

December 3, 2018

Commissioner Andrew Stolfi
Insurance Commissioner and Administrator
Division of Financial Regulation
Oregon Department of Consumer & Business Services
Salem, OR 97301



RE: Proposed Rules to Implement ORS 743B.287 Regarding “Surprise” Out of Network Services

Dear Commissioner Stolfi,

Thank you for the opportunity to comment on the proposed rules regarding reimbursement for out of network services obtained at an in-network facility as governed by ORS 743B.287. Moda Health was an active participant in the Rulemaking Advisory Committee (RAC) convened to develop these rules. Overall we support the proposed rules. We offer the following comments on various technical aspects of the proposal and also offer our suggestions for future reconsideration of this issue.

Given that ORS 743B.287 will change in 2022 to no longer address surprise out of network services, it is important that we keep focused on long term solutions to this problem. While ORS 743B.287 and these related rules implement important consumer protections for the next three years, they do not adequately address the continued rising cost of out of network services. Using median allowed amounts from the All Payer All Claims (APAC) database will eliminate high cost outliers from our pricing for these services. However, we expect it will continue to drive an increase in the cost of these services. Any discussion about addressing this issue on a longer term basis should center on more stable options for determining reimbursement, such as tying reimbursement to a percentage of what Medicare would pay for a service. This could allow us to both protect consumers from out of pocket expenses while also better addressing rising costs which leave consumers with more to pay each month in premium.

We offer the following feedback on the five areas for which you requested comment.

Geographic Areas: we recommend utilizing the Geographic Price Cost Index, which would establish two rating areas. This approach is administratively simpler and would align with the existing approach used for Medicare Advantage coverage.

CPI Adjustments: We support calculating the adjustment from January 2015 to July 2018, given that the 2019 annual average data is not yet available.

Base Units for Anesthesia Services: We recommend using the American Society of Anesthesiologists (ASA) guidelines, as they should be well understood by providers and payers. We currently utilize the ASA guidelines.

Obstetrical Anesthesiology Services: Obstetrical anesthesiology services are sufficiently addressed in the rules. Use of an alternate formula would complicate an already complicated



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process and was not discussed during the RAC process. Therefore, it should not be included in the rules.

AD Modifier: We support use of the AD modifier for anesthesia services. This modifier is used by physicians in circumstances in which more than four procedures are supervised. Use of the modifier is common practice.

Lastly, we offer additional comment on the following area.

NU and RR Modifiers: These modifiers are utilized to differentiate between new and rental Durable Medical Equipment (DME) items. We do not foresee a need for these modifiers to be used in any surprise out of network scenarios and therefore recommend that they be removed from the "Modifier adjustment" definition under OAR 836-053-1605. If the RR modifier remained in the rules, further guidance would be needed to determine how to calculate the rental period for the device.

Thank you again for the opportunity to comment on these rules.

Sincerely,

A handwritten signature in black ink, appearing to read "Dave Nessler-Cass". The signature is fluid and cursive, with a long horizontal stroke at the end.

Dave Nessler-Cass
Chief Compliance Officer and Director, Regulatory Affairs
Moda Health Plan, Inc.