". The signature is written in a cursive style with a large, sweeping initial "J".

James David Johnson, Jr. DDS
AAOMS President

A handwritten signature in black ink that reads "John J. Hillgen IV". The signature is written in a cursive style with a large, sweeping initial "J".

John J. Hillgen, IV, DMD, MBA
Chair, AAOMS Committee on Healthcare Policy, Coding & Reimbursement