Key change needed to make No Surprises Act work as Congress intended

DEC 10, 2021

Gerald E. Harmon, MD
President

Physicians prioritize patient needs above all other considerations. To advance that mission, our AMA works tirelessly to improve access to quality, affordable health coverage for everyone, which includes protecting patients from the financial harm posed by unanticipated medical bills that can be generated through out-of-network care.

That is why our AMA has joined the American Hospital Association in asking the courts to ensure that the dispute-resolution provisions of the No Surprises Act reflect the basis for its bipartisan passage through Congress: a balanced and equitable process for settling payment disputes.

Let me be clear: The AMA’s support for the patient protections in the No Surprises Act against unanticipated medical bills remains in place. We supported the intent of this landmark law protecting patients from billing disputes between providers and commercial health insurers. Our lawsuit seeks to change only one aspect of the law’s implementing regulations put forward by federal regulators this fall, which we believe thwarts the intent of Congress and will result in reduced access to care for patients.

Reduced access to care

In essence, the implementation of No Surprises Act dispute-resolution process under rulemaking by the Biden administration skews the outcome in favor of insurance providers by artificially deflating payment rates for physicians caring for their patients.

Instead of the careful compromise Congress worked over two years to achieve for settling billing differences that end up in the independent dispute resolution process, federal regulators would unlawfully force arbiters to assume the median in-network rate is the appropriate out-of-network

URL: https://www.ama-assn.org/about/leadership/key-change-needed-make-no-surprises-act-work-congress-intended
Copyright 1995 - 2021 American Medical Association. All rights reserved.
rate—while limiting when and how other factors may be considered. This is equivalent to placing a thumb on the scale of the dispute-resolution process and tipping the result in favor of insurers.

Unless this aspect of implementation is changed, the harm thus inflicted will extend to patients when insurers further narrow their networks of physicians, hospitals, and other providers. Commercial insurers can be expected to exploit the fact they have little or no incentive to fairly negotiate with providers to bring them into or keep them in their provider networks.

Insurers, many of whom already have inadequate networks of in-network providers, will be incentivized to further slice these rosters by dropping providers who don’t agree to accept the significantly lower rates that emerge under the new rule. This is not a hypothetical threat; it has already happened in North Carolina.

**Physician practices already stressed**

The timing of this provision of the No Surprises Act is especially damaging to physician practices across our nation, as sharp reductions in patient volume and revenue driven by the pandemic combine with higher practice costs to threaten their continued financial viability.

The impact is persistent; more than 80% of physicians surveyed by the AMA in July and August 2021 noted that revenue remained below pre-pandemic levels. Allowing powerful commercial insurers to routinely undercompensate these providers will have predictable results going forward—and further restrict patient access to care.

The legal action we have undertaken to correct the imbalances created by regulators in implementing the No Surprises Act in no way affects the core patient protections the law affords, but seeks only to realign its implementation with the balanced, patient-friendly goals outlined by Congress in its passage.

As things now stand, the flawed dispute resolution process set to take effect Jan. 1, 2022 is in direct opposition to those goals. We are confident that, if sustained, the challenge we have put forth will protect patients in precisely the manner the architects of the No Surprises Act intended.