

# What physicians need to know about the No Surprises Act

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## Featured topic and speakers

In today's episode of Moving Medicine, AMA Chief Experience Officer Todd Unger discusses the No Surprises Act and what it means for patients and physicians with Emily Carroll, JD, a senior legislative attorney for the AMA's Advocacy Resource Center.

### Speaker

- Emily Carroll, JD, senior legislative attorney, AMA Advocacy Resource Center

## Transcript

**Unger:** Hello, this is the American Medical Association's Moving Medicine video and podcast. Today we're joined by Emily Carroll, a senior legislative attorney for the AMA's Advocacy Resource Center, who will discuss the No Surprises Act and what it means for patients and physicians. I'm Todd Unger, AMA's chief experience officer in Chicago.

Emily, thanks again for joining us. I know there are a lot of issues to discuss with regard to surprise billing, including a legal challenge that's now in the courts, but why don't we just start by talking a little bit about what is in the No Surprises Act and what it was trying to accomplish?

**Carroll:** Thanks for having me. Last year in December, the No Surprises Act passed as part of the Consolidated Appropriations Act, and it basically aims to protect patients from the financial impact of

surprise medical billing ... and just really quick background on surprise medical billing. It's essentially when a patient receives care from an out-of-network provider in either an emergency situation, where the hospital might be out of network, too, or at an in-network facility where the patient wasn't able to choose or select their provider. So there's no contract in place between that provider and the plan. And then the provider usually sends the bill to the plan, the plan determines what they want to cover, and then historically that difference between the provider's bill and what the plan pays is the balance or surprise bill.

**Unger:** So kind of like that letter you get in the mail and it's like, boom, oh my God, what, I owe this?

**Carroll:** Yes. It can be very surprising, yes. But starting January 1, a patient no longer is responsible for that balance. And they're only responsible for the cost sharing amount that would have been applicable if the provider and the plan had a contract in place. So this is a huge win for patients and the AMA has strongly supported these kinds of reforms in the past and was supportive of these reforms in the No Surprises Act.

**Unger:** Are there any other kind of steps kind of built in there that protect patients?

**Carroll:** Yes. So because the patient is no longer responsible for that balance, Congress set up a dispute resolution process to essentially ensure that that out-of-network physician or provider receives a fair payment. And that provides incentives for strong provider networks and for payers to keep those providers in-network and to make sure there's there's access to care. So the law sets up what they called an Independent Dispute Resolution process. And the IDR process is set up in a baseball style arbitration way, where each party submits their best offer to the arbiter and any evidence that's permitted by the statute to support their offer. And then the arbiter picks one and that process is binding on both parties. So that's how payment is resolved under this process.

**Unger:** Where do we stand right now with the No Surprises Act? When is it set to take effect?

**Carroll:** So the No Surprises Act is set to take effect in just a few weeks, January 1, 2022. The four departments that are in charge of implementing this law, the Department of Health and Human Services, Treasury, Labor, and the Office of Personnel Management, have issued three implementing regulations at this point. So two of those regulations have been what they call Interim Final Rules. So they're essentially effective without a requirement that the departments review public comment. Unfortunately, those two interim final rules implemented some of the biggest component of the Act. There wasn't, as usual, sort of an opportunity to comment on those rules in a way that we would've preferred. The third rule that has been issued was in the form of a nurse proposed rule making. And so there was an opportunity for public comment and we're still waiting that final rule.

**Unger:** So Emily, if I understand this right, it sounds like the intent is the right direction, but the way this has played out, there's some real concerns here and both the AMA, in concert with the American

Hospital Association, and an additional set of individual hospitals and physicians, just filed a lawsuit against the federal government, based on some of these concerns. What are the details of the lawsuit? Why is it so important for us to act?

**Carroll:** The AMA, as well as two individual physicians and two individual hospitals, filed a lawsuit last week, and they were challenging a very narrow component of one of the interim final rules that was issued in September. And that interim final rule was implementing that independent dispute resolution process that I discussed just a bit ago. So during congressional negotiations, every one agreed that patients should be kept out of the middle of surprise bills. And it was very much included and we continue to support those reforms that were included in the law. But much of the debate in Congress was centered around how to structure a fair dispute resolution process, not only to ensure a fair payment to out-of-network physicians, but also to ensure there was that incentive for payers to continue negotiating contracts with physicians and to keep their networks adequate for patients.

