

**60-day Notice Comments & Response Summary**  
**Patient Provider Dispute Resolution Requirements Related to Surprise Billing; Part II**  
**(CMS-10853/OMB control number: 0938-NEW)**

HHS received one comment from American Association of Oral and Maxillofacial Surgeons (AAOMS) related to an information collection request (ICR) HHS released concerning CMS-10853, a Paperwork Reduction Act (PRA) document detailing requirements to the patient provider dispute resolution requirements related to surprise billing. This is the reconciliation of the comments and it addresses the following comments.

*Comment #1:*

AAOMS pointed out that, as currently implemented, the PPDR process requires a provider to accept/receive a payment amount less than the charged amount for the unforeseen items and services not included in the good faith estimate, even when such charges are substantiated by credible information. The failure of the PPDR process to recognize the billed amount as the appropriate payment amount, when warranted, unfairly penalizes providers for the treatment of unforeseen medical circumstances.

Response:

We appreciate AAOMS's response to our comment solicitation, but this comment would require HHS to make changes to the regulations at 45 CFR 149.620 and is therefore out of scope for the changes related to this PRA package. HHS will take it into consideration for potential future rulemaking.

*Comment #2:*

AAOMS understands and appreciates the consumer protections established under the federal surprise billing regulations but they generally disagree with HHS that the median payment rate as defined is reflective of fair market pricing for healthcare items and services, nor that it reflects a reasonable payment amount. They argued that that actual market value may vary based on factors such as provider reputation, patient volume, service quality, geographic location, local competition, negotiations between payers and providers, government regulations, fee schedules and other factors that may not align with market forces.

Response:

We appreciate AAOMS's response to our comment solicitation, but this comment would require HHS to make changes to the regulations at 45 CFR 149.620 and is therefore out of scope for the changes related to this PRA package. HHS will take it into consideration for potential future rulemaking.

*Comment #3:*

In line with comment #2, AAOMS suggested HHS to consider updating the methodology for payment determinations under the PPDR to align with the federal IDR process. Specifically, they requested HHS to consider allowing the final payment amount for medically necessary services due to unforeseen circumstances to be equal to that of the total billed charges, when warranted.

Response:

We appreciate AAOMS's response to our comment solicitation, but this comment would require HHS to make changes to the regulations at 45 CFR 149.620 and is therefore out of scope for the changes related to this PRA package. HHS will take it into consideration for potential future rulemaking.

*Comment #4:*

AAOMS indicated the credibility standard under the patient-provider dispute process is ambiguous. As a result, they suggested HHS to consider issuing guidance to allow a determination of the type of information that meets the credibility standard in relation to the patient-provider dispute resolution process.

Response:

We appreciate AAOMS's response to our comment solicitation, but this comment would require HHS to make changes to the regulations at 45 CFR 149.620 and is therefore out of scope for the changes related to this PRA package. HHS will take it into consideration for potential future rulemaking.

*Comment #5:*

AAOMS believes that using a flat \$400 rate for the dispute threshold does not recognize the complex nature of many medical, dental and surgical items and services. Therefore, they encourage HHS to reconsider what is defined as "substantially in excess" regarding the total billed charges by a provider or facility in relation to the expected estimate of charges. For example, they indicated HHS may consider utilizing the greater of either \$400 over the expected charges presented in the good faith estimate or a predetermined percentage of the total billed charges as the threshold to trigger the patient-provider dispute resolution process.

Response:

We appreciate AAOMS's response to our comment solicitation, but this comment would require HHS to make changes to the regulations at 45 CFR 149.620 and is therefore out of scope for the changes related to this PRA package. HHS will take it into consideration for potential future rulemaking.