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August 16, 2021

Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Hubert H. Humphrey Building  
200 Independence Avenue, S.W.  
Washington, DC 20201

Re: Comments Related to No Surprises Act and Requirements Related to Surprise Billing (CMS-9909-IFC)

Dear Administrator Brooks-LaSure,

Thank you in advance for considering our comments on the No Surprises Act (CMS-9909-IFC) to protect consumers from surprise medical bills. We support the objectives of the No Surprises Act and appreciate your efforts to provide patients with advanced billing information to increase access and control over their medical care as well as ease concerns about unexpected medical bills.

The Committee on Operating Rules for Information Exchange (CORE), an initiative of CAQH, is a non-profit, national multi-stakeholder collaborative that drives the creation and adoption of healthcare operating rules that support standards, accelerate interoperability, and align administrative and clinical activities among providers, payers, and consumers. CAQH CORE Participating Organizations represent more than 75 percent of insured Americans, including health plans, providers, electronic health record (EHR) and other vendors/clearinghouses, state and federal government entities, associations, and standards development organizations.

CAQH CORE is designated by the Secretary of the Department of Health and Human Services (HHS) as the author of federal operating rules for the HIPAA administrative healthcare transactions. Operating rules, which are required by the Affordable Care Act, are defined as “the necessary business rules and guidelines for the electronic exchange of information that are not defined by a standard or its implementation specifications.” Operating rules are developed by CAQH CORE Participants via a multi-stakeholder, consensus-based process.

CAQH CORE comments on the No Surprises Act are based on our history of working with stakeholders across the healthcare industry to promote interoperability, reduce administrative burden, and work in a collaborative manner to coalesce around practical solutions to some of the most complex and onerous healthcare problems. Recent discussions with our healthcare partners have focused on the importance of the advanced explanation of benefit (EOB) provisions of the No Surprises Act and the opportunity for industry to come together to avoid potential duplication of effort or inconsistent implementation of these requirements. Our comments will focus on the need for workflow changes and standardized processes to

meet the advanced EOB requirements without creating undue burden for patients, providers, and health plans. In addition, we wanted to offer our assistance as the agencies develop future regulations to implement the No Surprises Act.

### **CAQH CORE Advanced Explanation of Benefits Advisory Group**

We are pleased to share that CAQH CORE is launching an Advanced EOB Advisory Group composed of industry stakeholders including providers, health plans, clearinghouses, vendors, associations, standards development organizations, and others charged with developing initial guidance on how industry can best demonstrate a “good faith” effort to meet the advanced EOB requirements in Sections 111 and 112 by January 1, 2022, with a special focus on the provider to payer data exchange. The Advisory Group will consider options that can be quickly implemented, those that may take longer than the current timeframe but have a higher return-on-investment, and how to align both needs. Additional use cases may also be addressed, and we are coordinating with other industry groups working in this space as well. Our work may be helpful as the agencies consider related regulations and we invite you to participate in the CAQH CORE Advanced EOB Advisory Group.

### **Preliminary Feedback on Sections 111. Consumer Protections Through Health Plan Requirement for Fair and Honest Advance Cost Estimate and 112. Patient Protections Through Transparency and Patient-Provider Dispute Resolution**

The No Surprises Act, Section 111, requires health plans to provide an advanced EOB for scheduled services at least three days in advance to give patients transparency into which providers are expected to provide treatment, the expected cost, and the network status of the providers. In addition, Section 112 requires health care providers and facilities to verify what type of coverage the patient is enrolled in and provide notification of a good faith estimate of charges to the payer or patient three days in advance of service and not later than one day after scheduling of service.

CAQH CORE wholeheartedly supports the spirit of these provisions. Providing patients with a good faith estimate of payment and coverage information in advance of a medical procedure will help inform care decisions and patient planning; however, we are concerned about how these requirements will be operationalized by industry including the potential for disparate, proprietary approaches that may ultimately create more burden and confusion than value for patients, providers, and health plans. More practical guidance from the agencies or industry collaborations on workflow processes, standardization, and consistent exchange mechanisms will help ensure patients are receiving meaningful advanced EOBs.

### **Need for Standardization to Reflect Expectations for the Advanced EOB Requirements**

Sections 111 and 112 of the No Surprises Act do not address what standard(s) and transmission method(s) meet the requirements for the creation and delivery of the advanced EOB. At CAQH CORE, we see firsthand the critical importance of applying uniform standards and operating rules across the entire healthcare industry to enable consistent automation and interoperability. We encourage the agencies to require the use of current and emerging electronic industry standards and operating rules to support the requirements in Sections 111 and 112 to avoid proliferation of proprietary or manual efforts that only increase administrative burden.

We are concerned that to meet the January 1, 2022 date, some stakeholders are developing one-off and proprietary solutions that may not be comprehensive or effective for supporting advanced EOB, including the use of portals. CAQH CORE has conducted extensive research to understand the barriers to automation

of important similar functions, such as prior authorization, and found that web portal maturity, functionality, and sophistication varies greatly across the industry. Additionally, from a provider perspective, having to log into and navigate multiple, proprietary health plan web portals can be expensive and time consuming. While web portal transactions typically cost less than manual transactions, the [CAQH Index](#) report indicates moving from portals to fully electronic transactions results in significant provider time and cost savings.

