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No Surprises Act

Perspectives on the Status of the Consumer Protections Against Balance Billing

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The No Surprises Act (NSA), enacted in December 2020, created new protections for 177 million Americans with private health insurance.¹ Specifically, the NSA protects consumers from many of the most prevalent forms of surprise balance billing by out-of-network providers and facilities in the emergency, air ambulance, and in-network hospital settings.

Before passage of the law, consumers were most vulnerable to balance billing when they used an out-of-network provider in situations when they could not reasonably choose how they obtained medical services. The reality is that not all medical services are delivered in network. For example, 18 percent of emergency visits and 16 percent of in-network hospital care resulted in at least one out-of-network charge for enrollees of large group plans in 2017 (Pollitz et al. 2020). Air ambulance services were even more likely to be out of network. Balance bills to consumers could potentially be large, in the range of \$20,000 for air ambulances, \$3,600 for surgical assistants, and \$1,200 for anesthesiologists (Chhabra et al. 2020; Chhabra, Sheetz, and Nuliyalu 2020). Even though many people did not experience balance bills, they were a source of concern. According to a 2020 poll, 65 percent of insured adults were at least “somewhat worried” about unexpected medical bills (Lopes et al. 2020).

States were the first to rise to the challenge to protect consumers from surprise balance bills. By 2020, 33 states had at least some protections in place, and 18 of those states had comprehensive protections.² But even for consumers in these states, federal restrictions allowed significant gaps to remain. States were generally unable to provide protections for individuals with self-funded plans sponsored by employers and unions, for those receiving air ambulance services, and for services in which multiple states are involved. The NSA now fills all of these gaps.

This brief considers how well NSA protections are working after being in effect for one full year. Based on structured interviews with federal and state regulators and a broad spectrum of stakeholders, the NSA appears to be protecting patients from the most pervasive forms of balance billing and getting consumers “out of the middle” of payment disputes between providers and payors (i.e., health plans and insurers). Physicians, hospitals, and payors have taken critical steps to adjust operational processes to mitigate the risk of consumers receiving balance bills for services covered by the NSA and to pay only in-network cost sharing for those services. It is too early to assess whether the NSA will constrain the growth in health insurance premiums and encourage broader provider networks, and there remain concerns that coverage gaps in the NSA, such as for ground ambulance services, can leave consumers with unexpected financial liability.

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Scope of the NSA

The No Surprises Act provides comprehensive consumer protections against certain out-of-network medical bills, also known as balance bills.^{3,4} Surprise balance bills arise when insured consumers inadvertently or unknowingly receive care from a provider (such as a physician) or at a medical facility (such as a hospital) that is not within their payor’s network, and that provider or facility subsequently bills the consumer for the difference between what the payor is willing to pay and what the provider seeks as full payment.

Starting on January 1, 2022, providers and facilities have been banned from sending consumers balance bills for emergency services, air ambulance services (but not ground ambulance), some services after a patient is stabilized, and nonemergency services at in-network facilities (unless, under certain circumstances, a patient signs a waiver consenting to treatment by an out-of-network provider). Patients treated by an out-of-network provider are only responsible for the cost-sharing amount they would have paid had the service been provided in network, and providers and facilities cannot send balance bills to patients for a higher amount (table 1).

TABLE 1

No Surprises Act: Summary of Key Features of Prohibition Against Balance Billing

Topic	Provision
Types of care covered	Emergency and post-stabilization care (in-network and out-of-network facilities) and nonemergency care (in-network facilities); applies to fully insured and self-funded plans. Includes air ambulance services but not ground ambulance services.
Consumer cost sharing	For NSA-covered care, holds consumers harmless by limiting consumer costs to in-network cost sharing.
Provider balance billing	For NSA-covered care, prohibits providers and facilities from billing consumers for any payment balance other than in-network cost sharing.
Consent waivers	Allowed only under certain circumstances (e.g., three days in advance of a scheduled service) and not permitted for emergency services, ancillary services surrounding a nonemergency service, or services resulting from unforeseen or urgent medical needs.
Payment standard	None, although median in-network rate (2019, inflated for future years) is used to determine cost sharing.
Independent dispute resolution process	Available if parties do not reach a voluntary agreement in a 30-day negotiation period. Each party submits its best offer to the independent arbitrator, who must choose one or the other (arbitrator cannot split the difference). Loser pays the cost of the arbitration.
Factors considered by the arbitrator in dispute resolution	Factors allowed: qualified payment amount (insurer or plan's median in-network rate); information submitted by the parties; training, education, experience, and quality of the provider; patient acuity and complexity of services; market share for the provider or the insurer; good faith efforts (or lack of good faith efforts) to enter into network agreements; prior contracted rates. Factors prohibited: usual and customary or billed charges; rates paid in public sector programs, such as Medicare and Medicaid.
Transparency and disclosure	Requirements for providers, facilities, insurers, and health plans to share information with consumers about the NSA's protections against balance billing as well as instructions for notifying state and federal agencies of potential violations.
Interaction with state laws	Defers to state payment standard or dispute resolution process (if state has established one) for state-regulated group and individual plans.
Enforcement	States have the primary enforcement role for state-regulated insurance; federal enforcement applies for self-funded employer plans and in states that fail to substantially enforce the law. Federal enforcement can include the use of civil money penalties.

