

## 2020 Merit-based Incentive Payment System (MIPS) Data Release Consent Form- Individual Clinician Reporting

This Data Release Consent Form ("DRCF") is entered into by and between the American Academy of Otolaryngology-Head and Neck Surgery Foundation ("AAO-HNSF") and the undersigned provider ("Provider") regarding Practice's participation in the Merit-based Incentive Payment System ("MIPS") administered by the U.S. Department of Health & Human Services Centers for Medicare & Medicaid Services ("CMS"), through use of AAO-HNSF's Reg-ent<sup>sm</sup> Registry ("Reg-ent"), a Qualified Clinical Data Registry ("QCDR") and a Qualified Registry ("QR"), in reporting year 2020. Practice and AAO-HNSF acknowledge and agree to the following:

### RECITALS

- a. Provider or Practice has entered into an agreement with AAO-HNSF to participate in Reg-ent QCDR/QR (the "Participation Agreement"). The Participation Agreement specifies the collection of data from Practice and Practice's ability to generate comparative reports through AAO-HNSF's Reg-ent QCDR/QR. The group and AAO-HNSF also have entered into a Business Associate Agreement/Data Use Agreement (the "BAA/DUA") setting forth requirements for the collection, storage, use and/or disclosure of provider's data in compliance with applicable requirements of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and the regulations promulgated thereunder by the United States Department of Health and Human Services codified at 45 CFR Parts 160 and 164 (commonly known as the Privacy and Security Rules) as amended by the Privacy and Security provisions set forth in Section 13400 of the Health Information Technology for Economic and Clinical Health Act, Public Law 111-5, and applicable state patient privacy laws or regulations.
- b. This DRCF enables AAO-HNSF to facilitate Practice's participation in MIPS subject to the provisions in the Participation Agreement and the BAA/DUA.

### AAO-HNSF Responsibilities:

1. Quality Measure Data Submission and Validation:
  - a. At the time of its QCDR/QR registration, AAO-HNSF will notify participants of the requirements for successful MIPS QCDR/QR reporting for obtaining an incentive and avoiding a penalty under the MIPS program, including number and type of measures to report in each performance category and patient sample size.
  - b. AAO-HNSF, or FIGmd, AAO-HNSF's database vendor (referred to collectively for purposes of this DRCF as "AAO-HNSF") will submit to CMS quality measure data/data results that demonstrate satisfactory participation in MIPS in the following performance categories, as selected by Provider: (i) Quality, (ii) Promoting Interoperability; and/or (iii) Improvement Activities.
  - c. AAO-HNSF will provide CMS a signed, written attestation statement via e-mail which states that the quality measure results and any and all data, including numerator and denominator data, provided to CMS are accurate and complete, as reported and attested to by the individual physician/clinician participants. AAO-HNSF will confirm individual physician/clinician National Provider Identifiers ("NPI") using a national database such as National Plan and Provider Enumeration System ("NPPEs").
  - d. Upon request by CMS, AAO-HNSF will provide CMS with access to the Reg-ent QCDR/QR database in order to review beneficiary data on which the AAO-HNSF's Reg-ent QCDR/QR submissions are based, or alternatively provide CMS a copy of the actual data used for such. Upon request, AAO-HNSF will also make available to CMS the contact information of individual physician/clinician participants, which shall include, at a minimum, the phone number, address, or email.
  - e. If determined necessary by CMS, AAO-HNSF will make available to CMS samples of patient level data in the Reg-ent QCDR/QR for validating data submitted to CMS on behalf of AAO-HNSF's Reg-ent QCDR/QR physician/clinician participants. CMS will validate that Tax Identifier Number ("TIN") TIN/NPI combinations match what is used for Medicare billing and that Medicare beneficiary counts by TIN/NPI match what is submitted by AAO-HNSF for each TIN/NPI combination.
  - f. AAO-HNSF shall submit data adhering to the deadlines established by CMS. Once the MIPS QCDR/QR submission deadline has passed and the CMS QCDR/QR portal has closed, resubmissions of data will not be accepted. AAO-HNSF cannot submit data to CMS after the deadline and is not responsible for any participant submission of data after the CMS QCDR/QR data submission deadline has passed.
  - g. AAO-HNSF will not submit data on Provider's behalf if Provider is not an active submitter to AAO-HNSF, even if Provider has completed this DRCF. Final submission eligibility decisions shall be made by AAO-HNSF in its sole discretion.
  - h. AAO-HNSF will retain all data submitted to CMS for purposes of MIPS for at least 10 years.