### **Need for Workflow to Reflect Expectations for the Advanced EOB Requirements**

Implementation of the requirements in Sections 111 and 112 will take time to ensure appropriate workflow changes and resourcing for both the health plan and provider, especially if an advanced EOB is required for most scheduled items or services (rather than by request) as is written in the statute. Providing the patient with the most accurate advanced EOB will require consistent and comprehensive collection of data and staff time. There are often multiple providers involved in an episode of care and this information would be included in the advanced EOB. Section 112 does not specify whether the health plan or the provider is responsible for gathering pricing information across these providers. Whether it is the provider or the health plan, they will need a standardized, ideally automated process to gather pricing information and share it with the necessary parties.

Similarly, the transmission of the “good faith estimate” of the expected charges from the provider to the health plan will also require workflow adjustments. These workflow changes will take time to develop, test, and implement. Additionally, providers have emphasized the importance of health plans also sharing the same advanced EOB with them, in addition to the patient, a workflow component not currently included in Section 111 or 112. We encourage the agencies to address these workflow issues and consider your existing authority to delay enforcement.

### **Current and Emerging Standards: The Role for Standard Agnostic Operating Rules**

Consideration must also be given to the fact that the healthcare industry is in the process of a transformation – augmenting EDI-based standards and infrastructure with application programming interfaces (APIs). However, within this continuum of technological advancement industry stakeholders are at varying levels of maturity – early adopters are already testing new API-based use cases while others have limited resources for innovation. This lack of alignment will quickly become an impediment to seamless advanced EOB data exchange if not addressed. Industry discussions already indicate a split in the desire to use current versus emerging standards to support advanced EOB between stakeholders who need to share data.

Aligning data and infrastructure expectations across standards for advanced EOB via “standard agnostic” operating rules has the potential to accelerate success by capitalizing on existing value in backend systems, facilitating ease of technology transition, and supporting smaller entities with fewer resources. Standard-agnostic operating rules can specify consistent data content and infrastructure across current and emerging standards while meeting organizations where they are on the technology adoption spectrum. For example, multiple standards have been suggested to support provider transmission of the “good faith estimate” of charges to the health plan including:

- Existing HIPAA-mandated X12 transactions that could be used to satisfy the requirements in Sections 111 and 112 including the 5010 version of the 837 Healthcare Claim for provider to payer

exchanges. Additionally, the 8010 version of the 837 Healthcare Claim allows for pre-determination for both Institutional and Professional claims. CMS has the authority to require use of the latest version of a standard.

- Use of the HL7 FHIR standard for the exchange of data to support the advanced EOB via an API is also under development and may be especially useful for supporting communications with the patient. This could be an alternative for the section of the industry that is building a FHIR-based data architecture.

Industry cannot shift to an emerging standard overnight; therefore, enabling common expectations regardless of the standard will keep backend data consistent and enable a more successful glidepath. It would be beneficial for industry to agree to a set of standards and a set of associated operating rules to ensure consistent and cohesive implementation of requirements surrounding the advanced EOB. As mentioned previously, CAQH CORE is convening an advisory group to start this process. We encourage the agencies to review the guidance produced by this advisory group and consider naming or requiring development of the specific standards and associated operating rules recommended to support transmission of the advanced EOB to reduce cost and burden and ensure timely delivery to the patient.

### **Using HIPAA to Drive Standard Provider to Payer Data Exchange to Support Advanced EOB**

CMS already has authority to mandate operating rules for standards under Section 1104 of the Affordable Care Act. We encourage HHS and CMS to consider using its existing authority under the Administrative Simplification provisions in the Health Insurance Portability and Accountability Act (HIPAA) and expanded under the Affordable Care Act (45 C.F.R. § 162.910-930) to drive industry-wide adoption of standards and operating rules to support the exchange of advanced EOBs. Specifically, Section 1172 of the Social Security Act states:

*The Secretary shall adopt standards for transactions, and data elements for such transactions, to enable health information to be exchanged electronically, that are appropriate for--"(A) the financial and administrative transactions described in paragraph (2); and "(B) other financial and administrative transactions determined appropriate by the Secretary, consistent with the goals of improving the operation of the health care system and reducing administrative costs.*

This authority can be used to update existing standards and advance new and emerging standards for additional administrative functions such as the requirement for an advanced EOB. The process uses the existing National Committee on Vital and Health Statistics (NCVHS), a federal advisory committee to the HHS Secretary, to review and hear industry feedback on new and emerging standards and operating rules. NCVHS can then make a recommendation to the Secretary on adoption. Should HHS decide to move forward with a new or updated standard, proposed rules are issued for public comment with appropriate implementation timelines. The process is open to the public, includes an appeals process, can be enforced by CMS, and, most importantly, moves the entire industry forward together.

### **Next Steps: Bringing Industry to Consensus**

There is a need for an overarching strategy to consider how the requirements under Sections 111 and 112 will support the advanced EOB workflow without creating unnecessary burdens. Multiple stakeholders will need to collaborate across the healthcare industry to ensure successful implementation. CAQH CORE looks forward to supporting this work and helping the industry coalesce around specific rules of the road to bring

together current and emerging standards and workflows to meet the spirit of the law without inhibiting industry innovation and progress.

Thank you for considering our comments in response to the No Surprises Act. Should you have questions, or if you would like someone representing CMS to be involved the CAQH CORE Advanced EOB Advisory Group, please contact me at atodd@caqh.org.

Sincerely,



April Todd  
Senior Vice President, CAQH CORE & Explorations

CC:

Secretary, Department of Health and Human Services

Secretary, Department of Labor

Secretary, Department of the Treasury

Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget

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