



September 7, 2021

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244

Re: CMS-9909-IFC; Requirements Related to Surprise Billing; Part I

Dear Administrator Brooks-LaSure:

On behalf of the American Academy of Family Physicians (AAFP), representing more than 133,500 family physicians and medical students across the country, I write in response to the [interim final rule](#) (IFR): Requirements Related to Surprise Billing; Part I as published in the Federal Register on July 13, 2021.

Patient Protections

The AAFP strongly supports the patient protections included in the IFR. We have long advocated to protect patients from unanticipated medical bills and other high health care costs. We appreciate CMS strengthening the prudent layperson standard for accessing emergency medical care and taking steps to mitigate the cost-sharing imposed on those with high deductible health plans after receiving unanticipated out-of-network care. Family physicians see firsthand how patient cost sharing requirements and unanticipated medical bills can cause patients to forgo needed services and lead to preventable illness. We are encouraged that these additional protections will improve equitable access to care for patients.

Participating Health Care Facility

The AAFP appreciates the definition of participating health care facility, which is limited to those facilities in which balance bills typically occur. We urge CMS to maintain this definition and to refrain from imposing any unnecessary regulatory requirements on primary care practices, while also maintaining strong protections for patients.

Qualifying Payment Amount: Treatment of Alternative Payment Models

The IFR allows plans to disregard the impact of alternative payments, including bonuses and other incentive payments, in the calculation of the QPA. The IFR directs plans to calculate a median contracted rate using the underlying fee schedule rates, where available. We are concerned disregarding these additional payments could hinder the transition toward value-based care and disincentivize physician practices from moving into an alternative payment model. While the No

STRONG MEDICINE FOR AMERICA

President Ada Stewart, MD <i>Columbia, SC</i>	President-elect Sterling Ransone, MD <i>Deltaville, VA</i>	Board Chair Gary LeRoy, MD <i>Dayton, OH</i>	Directors James Ellzy, MD, <i>Washington, DC</i> Dennis Gingrich, MD, <i>Hershey, PA</i> Tochi Iroku-Malize, MD, <i>Bay Shore, NY</i> Andrew Carroll, MD, <i>Chandler, AZ</i> Steven Furr, MD, <i>Jackson, AL</i> Margot Savoy, MD, <i>Media, PA</i>	Jennifer Brull, MD, <i>Plainville, KS</i> Mary Campagnolo, MD, <i>Borderntown, NJ</i> Todd Shaffer, MD, <i>Lee's Summit, MO</i> Danielle Carter, MD (New Physician Member), <i>Jacksonville, FL</i> Anna Askari, MD (Resident Member), <i>Palm Desert, CA</i> Cynthia Ciccotelli (Student Member), <i>Yardley, PA</i>
Speaker Alan Schwartzstein, MD <i>Oregon, WI</i>	Vice Speaker Russell Kohl, MD <i>Stilwell, KS</i>	Executive Vice President R. Shawn Martin <i>Leawood, KS</i>		

Surprises Act implemented several vital patient protections, moving to a value-based health care system is essential for reducing patients' health care costs and improving patient outcomes. It is vital that these regulations do not create additional barriers to moving out of fee for service.

Notice and Consent Process

The IFR outlines a notice and consent process for patients to waive balance billing and cost-sharing protections in the event they wish to receive out-of-network care. We appreciate CMS's efforts to standardize this process, including creating a standard form that can be used. To obtain notice and consent, physicians are required to provide patients with a good faith estimate of what they may charge the individual for items and services involved. The IFR also encourages physicians to provide information to patients regarding cost-sharing, as well as prior authorization or other care management limitations that may be required in advance of receiving such items or services. CMS correctly notes that non-participating physicians and facilities may find it challenging to obtain relevant cost-sharing and prior authorization information since, by definition, they do not have a contract with the patients' health plan. However, CMS still encourages physician to contact patients' health plans to obtain this information.

The AAFP appreciates the flexibility in the IFR with respect to cost-sharing and utilization management information. While we agree that physician practices should be able to estimate the total charges for the services the practice expects to furnish, we urge CMS to refrain from requiring practices to also obtain information about cost-sharing and utilization management processes that is not readily available to them. This would significantly increase the burden of the notice and consent process and could lead to delays in needed care. We recommend CMS clarify that providing cost-sharing and utilization management information is not required.

We recommend CMS require payments be made directly to the physician or facility providing out-of-network care if notice and consent is obtained. This would reduce burdens placed on physicians and patients by taking patients out of the middle of the payment process.

The AAFP is also concerned that the IFR provides insurers with the authority to determine whether notice and consent were provided in a timely manner and received. If they believe it was not, they are instructed to reprocess the claim. This could result in additional administrative burdens for physicians, as well as unnecessary payment delays.

Advanced Explanation of Benefits (AEOB)

The AAFP thanks CMS for carefully considering stakeholder comments and concerns regarding the AEOB and delaying rulemaking and compliance for this requirement. We believe that, given that physicians and other health care professionals are currently working to respond to a surging pandemic, this was the best course of action at this time. In developing subsequent regulations, the AAFP strongly recommends CMS work to minimize administrative requirements on primary care practices, including requirements related to providing a good faith estimate (GFE) and the AEOB upon a patients' request. We stand ready to work with CMS to ensure patients have the information they need to make decisions about their health care without adding administrative requirements to already overburdened physician practices.

Administrator Brooks-LaSure
Page 3 of 3
September 7, 2021

Thank you for the opportunity to provide comments on the IFR. Please contact Meredith Yinger, Senior Regulatory Strategist, at myinger@aafp.org or 202-235-5126 with any questions about our comments.

Sincerely,

A handwritten signature in black ink that reads "Gary L. LeRoy, MD, FAAFP". The signature is written in a cursive style with a large, stylized "G" and "L".

Gary L. LeRoy, MD, FAAFP
Board Chair
American Academy of Family Physicians