Biden’s surprise-billing rule “not the law that Congress passed”

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What’s the news: The U.S. District Court in Washington, D.C., should halt implementation, pending judicial review, of a provision of the No Surprises Act that skews the law’s independent dispute resolution process in favor of insurance companies, or eliminate the provision entirely. That’s what the AMA and American Hospital Association (AHA) are asking for in motions filed with the federal court.

The motions—nearly identical, but filed separately—are part of a rebuke of the Biden administration’s reply to an AMA-AHA lawsuit (PDF). Physicians and hospitals argue that federal regulators from the Departments of Health and Human Services, Labor and Treasury exceeded their authority when they issued a rule last September that runs contrary to the intent of the legislators who wrote the law.

The AMA and AHA’s legal actions are not aimed at the No Surprises Act’s provisions protecting patients from unexpected out-of-network medical expenses, which should be allowed to stand.

Learn how the Biden administration’s surprise-billing rule provision jeopardizes patient access to care.

Why it’s important: “Hospitals and physicians strongly support protecting patients from surprise medical bills,” says a joint statement from the two organizations. “That is why the American Medical Association and American Hospital Association were instrumental in the passage of the No Surprises Act, which takes patients out of the middle of billing disputes between providers and commercial health insurers.

“These consumer protections are already in effect and are not being challenged in any way,” the statement adds. “The only issue is whether the independent arbitration process between health insurance plans and providers will be implemented by federal agencies in the fair and balanced way Congress intended.”

The target of the AMA-AHA lawsuit is a provision directing 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 come into play.

The AMA-AHA motions present uncontested evidence that doing so "will cause irreparable harm," and that's why the court should either stay the provisions of the Biden administration regulation or "vacate this unlawful rule." Read the motions from the AMA (PDF) and the AHA (PDF).

> The agencies' "feeble explanations" notwithstanding, the motions state the challenged provision should be removed because it violates a "fundamental separation of powers."
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> "It is not the law that Congress passed," the motions say. "Agencies cannot rewrite statutes by adding material terms found nowhere in the text. … The departments' interpretation of the [No Surprises] Act is contrary to its text, design, history and intent, and is therefore owed no deference."

A bipartisan coalition of congressional leaders declared in a November letter (PDF) that the Biden administration rule does "not reflect the law that Congress passed."

Physicians and hospitals argue that the independent-dispute resolution 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.

By anchoring proposals to a particular benchmark—the QPA—insurers are encouraged to submit an offer below that benchmark. The rule will discourage insurers from negotiating fair network contracts, and it is likely that provider networks will narrow because of it.

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.

Learn more: The administration has until Feb. 18 to respond to the motions. The U.S. District Court will then render decisions on both sides' motions for summary judgment and the AMA-AHA motion for a stay pending judicial review. If the case goes forward, an initial hearing may be scheduled.

In the meantime, the AMA has gathered expert insights to help doctors comply with the No Surprises Act.

Also, this AMA toolkit will help physicians prepare for implementation of the No Surprises Act (PDF).