**Carroll:** The result that that came out of Congress and the statute was a pretty balanced dispute resolution process. Congress essentially said in the law that for an arbiter to determine a fair payment, a number of factors should be considered by the arbiter. And those included things like the median in-network rate, the market dominance of both parties, the acuity of the patient and the complexity of the case, the teaching status of the hospital and so on. Unfortunately when the rules came out, regulators kind of broke from that statutory language and issued a rule that said the arbiter should just basically assume that the median in-network rate is the right out-of-network rate barring sort of extenuating circumstances. And they made very clear, that those circumstances were super limited in their scope. Because of this flawed interpretation, we're not only going to see insurers paying out-of-network providers much less in the coming years, but I think we're also going to see significant and dramatic cuts to rates for in-network providers because now they sort of have to negotiate under this median in-network rate ceiling.

And so they're going to have the choice to sort of accept that median network rate, which is likely much lower than the cost of care, or they're going to be dropped from their networks. And we're already seeing this play out in states like North Carolina, where we had a major payer send letters to a number of providers, essentially saying that as a direct result of this interim final rule, they're cutting rates or dropping them from their networks. This is all happening sort of in the context of independent physician practices, really trying to get back in their feet after the pandemic and that financial strain on some of these independent practices really threaten access. So I think we're going to see narrower networks reduce access to care and reduce patient choice.

**Unger:** Well, those are certainly not the outcomes that everybody was seeking here. And if I understand this correctly, then, what we are seeing is in its final execution is a process that really is unfairly benefiting commercial health insurance companies. Is that right?

**Carroll:** That is right. This rule really put a thumb on the scale in favor of the payers in this dispute resolution process. And I think the long term implications on physicians and patients is going to be really dramatic.

**Unger:** Is there anything that practices can do proactively to address some of the challenges?

**Carroll:** However we view these reforms, they're coming January 1, right? So it's important that physicians are really aware of these changes and are incorporating these changes into the practices. The AMA's developing and sharing educational resources over the next month. And even after, and they'll be distributed through a lot of our channels, including our advocacy update, which I think you can sign up for at the AMA's website [ama-assn.org/advocacynews](http://ama-assn.org/advocacynews). So that's an important vehicle for receiving information about the No Surprises Act. And I would also encourage physicians to share their experiences about implementing these changes, in their practices, with us, with their state and specialty medical societies, because I think it's really important for us to know how all these changes are kind of shaping up in physician practices, so we can continue to sort of best advocate for physicians as these changes are implemented over the next year.

**Unger:** So there's just really no more important time than right now, of course, to speak with a unified voice. And that is what the AMA is doing right here. Looking ahead to the future, does the act do enough or do we need to do more to protect people from unanticipated medical bills?

**Carroll:** That's a great question. I think the No Surprises Act will do a lot of good for a lot of patients and the AMA will continue to support those protections. But I would say a lot of work still remains to make sure patients are really getting value for their premiums and are able to access affordable in-network care. As I mentioned, the structure of the arbitration process really favors health insurers and allows them to kind of continue their market power to sort of structure provider networks and benefits in a way that does not increase access to care.

And in terms of surprise billing, AMA has really always recognized that unanticipated out-of-network care, including surprise billing, is really a symptom of much larger problems in the way provider networks and benefits are created and regulated. So as the NSA, the No Surprises Act is implemented, I think it's going to be really critical that regulators address issues like network adequacy, health insurer competition, insurer created barriers to care like prior authorization to really ensure that the No Surprises Act is a component of the solution to unanticipated medical costs, and not just the end of the story. Obviously in the AMA, those are all major priorities for us and we'll continue to work with our partners to ensure those important reforms are recognized at the state and federal levels.

**Unger:** Well, thank you so much, Emily, for being here today. There's a lot to learn about the No Surprises Act and the move by the AMA and the AHA on this front. You can find out more information about that on the AMA will website. That's it for today's episode. We'll be back with another Moving



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