



*Bringing physicians together  
for a healthier Ohio*

March 15, 2021

Ohio Department of Insurance

Sent via email to: [surprisebilling@insurance.ohio.gov](mailto:surprisebilling@insurance.ohio.gov)

The Ohio State Medical Association (OSMA) would like to thank the Ohio Department of Insurance (ODI) for the opportunity to provide our initial comments regarding rules that are being drafted due to the implementation of House Bill 388, Ohio's Surprise Billing law.

After thorough review of the statutory citations below, and upon consultation with physicians and others who work in medical billing, we have the following comments to offer:

#### **General Questions/Clarifications**

- We would like to clarify that when providing services to an out-of-network patient, providers are given twelve (12) months to submit claims. Since the bill allows for bundling of claims and specifies that the service in question must have been provided not more than one year before the request. We believe twelve (12) months is specified in the language, but would like confirmation.
- Since the bill allows for providers or practices to arbitrate, we would like to clarify that ODI will allow a provider to appoint members of their administrative/billing staff to act on their behalf and communicate with ODI and the arbitration entity on all matters related to the arbitration proceedings.
- We would like to clarify that all payments made to providers for out-of-network claims are paid directly from plan to provider/practice. We believe this is the intent of the law since providers are prohibited from billing a patient for an out-of-network claim, but just want to confirm.

#### **R.C. 3902.51(A)(3)(c)**

OSMA recommends once the health plan issuer offers an amount of reimbursement, the provider should be given ninety (90) days to decide whether to accept the offer or notify the health plan they plan to negotiate reimbursement.

**R.C. 3902.52(G) No comments at this time.**

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**R.C. 3902.52(H)**

The OSMA believes it is not necessary to define a maximum number of providers in a practice. The language in sec. 3902.52 (A)(2)(a) is already very limiting as to the number (15) and type of claims which qualify to be bundled and potentially arbitrated together:

- Claims must be from the same health benefit plan;
- involve the same or similar services provided under similar circumstances;
- shall be for services using the same coding set and providers of the same license type.

**R.C. 3902.53(A)(2)**

The OSMA would like to discuss with the department when and under which circumstances Ohio's prompt pay law will apply to different aspects of the law. We believe there are time frames that should be established throughout different sections, and agree with bill language that specifies the prompt pay laws do apply to the paying of claims once a decision is rendered by the arbitrator.

Other areas time frames might need to be determined:

- Once a provider notifies ODI of their decision to arbitrate, ODI shall appoint an arbitrator. We would recommend this happen within ten (10) days.
- How long the arbitrator should be given to render a decision. We would recommend this happen within thirty (30) days.

**R.C. 3902.54(A)**

The OSMA has some concerns about how the Superintendent will ensure that the arbitration entity does not have any material, professional, familial, or financial connection to the providers, healthcare facilities, health plans, employees of the health plans, or drug companies. When arbitration entities have to consult with medical experts, coding experts, insurance experts and drug companies to research each case, one can think of many potential conflicts unless the arbitration entity is only utilizing out-of-state parties who have confirmed that they have no affiliations with the physician seeking arbitration.

**R.C. 3902.54(D)      No comments at this time**

The OSMA appreciates the opportunity to provide comments at this initial stage of rule drafting. The OSMA's Director of Regulatory Affairs, Jennifer Hayhurst, manages our activities with Ohio's regulatory agency rule drafting process. You may reach Ms. Hayhurst at [jhayhurst@osma.org](mailto:jhayhurst@osma.org).

We look forward to working with ODI on this new section of Ohio rules and we are always available should you have any questions or want to discuss the proposed rules.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd M. Baker". The signature is fluid and cursive, with the first name "Todd" being the most prominent.

Todd Baker  
CEO