



Wisconsin Office of the  
**COMMISSIONER**  
**OF INSURANCE**

# No Surprises Act

January 26, 2022

# Enforcement Overview

- States are the primary enforcers
  - CMS worked with states to enter into a Collaborative Enforcement Agreement (CEA)
- Wisconsin entered a CEA to maintain the primary enforcement role for most of the NSA provisions, with some exceptions
  - CEAs are available on CMS' website
- If a State fails to enforce a provision of the Act, HHS assumes enforcement of the provision and can impose a civil monetary penalty against the entity of up to \$10,000 per violation
- DOL enforces provisions as to self-funded group health plans - except self-funded non-federal, governmental plans (i.e. school districts, villages, towns, etc)

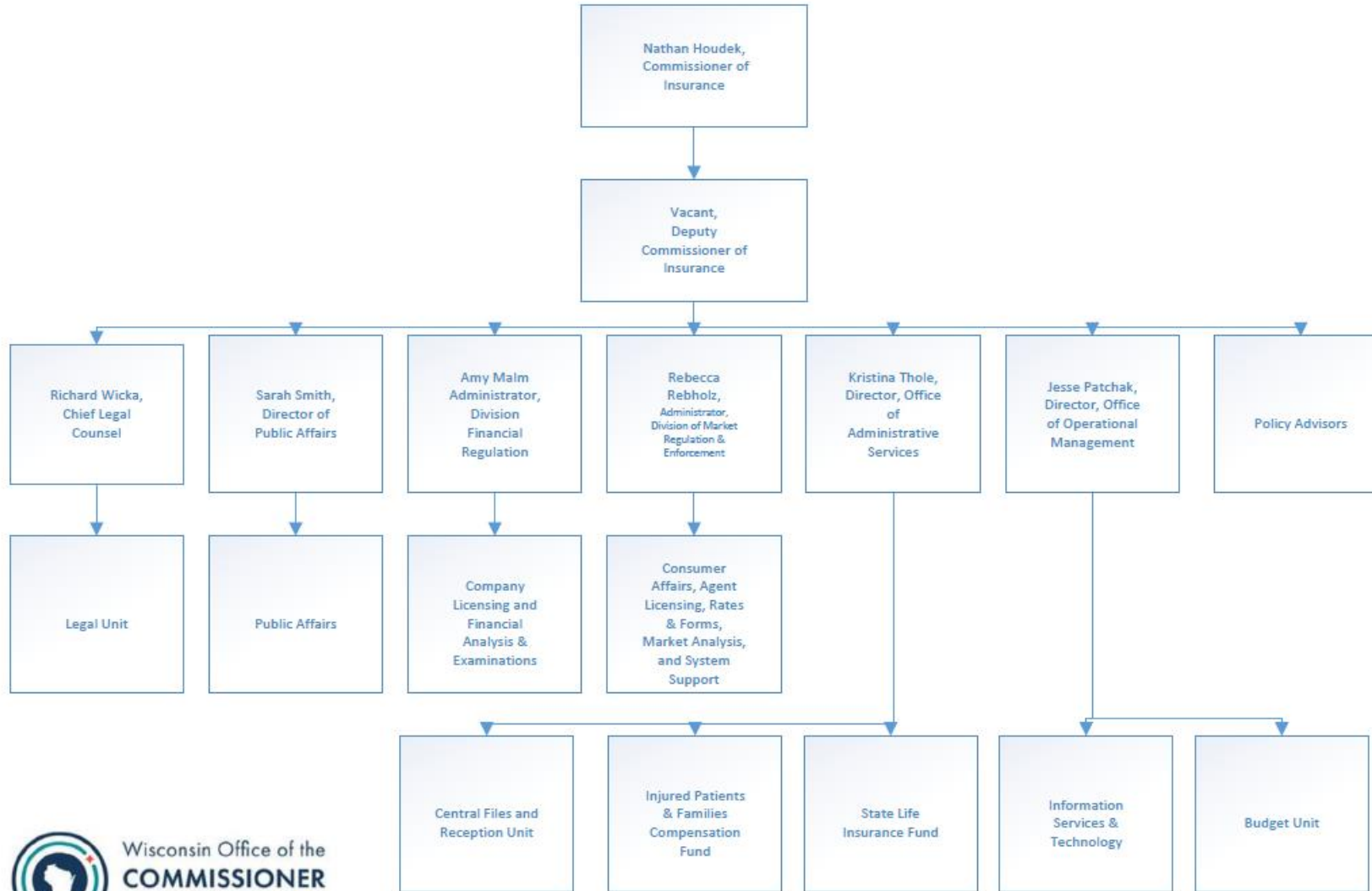


# Enforcement Process

- Wisconsin will “triage” surprise/balance billing issues
  1. OCI will identify whether the issue falls under the NSA
  2. If we are not primary enforcer, we will refer to CMS
  3. If we are primary enforcer we will:
    - i. Communicate, collect information/documentation, investigate and facilitate resolution where possible
      1. Outline where we see non-compliance with the NSA
      2. Request the entity to come into compliance
    - ii. Refer issues to CMS where we were not able to facilitate a resolution



# Office of the Commissioner of Insurance Organizational Chart



# NSA Enforcement at OCI

- The Division of Market Regulation and Enforcement (DMR):
  - determines compliance with applicable laws and rules, like the No Surprises Act
  - handles consumer complaints
  - initiates administrative actions
  - reviews insurance company policy forms and rates
  - conducts Market Conduct Exams and reviews along the continuum
  - investigates agent activities