QCDR/QR Participant Responsibilities:

1. Provider shall submit and/or permit the extraction of a data record, for each patient receiving medical care that meets the inclusion criteria and core data element documentation as stated in the Participation Agreement, within the established "call for data period" as articulated by CMS. Provider understands that failure to submit data within the call for data period may result in exclusion from MIPS.
2. Provider declares intent to submit data as an individual eligible clinician participant for MIPS through AAO-HNSF's Reg-ent QCDR/QR no later than thirty (30) days prior to the MIPS QCDR/QR submission deadline and will provide and attest to the accuracy of the following:
  - Confirmation of Medicare Part B participation and billing
  - NPI and TINs under which Provider bills Medicare Part B
  - Individual NPI associated with data submitted to AAO/HNSF's Reg-ent QCDR/QR
  - Provide tax documentation to confirm TINs, if requested.
3. Provider confirms and attests to the accuracy and completeness of all data being submitted to AAO-HNSF on Provider's behalf, including the following:
  - TIN/NPI combination(s) used in AAO-HNSF's Reg-ent QCDR/QR are accurate and used on submission of Medicare claims
  - The NPI associated with the submitted measures is Provider's individual NPI
  - At least one Medicare patient is included in the Quality data
  - The reporting denominator or number of eligible procedures for each measure meets or exceeds the required 70% sample of all measure-relevant procedures, per TIN/NPI combination, or an attestation that all performed procedures relevant to the measures were submitted to AAO-HNSF's Reg-ent QCDR/QR
  - Provider will furnish AAO-HNSF with data on all patients meeting the inclusion criteria as stated in the Participation Agreement
4. Provider understands AAO-HNSF is not responsible for the accuracy of attestations for the Promoting Interoperability and Improvement Activities performance categories and that Provider is responsible for maintaining documentation for supporting his/her attestations made for at least 6 years from the end of the 2020 MIPS performance period (i.e. January 1, 2026).
5. Provider authorizes AAO-HNSF and/or FIGmd, acting on behalf of AAO-HNSF (referred to collectively for the purposes of this DRCF as "AAO-HNSF") to submit to CMS, on Provider's behalf, reporting and performance data on measures confirmed by Provider for purposes of participation in the MIPS program, and understands that CMS may publicly disclose quality measure results associated with the MIPS program. Provider understands that such data will include quality measure results, the number of eligible instances applicable to MIPS, the number of instances of quality services performed, and other information related to services Provider furnished to all of its patients with certain medical conditions. Such public disclosure will not include any patient-specific information. Provider also agrees to ensure that data related to the relevant measures is submitted in the form and by the dates specified by AAO-HNSF in order to allow Provider to qualify for the Medicare physician/clinician incentive payment or to avoid payment adjustments.
6. Provider understands in signing this consent form, Provider is electing to report as an individual eligible clinician for the 2020 performance year and, as such, must report as an individual eligible clinician across all performance categories. If Provider had intended to report as part of a group, Provider would not sign this form for individual eligible clinician reporting.
7. As required by CMS guidelines, Provider will comply in all respects with AAO-HNSF's Reg-ent QCDR/QR data validation plan, which will include periodic audits by AAO-HNSF. Provider will provide data necessary for such data audit or validation, including patient-level data and clinical documentation demonstrating completion of Improvement Activities and data and documentation/data supporting Promoting interoperability measures and activities reporting completed through Reg-ent. Provider acknowledges that Provider will be responsible for any costs associated with compliance with the audit requirements (e.g., record retrieval, photocopying, mailing, etc.). Failure to comply with this contractual requirement may result in Reg-ent not supporting MIPS reporting for your practice.
8. Provider understands that AAO-HNSF is not responsible for the content of the submitted data and whether it meets the requirements for the MIPS incentive payments or to avoid MIPS adjustments. While AAO-HNSF offers sufficient measure quantity and type options to meet MIPS requirements, not all measures may be available to all Practices or Providers within practices for reporting due to their individual information technology installations, patient mix, and/or clinical documentation patterns. It is the responsibility of Provider to ensure that MIPS incentive payment or adjustment avoidance thresholds for measure number and type are met prior to submission. All final adjustments or incentive payments for MIPS are made by CMS; AAO-HNSF cannot guarantee payment and does not make final incentive eligibility decisions or calculate incentive payment amounts.
9. Provider agrees to review measure results in the AAO-HNSF's Reg-ent QCDR/QR at least four times a year based on the following CMS requirement for a QCDR/QR: Provide timely feedback, at least four times a year, on the MIPS performance categories at the individual eligible clinician level for which the QCDR/QR reports on the eligible clinician's behalf for purposes of the individual eligible clinician's satisfactory participation in the QCDR/QR.

