

Don't skew surprise-billing regulations in health plans' favor

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Editor's note: *At this article's deadline, the Biden administration proposed another rule to implement the No Surprises Act. Find out why the surprise-billing regulation represents a surprise gift to the insurance industry.*

The AMA has serious concerns about the method for calculating the qualifying payment amount (QPA), a provision of the No Surprises Act (NSA) law that's designed to protect patients from unexpected out-of-network fees for services that they believed were covered by their insurance plan.

Under the NSA, the QPA is meant to represent the median in-network rates for health care providers with each plan (frozen at 2019 levels and increased each year for inflation). The method plans should use to calculate a QPA for a health care service was included in a recent interim final rule (IFR), which is likely to be the first of many regulations to be developed in the implementation of the No Surprises Act, which was signed into law as part of the \$1.4 trillion Consolidated Appropriations Act of 2021 and takes effect Jan. 1.

In addition to creating a method for calculating the QPA, the IFR also addresses NSA provisions related to notice and consent for out-of-network care and treatment of state surprise billing laws.

QPA calculation

There is a concern that, instead of producing market-rate physician payments, the QPA will generate rates reflective of health plans' market power (PDF) in increasingly noncompetitive regional markets. For example, under the IFR, small and large contracts will be weighted equally when determining the median contracted rate. Additionally, bonuses or other incentive-based, nonfee-for-service payments are not considered when determining the median. Moreover, plans actions such as downcoding and denials of claims will skew the QPA further.

“Ultimately, we believe it is in all stakeholders’ best interest to ensure that the calculation that purports to represent a median in-network commercial rate for provider payments in this process is truly reflective of the market,” AMA Executive Vice President and CEO James L. Madara, MD, wrote in a letter to Centers for Medicare & Medicaid Services (CMS) Administrator Chiquita Brooks-LaSure.”

“The QPA, under the method outlined in the IFR, does not meet that standard,” Dr. Madara’s letter says.

Dispute-resolution fairness a must

The QPA will be used to determine patient cost-sharing in a surprise billing situation and the AMA’s comments on the IFR recognize the importance of keeping such cost-sharing low.

However, under the NSA, the QPA is also submitted to the independent dispute resolution (IDR) entity, if a payment dispute reaches that point, to help determine a fair payment to the health care provider. A nonrepresentative QPA could significantly taint that process.

If the IDR process is skewed to favor health plans, it will create a “race to the bottom” in the negotiation of commercial rates, according to Dr. Madara’s letter.

If “plans are always able to prevail—it becomes nearly impossible for many physicians to engage in meaningful negotiations with plans,” Dr. Madara wrote.

Potential to confuse physicians

More clarity and transparency is needed for those physicians navigating out-of-network billing in states with existing surprise-billing laws to minimize confusion.

“Another major concern for the AMA is physicians being able to clearly identify which set of rules apply to a claim when a specified state law is also in place,” the AMA’s comments state. “We think it is impossible to overstate the potential for physician confusion in navigating two regulatory structures, potentially even within the same episode of care depending on the scope of a state law.”

The AMA is calling on CMS to address these concerns with corrections or clarifications in future rulemaking related to the law’s implementation.

Read the AMA’s summary of the IFR and AMA comment letters on rule-making for the No Surprises Act (PDF).