December 20, 2023

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

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

RE: Federal Independent Dispute Resolution Operations (RIN 0938–AV15)

Dear Secretary Becerra and Administrator Brooks-LaSure:

On behalf of our member medical group practices, the Medical Group Management Association (MGMA) is pleased to submit comments in response to the Federal Independent Dispute Resolution Operations proposed rule, published in the federal register on Nov. 3, 2023.

With a membership of more than 60,000 medical practice administrators, executives, and leaders, MGMA represents more than 15,000 group medical practices ranging from small private medical practices to large national health systems, representing more than 350,000 physicians. MGMA's diverse membership uniquely situates us to offer the following feedback.

The *No Surprises Act* (NSA) was passed by Congress as part of the *Consolidated Appropriations Act, 2021,* and created certain patient protections from surprise medical bills. MGMA supports protecting patients' access to necessary care while creating a pathway to ensure physicians and practices receive appropriate payment for out-of-network services.

Since its inception, the Independent Dispute Resolution (IDR) process has placed substantial administrative burden on medical groups, created an imbalance of power between the provider and insurer parties, and threatened the financial viability of certain physician practices. A recent Government Accountability Office (GAO) report highlights many of the challenges medical groups are experiencing with the implementation of the NSA. Unsurprisingly, the report found that initiating parties (mainly providers) prevailed in 77% of disputes initiated between Jan. 1 and June 30, 2023.[1] This further underscores the legitimacy of provider-initiated disputes, and the need to ensure the IDR process is fair and equitable.

<u>New Batching Provisions</u>

[1] Government Accountability Office, Private Health Insurance: Roll out of Independent Dispute Resolution Process for Out-Of-Network Claims Has Been Challenging, Dec. 12, 2023, https://www.gao.gov/products/gao-24-106335.

The Departments are proposing new batching provisions for the following: 1) items and services furnished to a single patient on one or more consecutive dates of service and billed on the same claim form (a single patient encounter); 2) items and services billed under the same service code or a comparable code under a different procedural code system; and 3) anesthesiology, radiology, pathology, and laboratory items and services billed under service codes belonging to the same Category I CPT code section, as specified in guidance by the Departments, to address the unique circumstances of these medical specialties and provider types. The rule also proposes to limit batching to 25 qualified IDR items 'line items.'

MGMA appreciates the Departments' proposal to expand batching rules to allow more flexibility in the IDR process. **However, we urge the Departments to increase the 25-line-item limit for batching for items and services.** Permitting practices to submit batched claims under a single dispute ensures they can expedite an otherwise redundant process and makes the IDR process more economically feasible for specialties that see a large volume of low dollar claims.

For example, certain practices often provide high volumes of small dollar claim services involving a single code within a 30-day period. If the difference between the initial payment and a reasonable reimbursement rate is even one or two dollars and the service volume is in the thousands, the aggregate loss in compensation would be significant. Consequently, imposing a 25-line-item limit for batching services would effectively make the IDR process economically off-limits for certain practices, especially given the $115 administrative fee is more than double the 2022 administrative fee of $50.

MGMA recommends the Departments allow for submission of a single file upload for batched submission as opposed to requiring hand entry for each claim. Continuing to streamline the IDR process is imperative, as providers struggle with redundancy and administrative burden in the dispute submission process. Manual entry of individual claims is often not practical, particularly for groups submitting a large number of services in a dispute. The existing process is equally challenging for larger practices that may have higher volumes of claims under the federal IDR process and smaller practices with limited resources.

Finally, we encourage the Departments to continue working with relevant specialties to ensure the proposed Category I CPT subcategories are practical, feasible, and efficient.

90-calendar-day cooling off period

MGMA appreciates the Departments soliciting comments on the 90-day cooling off period and acknowledging that issues may arise with the proposed expanded batching rule, including operational challenges and barriers to submission of subsequent IDR disputes. **MGMA supports the Departments reducing the cooling off period following a batched dispute determination to as little as one business day.**

<u>Early Communication Between Payers and Providers</u>

The proposed rule includes several provisions to encourage streamlined communication between payers and providers, including requiring payers to provide legal information at the time of initial payment or notice of denial of payment to providers in a letter to the Departments, and requiring payers to use claim adjustment reason codes (CARCs) and remittance advice remark codes (RARCs) when providing paper or electronic remittance advice.

MGMA supports the Departments' proposals to require payers to provide this additional information and mandate the use of CARCs and RARCs when providing initial payment or notice

of denial of payment. MGMA agrees that requiring insurers to use these codes and provide pertinent legal information will increase efficiency in the IDR process and allow for medical groups to access the payment dispute process more easily.

Open Negotiation

Open negotiation notice

The proposed rule makes several changes to the open negotiation process, including requiring initiating parties to provide an open negotiation notice to non-initiating parties through the IDR portal to initiate open negotiation. This notice would require new content elements including supporting documents relevant to initial payment.

MGMA understands and appreciates the Departments' intent to improve the open negotiation process with these proposals. If done correctly, a functioning IDR portal would help expediate what is currently a laborious process. However, we have concerns that requiring this additional documentation will potentially create undue administrative burden for medical groups. For example, extracting initial payment information from bulk remittance advice requires manually sifting through documents encompassing hundreds or thousands of services. Allowing the extraction of this information during the 30-day open negotiation window is operationally more feasible.