10. Provider hereby waives, releases, and holds AAO-HNSF and its members harmless from, any claims Provider may have against AAO-HNSF arising out of its submission of Provider's information to CMS for MIPS purposes, except to the extent that such act or omission is the result of AAO-HNSF's gross negligence or willful misconduct. Provider understands that AAO-HNSF's liability for any such claims will be limited to the amount of MIPS payments due to Provider and that AAO-HNSF shall not be liable for any incidental or consequential damages as a result of its failure to submit Provider's data to CMS. Further, AAO-HNSF shall not be liable for or provide compensation to Provider for negative adjustments incurred by the Provider, including those resulting from insufficient measure count or type. Provider provides this waiver and release knowingly and voluntarily.
11. Provider gives permission to AAO-HNSF to submit this signed DRCF, which includes Provider's email address, to CMS in order to demonstrate compliance with CMS guidelines. This DRCF hereby allows AAO-HNSF to make multiple submissions to CMS related to Provider's participation in the MIPS program, and Provider acknowledges that a new DRCF will not be required or signed for each individual submission.
12. This DRCF shall be effective for the 2020 MIPS reporting year, barring updates to this DRCF as determined by AAO-HNSF. Provider understands that this DRCF shall remain in full force and effect unless Provider provides AAO-HNSF with written notice of termination. Provider may terminate this DRCF upon ten (10) days' written notice to AAO-HNSF at any time. AAO-HNSF may terminate this DRCF (i) upon ninety (90) days' written notice to Provider at any time or (ii) upon five (5) days' written notice to Provider due to breach of any of the responsibilities of Provider that render AAO-HNSF unable to carry out its responsibilities under this DRCF. Termination of this DRCF shall not constitute a termination of the Participation Agreement.
13. Provider agrees that this DRCF represents consent and authorization, on behalf of the Provider, for AAO-HNSF, either directly or through its subcontractors, to extract, format and submit to CMS the required data elements for MIPS (such data, "MIPS Data")
14. Provider understands that if they do not submit data to CMS within deadlines established by CMS, this Data Release Consent Form is deemed cancelled. Neither the Reg-ent registry, the AAO-HNS/F, nor FIGmd shall have any liability, including, but not limited to penalties imposed by CMS. Provider's acceptance by electronic signature indicates agreement to the above conditions.
15. This DRCF, together with the Participation Agreement and the BAA/DUA, constitutes the entire agreement between the parties and supersedes all prior understandings and writings, between the parties with respect to the subject matter herein. No amendments or waivers to this DRCF shall be effective unless in writing and signed by an authorized representative of the party against whom such amendment or waiver is to be enforced. This DRCF may not be assigned without the written consent of the non-assigning party.
16. Provider's acceptance by electronic signature indicates agreement to all of the above conditions.

**IN WITNESS WHEREOF**, Provider and AAO-HNSF have caused this DRCF to be executed as of \_\_\_\_\_ day of \_\_\_\_\_, 2021:

PROVIDER

AAO-HNSF

Practice Name:

Signature: James C. Denny, III

Provider TIN:

Name: James C. Denny, MD

Its: Executive Vice President/CEO

Eligible Professional Name:

Date: \_\_\_\_\_

NPI:

Signature:

Printed Name:

Email:

Date: