Surprise billing rule provision jeopardizes patient access to care

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What's the news: The AMA and the American Hospital Association (AHA) have sued the federal government over the Biden administration's misguided plan for implementing a narrow but critical provision in the No Surprises Act (NSA)—a new law designed to protect patients from unexpected out-of-network medical bills. The suit, filed in the district court for the District of Columbia, argues that the plan ignores statutory language and would result in reduced access to care for patients.

The legal challenge is necessary because the rule, set to take effect Jan. 1, would upend a carefully crafted congressional compromise on how to resolve billing disputes. Instead, it places a heavy thumb on the scale of an independent dispute-resolution process that would unfairly benefit insurance companies.

It would also, ultimately, reduce access to care by discouraging meaningful contract negotiations and reducing physician and hospital networks.

The AMA and the AHA strongly support protecting patients from unanticipated medical bills and were instrumental in passing this landmark legislation to keep patients from getting caught in the middle of billing disputes between commercial health insurers and physicians or hospitals.

That is why the lawsuit is narrowly focused on bringing the regulations in line with the what the law says and would not prevent the law's core patient protections from moving forward, including limitations to out-of-pocket costs for patients.

> "Congress established important patient protections against unanticipated medical bills in the No Surprise Act, and physicians were a critical part of the legislative solution," said AMA President Gerald E. Harmon, MD. "But if regulators don't follow the letter of the law, patient access to care could be jeopardized as ongoing health plan manipulation creates an unsustainable situation for physicians. Our legal challenge urges regulators to ensure

> the meaningful process to resolve disputes between health care providers and insurance companies created by Congress is realized."

The concerns of the AMA and AHA are being echoed by a bipartisan coalition of congressional leaders who declare that the new rule and a separate decision to delay implementation of the NSA's patient protection provisions "do not reflect the law that Congress passed."

House Ways and Means Committee Chair Rep. Richard E. Neil, D-Mass., and Ranking Minority Member Rep. Kevin Brady, R-Texas, wrote in a letter to the secretaries of the Health and Human Services, Labor and Treasury departments that "Congress deliberately crafted the law to avoid any one factor tipping the scales during the IDR [independent-dispute resolution] process." They added that the interim final rule "strays from the No Surprises Act in favor of an approach that Congress did not enact in the final law."

Why it's important: Hospital-based physicians and physician practices who have been under stress while providing front-line care for COVID-19 patients are also facing financial stress due to lower patient volume (PDF) during the pandemic. Some independent practices may be forced to close, while others face tough decisions such as whether to accept outside funding from private equity sources, join hospital systems, or consolidate with larger groups.

"Unfortunately, these regulations could jeopardize patient access to care by putting unnecessary financial strain on physicians providing direct medical care, undercutting efforts by physicians to negotiate fair contracts with health plans, and reducing the breadth of provider networks across the country," said Dr. Harmon, a family physician in South Carolina.

The Biden administration's rule lessens insurers' incentives for negotiating fair contracts, and the AMA predicts that fewer contracts will be offered because of it.

Instead of producing market-rate physician payments, the rule put forth by the administration this past September could generate rates reflective of health plans' market power in increasingly uncompetitive regional markets.

The lawsuit notes that this scenario is already playing out in North Carolina. The dominant insurer in the commercial market there, Blue Cross Blue Shield North Carolina, has threatened to terminate agreements with physicians and hospitals who do not agree to lower rates in light of the new rule.

"Put simply, this lawsuit seeks to preserve access to care; the September Rule would reduce it," the lawsuit says. "Congress did not intend that result."

Learn more: Read the AMA's analysis of an earlier interim final rule implementing other elements of the NSA and learn why surprise-billing regulations shouldn't be tilted toward health plans.

The AMA supports stronger provider network regulations to ensure fair payment to out-of-network physicians. Find out the six ways that insurers are driving the surprise-billing phenomenon.