



Call to Action

Federal Agencies Botch Surprise Medical Bill Rule: Urge Congress to Fix Error

Issue

The U.S. Departments of Treasury, Labor and Health and Human Services failed to conform to Congressional intent in their rule implementing the No Surprises Act, the new federal surprise medical bill law. Contrary to the law's intent to create a fair process for resolving physician-health insurance company payment disputes, the rule explicitly directs the independent arbiter to presume the insurer's median in-network rate is the proper out of network (OON) payment rate. The Department's decision tilts the entire "independent" resolution process in favor of insurance companies, at the expense of physicians.

Background

After years of bipartisan and bicameral work, the U.S. Congress passed in December of 2020 the No Surprises Act (NSA) – the first federal law to protect patients from surprise medical bills.

What the law says: During the Congressional debate, lawmakers intentionally blocked the inclusion of any type of payment benchmark for OON payments. ASA worked closely with Congressional allies on language that captured Congress' bipartisan and bicameral intent to create a balanced and truly independent dispute resolution (IDR) process for OON payment disputes. The final NSA legislative language required the arbiter to consider a full range of factors when resolving a payment dispute, including the patient's acuity or the complexity of services, demonstrations of previous good faith efforts to negotiate in-network rates and previously contracted rates, in addition to the insurers' median in-network rate, also known as the Qualifying Payment Amount (QPA).

What the rule says: Erroneously and without legislative foundation, the September 30 rule ignores Congressional intent and creates a default payment benchmark for OON payments. The rule directs the arbiter to presume that the insurer-calculated median in-network amount is the appropriate payment rate. The language creates an insurer-friendly benchmark that will significantly disadvantage physicians seeking reasonable OON payments.

Take Action

ASA is currently considering a full range of legislative, regulatory and legal responses to the deeply flawed rule. As part of ASA's initial response, please contact your member of Congress and seek their support for a legitimately fair and independent dispute resolution process. Ask that they contact the federal departments and urge that the defective rule be rewritten to capture Congressional intent.

Go to the "Advocating for You" tab of the ASA website and select "Take Action with Grassroots" to contact your lawmaker.