# NSA Enforcement at OCI, cont.

- DMR processes and investigates consumer complaints
- This is managed by the Consumer Affairs unit
  - 5 designated health insurance examiners will be primarily responsible for handling complaints and questions related to NSA



# OCI Complaints Process

- Complaints
  - OCI has an NSA-specific complaint form
  - Complaints can currently be filed by mail with an online option coming soon
  - A copy of the complaint, and a letter requesting a response is sent to the entity named in the complaint
- Requests for Information
  - Response is provided via email to the requestor
  - Communication is tracked in our complaint system
  - Can become an OCI complaint or a referral
- Referrals
  - In instances where we don't have regulatory authority, we refer complaints from OCI to the appropriate state or federal agency



# OCI Enforcement Authority: Health Carriers

- Disclosure of agent/broker commission
- Consumer Transparency Notice/EOB from the health plan
- Consumer notice on insurance card
- Gag clauses
- Continuity of Care – health plan requirements
- Price Comparison Tool – available via telephone, paper copy and website
- Provider Directories: Verification process, response protocol, provider database and information on website





# OCI Enforcement Authority: Providers/Facilities

- Consent for out of network care
- Consumer Notice of Rights
- Balance billing for:
  - Non-emergency services furnished by an OON provider at participating health care facilities
  - Emergency care
- Continuity of Care – provider/facility requirements
- Provider Directories
- Refunds to Enrollees
- Advance Notice/Good Faith Estimates:
  - If individual is insured, and seeking to have a claim submitted to their insurer, notice goes to the insurer
  - If individual is not insured, or not intending to submit claim to their insurer, notice goes to the individual



# Provisions with Deferred/Delayed Enforcement

- Price Comparison Tool
  - HHS will defer enforcement of this requirement before plan years beginning on or after January 1, 2023
- Good Faith Estimate/Notice for insured individual
  - Pending further rulemaking.
- Good Faith Estimate for uninsured individual
  - If GFE includes charges from co-providers/co-facilities, GFEs for those charges are deferred until 12/31/22.
- Notice in Advance of Services – from health plans
  - Pending further rulemaking.



# Provisions Awaiting Further Rulemaking

- Provider Directory requirements for insurers:
  - Pending further rulemaking, CMS will not deem a plan/issuer to be out of compliance with provider directory requirements as long as out-of-network costs are not imposed on an individual who was provided incorrect provider information.
- Consumer Transparency Notice requirements for insurers:
  - Plans/Issuers implement these requirements using a good faith, reasonable interpretation of the statute. CMS has issued a model disclosure notice that can be used to satisfy these disclosure requirements.
- Continuity of Care requirements:
  - a. Any future rulemaking will be prospectively applied to allow a reasonable amount of time for compliance.



# CMS Enforcement Authority

Areas in which OCI does not have primary regulatory authority under the CEA will be referred directly to CMS. These areas include:

- External Review – Wisconsin External Review (IRO) process will not apply.
- Federal Independent Dispute Resolution (IDR) process and the rules around that including:
  - Timelines
  - Qualified payment amount
  - Factors considered by the arbitrator
  - IDR fees
  - Reporting to HHS on IDR proceedings
- Air Ambulance billing
- Ground ambulance billing (pending outcome of advisory committee findings)



# Communicating with OCI

- Dedicated email box: [OCINSAComplaints@wisconsin.gov](mailto:OCINSAComplaints@wisconsin.gov)
  - Use for questions, comments and/or submitting a complaint if not done online
- If a complaint file exists, contact the assigned examiner
- Sign up for OCI list serve to receive Bulletins and Press Releases:  
<https://oci.wi.gov/Pages/AboutOCI/ListServe.aspx>
- Provide us with complete contact information including: a contact name, email address, mailing address, & phone number for:
  - Complaints we receive naming providers/facilities
  - Communications specific to providers/facilities regarding the NSA



# Resources

- You can find this presentation linked from the OCI NSA landing page here:  
<https://oci.wi.gov/Pages/Consumers/NoSurprisesAct.aspx>
- CMS NSA website: <https://www.cms.gov/nosurprises>
- FAQs about the ACA and CAA 2021:  
<https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-49.pdf>
- FAQs about Good Faith Estimates:  
<https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Guidance-Good-Faith-Estimates-FAQ.pdf>



# Federal Complaints and Questions

- The Federal agencies have set up a Help Desk and websites to receive questions and complaints re: the No Surprises Act.
  - The No Surprises Help Desk is available from 8 am to 8 pm EST, 7 days a week.
  - Questions or complaints can be submitted by calling 1-800-985-3059.
- Consumers and providers can also submit a complaint online:
  - Consumer Web Form [https://cmsitsm.servicenowservices.com/x\\_g\\_cfm\\_nshd\\_NSA%20Privacy%20Policy%20Consumer.do](https://cmsitsm.servicenowservices.com/x_g_cfm_nshd_NSA%20Privacy%20Policy%20Consumer.do)
  - Provider Web Form [https://cmsitsm.servicenowservices.com/x\\_g\\_cfm\\_nshd\\_NSA%20Privacy%20Policy%20Provider.do](https://cmsitsm.servicenowservices.com/x_g_cfm_nshd_NSA%20Privacy%20Policy%20Provider.do)
- For helpful tips on how to complete the complaint form, visit: <https://www.cms.gov/nosurprises/consumers/complaints-about-medical-billing>
- Resolving billing disagreements between consumers and providers: To initiate the patient-provider dispute resolution process (PPDR), you can start a dispute online, mail, or fax. <https://nsa-idr.cms.gov/billdisputes/s/>





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## Questions?



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