Open negotiation response notice

The proposed rule also establishes an open negotiation response notice requirement for the non-initiating party by the 15th day of the open negotiation period.

MGMA supports the Departments' efforts to encourage non-initiating parties to meaningfully engage in the open negation process. It is the experience of many medical groups that the non-initiating party is unresponsive during the open negotiation process. This reality is underscored in GAO's report on NSA implementation — one initiating party reported not receiving a "response from issuers about 65 percent of the time during the open negotiation period." **Finally, MGMA supports allowing certified IDR entities to take into consideration a party's compliance with the open negotiation response notice when making their payment determinations.**

Use of portal for open negotiation

MGMA appreciates the Departments' intent to streamline the open negotiation process by moving it to the IDR portal. **We encourage the Departments to continue working with the provider community to develop a more robust IDR portal and open negotiation process to best facilitate meaningful dialogue between both parties.** Providers are struggling with redundancy and administrative roadblocks in the IDR submission process as currently constituted. We encourage the Departments to maintain appropriate flexibility while updates to the process are made.

Administrative Fee

Reduced administrative fee for non-initiating parties in cases of ineligible disputes

The Departments propose to require payment of the nonrefundable administrative fee by the initiating party within two business days of the preliminary selection of the IDR entity and two business days of an eligibility determination by the non-initiating party. If a claim is determined ineligible, the non-initiating party is only required to pay 20% of the administrative fee, while the initiating party must pay the entire

amount. Although we recognize that should these rules be finalized there are likely to be significantly less eligibility problems as a result of a formalized open negotiation process and an expanding batching process, **MGMA encourages the Departments to provide the reduced administrative fee to both parties upon determination of ineligibility, rather than only providing a discount to non-initiating parties.**

Reduced administrative fee for small dollar claims

The Departments propose to charge a reduced administrative fee when the highest offer made during open negotiation by either disputing party was less than a predetermined threshold. The proposed rule would permit a reduced administrative fee of 50% when the highest offer is less than the amount of the standard administrative fee.

MGMA appreciates the Departments' intention to reduce the administrative fee for low-dollar amount disputes, **we encourage the Departments to implement greater flexibilities to further increase the accessibility of the IDR process for medical groups, including setting the threshold for the discounted rate at slightly higher than the administrative fee.** We support the concept of reduced fees for "low-dollar" disputes, but the threshold should be based on the aggregate difference between the initiating party's offers and the initial payments to make the IDR process as economically feasible as possible.

Return of IDR fees

MGMA supports the proposal to return all IDR fees in full if parties reach an agreement on an out-of-network rate or agree to withdraw the dispute prior to an eligibility determination by the IDR. We believe this proposal will help facilitate meaningful negotiations between disputing parties.

Extenuating Circumstances

The Departments propose to amend extenuating circumstances in which time periods may be extended to include events that contribute to systematic delays in processing disputes, such as unforeseen volume of disputes or IDR portal failures.

MGMA appreciates the Departments efforts to further ensure the systematic delays of processing disputes are mitigated. However, we aim to emphasize the importance of timely adjudication of IDR claims, and that this process should not be overutilized to continue to lengthen the claims adjudication process. There remains a significant backlog in cases, made worse by the fact that the Administration has closed the NSA portal to new disputes for extended periods of time.

According to GAO, 61% of disputes remain unresolved as of June 2023.[2] These delays directly medical groups' ability to get reimbursed an appropriate amount for services that happened many months ago. The lack of payment for services rendered, coupled with inflation and ongoing administrative challenges, is simply unsustainable for medical groups.

Federal IDR Process Registration of Group Health Plans, Health Insurance Issuers, and Federal Employees Health Benefits (FEHB) Carriers

The proposed rule would require plans and issuers subject the IDR process to submit certain information to a centralized registry run by the Departments that would be made available through the IDR portal.

[2] *Id.*

Each plan, issuer, or FEHB carrier would receive an IDR registration number, and would need to provide important information such as their legal business name, their form of insurance coverage or plan (i.e., whether it's self-funded plan subject to ERISA), the state(s) in which the plan or coverage is subject to a specified state law related to balance billing, and more.

MGMA supports the Departments' establishment of a registry for plans, issuers, and FEHB carriers. As discussed in the proposal, this will relieve some of the burden on providers by allowing them to access this searchable registry and find critical information in the IDR portal. A major impediment to the timely resolution of IDR claims is the inability of medical groups to obtain this necessary information to begin the IDR process — this proposal should help alleviate many of these concerns.

Conclusion

MGMA is committed to continuing to partner with the Departments to protect patients from surprise out-of-network costs and empower patients to have the information necessary to actively participate in their care plan. We appreciate the opportunity to provide comments to help establish an effective and appropriate IDR process that is consistent with the intent of the law. If you have any additional questions, please do not hesitate to contact James Haynes, associate director of government affairs, at jhaynes@mgma.org or 202.293.3450.

Sincerely,

/s/

Anders Gilberg
Senior Vice President, Government Affairs