



Advocacy in action: Fairness in out-of-network billing disputes

What's at stake

The No Surprises Act signed into law in 2020 contained provisions intended to address unexpected gaps in insurance coverage that result in “surprise medical bills,” instances in which patients unknowingly obtained medical services from physicians and other health care providers outside their health insurance network.

While several iterations of the legislation were written, the AMA stood fast in advocating that the bill adhere to seven principles that called for insurer accountability and transparency while protecting patients and keeping them from getting caught in the middle of payment disputes.

The Biden administration issued interim rules governing the law's independent dispute-resolution (IDR) process that didn't match the law Congress passed and were skewed in favor of insurance companies. The IDR process written into the law by Congress requires each party to submit a single, final offer—a process that encourages each side to submit reasonable offers with allowable supporting evidence.

But the administration's rules include provisions essentially requiring arbitrators to focus their decision on one factor: the median rate paid to in-network physicians, hospitals and others—called the qualifying payment amount (QPA). The regulators, not Congress, have directed arbitrators to use the QPA as the presumptive payment and limit when and how other factors should be weighed in determining the appropriate payment amount.

The impact of the administration's rules could have long-term impacts on the ability of physicians to negotiate fair contracts with payers and the ability of patients to access in-network services, or eventually any care, at all. Physicians across the country are already experiencing take-it-or-leave-it payment cuts to long-standing contracts with payers, and many physician practices have had their contracts terminated as a result of the No Surprises Act regulations.

The AMA's position



Along with the American Hospital Association (AHA), the AMA supports a Texas Medical Association (TMA) lawsuit challenging the Biden administration's final rule implementing the IDR process created by Congress and contained in the No Surprises Act.

The two associations have filed an amicus brief supporting the TMA lawsuit (PDF), which was filed in the U.S. District Court the Eastern District of Texas and names as plaintiffs the U.S. departments of Labor, Treasury, and Health and Human Services, along with the secretaries who lead each department.

"Regulations implementing the IDR process placed a thumb on the scale in favor of insurers by requiring the arbiter to consider the health plans' median in-network rate, or QPA ... as the appropriate out-of-network rate in most situations, essentially predetermining the outcome of the process," Bobby Mukkamala, MD, chair of the AMA Board of Trustees, said during an AMA Advocacy Insights webinar on the law's out-of-network payment process.

AMA advocacy in action

The AMA has:

- Led an effort with national specialties and state medical associations to build consensus and affect the No Surprises Act regulations.
- Filed an amicus brief in federal district court with the AHA to support a TMA lawsuit arguing that the government's final rule remains contrary to the law and exceeds statutory authority by adding various extra-statutory language that overweighs the QPA.
- Initiated the filing of a lawsuit in federal district court (PDF), along with the AHA, arguing that the government's interim final rule is contrary to the law and exceeds statutory authority by creating a rebuttable presumption that the arbiter in the IDR process consider the QPA as the appropriate out-of-network payment amount. A federal judge in Texas ruled in favor of a similar case brought by the TMA, effectively removing the rebuttable presumption.
- Advocated for a fair IDR process in meetings, comments and letters, including a letter (PDF) to the Biden administration arguing that a balanced IDR process is not anti-patient, pushing back on payer and employer efforts to undermine the process.

The AMA is:

- Working directly with the Centers for Medicare & Medicaid Services to address operational challenges with additional resources for physicians and others.



Advocacy resources

- Recently adopted AMA policy on out-of-network care.
- Guide to Surprise Billing Provisions in the Consolidated Appropriations Act 2021 (PDF).
- Summary of No Surprises Act final rule and supporting documents (PDF).
- Toolkits for physicians on preparing for implementation of the No Surprises Act (PDF) and disputing network payments using the No Surprises Act IDR process (PDF).
- More on implementation of the No Surprises Act, including two in-depth AMA Advocacy Insights webinars.

Learn more

Visit AMA Advocacy in Action to learn more about the advocacy priorities the AMA is actively working on.

Get involved

The AMA works to generate support for policies critical to the nation's health care system—and we can't do it without your help. Learn more about ways to get involved with AMA advocacy.