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CEO, EXECUTIVE VICE PRESIDENT

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October 18, 2021

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
Hubert H. Humphrey Building, Room 445-G
200 Independence Avenue, SW
Washington, DC 20201

Re: File Code CMS-9907-P

Dear Administrator Brooks-LaSure:

On behalf of the physician and medical student members of the American Medical Association (AMA), I appreciate the opportunity to offer our comments to the Centers for Medicare & Medicaid Services (CMS) on proposed rules implementing certain provisions of Title I (No Surprises Act) and Title II (Transparency) of Division BB of the Consolidated Appropriations Act, 2021 (CAA).

Disclosure and Reporting Requirements for Agent and Broker Compensation

The proposed rule would implement a CAA provision that requires insurers to disclose the amount they pay in direct compensation (i.e., monetary amounts, including sales and base commissions paid by the insurer to an agent or broker directly linked to the sale of the policy or contract) and indirect compensation (i.e., payments other than sales or base commissions, which may include service fees, consulting fees, bonuses, awards, prizes, and other non-monetary forms of compensation) to agents and brokers to incentivize enrollment in their individual market products and short-term, limited duration insurance (STLDI) plans. Insurers that offer individual health insurance coverage or STLDI must disclose compensation information before a consumer selects their plan and on any documentation that confirms the consumer's enrollment.

Under the proposed rule, insurers would be required to disclose compensation information to all potential or new policyholders (i.e., the person purchasing the policy who is responsible for paying premiums rather than all plan enrollees) as well as upon renewal of a policy. Disclosures would be required before a consumer finalizes their plan selection and on any document that confirms initial enrollment in coverage. Insurers would have to disclose the amount of direct and indirect compensation, including a commission schedule or an explanation of the thresholds used for indirect compensation such as a bonus. In addition, under the proposed rule, insurers would have to report compensation information to HHS on an annual basis. These transparency and disclosure requirements are necessary to inform consumers of any incentives, such as a commission schedule or bonuses, that agents and brokers may have to steer a consumer toward a plan that may not be in the consumer's best interest. This is a particular concern with respect to the sale of STLDI products, which can result in consumers being underinsured, especially for

catastrophic costs due to accidents and debilitating conditions. AMA supports these provisions in the proposed rule and urges CMS to finalize them.

CMS Enforcement of Group and Individual Insurance Market and Provider and Facility Requirements

The AMA appreciates CMS' action to issue a Notice of Proposed Rulemaking (NPRM) with a comment period to implement certain components of the No Surprises Act (NSA).

CMS proposes requiring that states have primary enforcement authority over providers practicing in their states in terms of compliance with NSA provisions. The AMA looks forward to working with state medical associations and other stakeholders to ensure that this authority lies with the most appropriate regulator in each state where a state chooses to assume enforcement authority. Also, we would welcome any additional guidance from CMS as to how states may assign such authority and having the opportunity for us and other stakeholders to provide our input on such guidance.

When CMS has assumed enforcement authority, the AMA recognizes the need for conducting investigations into provider actions when such potential violations are brought to the attention of CMS. However, we have serious concerns about the proposal to allow CMS to conduct random investigations of providers for violations of the NSA provisions. While the NSA requires CMS to conduct at least some affirmative audits of payers, there is no similar statutory requirement with respect to providers. The potential administrative burden on any physician practice randomly selected for such an audit is extremely problematic, especially for small physician practices.

While the proposal to allow random investigations of provider compliance aims to align the provider and payer enforcement provisions under the proposed rule, the AMA believes that such alignment will do little to improve efficiencies. We suggest that there is little value in such investigations of providers, as the NSA establishes requirements to notify patients of their rights under the NSA and where to report violations. Moreover, provider violations are likely to be apparent to involved parties, including the patient and the payer, thus prompting reporting. Random investigations of providers will rarely result in uncovering violations that have not been reported, and certainly not large-scale violations that would warrant the substantial burdens of such investigations on physician practices and CMS.

On the other hand, payer violations of the NSA are likely to be much less apparent to the involved parties, including patients and physicians. As such, there is value in random investigations of plans for NSA violations in addition to targeted investigations and statutorily required audits on qualifying payment amount calculations. A similar argument can be made regarding compliance with the Mental Health Parity and Addiction Equity Act (MHPAEA) non-quantitative treatment limit comparative analyses, and the AMA supports the use of random (and targeted) investigations, as well as market conduct examinations, to ensure compliance with these requirements as well.

The AMA also has concerns with the proposed 14-day deadline for the provider to respond to a noncompliance notice. Unless rapid action is required due to the nature of the violation, we urge CMS to lengthen this timeline to at least 30 days to allow physicians, especially those in independent and/or smaller practices, to locate and gather the information necessary to respond to the notice in a meaningful way.

The AMA supports CMS' proposals promoting a remedial response to violations where the provider did not knowingly violate the requirements, recognizing that the majority of violations by physicians and

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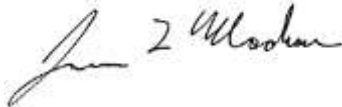
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other providers will not be intentional, but a result of the complexities associated with complying with this new law and potentially navigating both a state and federal surprise billing structure. The AMA stands ready to work with CMS to help educate physicians about the requirements of the NSA.

Finally, the NPRM proposes requiring that states have primary enforcement authority over providers practicing in their states, and over providers and facilities that are out-of-state but provide telehealth services to individuals in their states. The AMA suggests that the fundamental role of state licensing boards is to protect the public, and as such, it is imperative that state licensing boards continue to have oversight of all health care professionals providing care to patients within their state, regardless of the modality used to provide such care. This approach also ensures the state practice acts, informed consent and scope of practice laws apply. As correctly noted, many states have taken steps to address licensure of out-of-state providers caring for patients via telehealth. Such measures, including waivers and exceptions to licensure, should continue to be within the purview of the respective state legislatures and state licensing boards.

We appreciate the opportunity to offer input on the NPRM. Please contact Margaret Garikes, Vice President of Federal Affairs, at margaret.garikes@ama-assn.org or (202) 789-7409, with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "James L. Madara". The signature is written in a cursive style with a large initial "J" and "M".

James L. Madara, MD