Source: Authors' additions and modifications, based on exhibit 1 in Jack Hoadley, Madeline O'Brien, and Kevin Lucia, *No Surprises Act: A Federal-State Partnership to Protect Consumers from Surprise Medical Bills* (New York: Commonwealth Fund, 2022).

Payors must send payment to the out-of-network provider for the care their members receive. The provider may accept this amount (plus the allowed cost-sharing amount) as payment in full or may dispute the amount. To resolve payment disputes between payors and out-of-network providers, the NSA first asks the parties to engage in "open negotiations" to seek agreement on a payment amount. If this fails, then the NSA requires binding "baseball-style" arbitration, by which each party offers a payment amount, and an independent dispute resolution (IDR) entity selects one party's offer as the final payment amount, with no ability to require payment of a different amount. To inform the final

payment decision, the IDR entities must consider the qualifying payment amount (i.e., the payor's median in-network rate) as well as additional information either requested by the IDR entity or otherwise submitted by the parties, such as the provider's training, education, experience, and scores on measures of clinical quality; patient acuity; and complexity of services. However, IDR entities must not consider the provider or facility's usual and customary charge or the billed charge, which are generally much higher than in-network rates, or the reimbursement rates paid by public payors (such as Medicare, Medicaid, the Children's Health Insurance Program, or TRICARE).

Before passage of the NSA, 18 states had enacted comprehensive surprise billing laws for state-regulated insurers, and another 15 had limited protections.⁵ The NSA builds from these state laws by extending balance billing protections to those with self-funded employer-sponsored insurance and for services that states had limited ability to regulate, such as air ambulance. The NSA now serves as the minimum standard for consumer protections across the United States, although states can impose additional requirements that are more protective of consumers. For example, states can protect consumers from balance billing for ground ambulance services, which are not covered by the NSA.⁶ In addition, the NSA defers to state laws that have provisions for determining a payment amount for a surprise medical bill, as was the case with many states that had existing balance billing protections.

The government entity charged with enforcing the NSA's protections varies by the type of payor. For state-regulated insurance plans, states are the primary enforcers of the NSA's standards. However, the US Department of Health and Human Services (HHS) can step in by agreement with the state or if a state is unable to enforce the law. Although state approaches to NSA enforcement continue to evolve, to date, 37 states and the District of Columbia have elected to share enforcement duties with the federal government. Five states have elected to take full responsibility for enforcement. In 7 states, the federal government directly enforces all NSA balance billing protections (Hoadley, O'Brien, and Lucia 2022).⁷ Of note, CMS can levy civil monetary penalties for violations of NSA requirements that it enforces directly or in collaboration with states. In addition, HHS has direct enforcement authority for all NSA protections as applied to nonfederal governmental group health plans (e.g., state employee health plans). The US Department of Labor (DOL) and the US Department of the Treasury also regulate NSA requirements for other types of group health plans, including self-funded group health plans, while the US Office of Personnel Management (OPM) oversees the Federal Employees Health Benefits program.

In addition to protecting consumers from surprise balance billing, a key goal of the NSA is to constrain increases in premiums and out-of-pocket costs paid by consumers. The Congressional Budget Office estimated that the NSA would reduce premiums by between 0.5 percent and 1 percent in most years.⁸ The law mandates various reports to assess the NSA's impact on critical components of the health care system, including the cost of health care services, consumer access to services, plan provider networks, new patterns of vertical or horizontal integration among providers or payors, and provider relationships with private equity firms.

Implementation to Date

To date, NSA has been implemented through regulations and subregulatory guidance, largely issued jointly by the federal agencies charged with the law's implementation, including HHS, DOL, Treasury, and OPM. These regulatory actions cover patient cost-sharing protections, notice and consent standards, complaints processes, enforcement, and the IDR process, among other NSA requirements.⁹ Of note, the federal agencies have yet to issue regulations for the advanced explanation of benefits requirement, which would provide insured consumers with critical coverage-related information regarding upcoming scheduled care, such as a good faith estimate of costs and cost sharing and whether the provider is in network.¹⁰

HHS has established the No Surprises Help Desk to answer questions and to receive and resolve complaints from consumers, providers, and payors about potential NSA violations.¹¹ HHS either resolves a complaint itself or refers it to the appropriate federal or state agency to further investigate and, if necessary, take enforcement action.¹²

Although the NSA was enacted on a bipartisan basis—and all stakeholders backed the goal of protecting consumers from balance bills—provider stakeholders continue to object to the process for determining final payments for covered out-of-network services. At the time of this writing, provider organizations have initiated several lawsuits challenging the federal agencies' implementation of the IDR process.¹³ In order to comply with the decisions of a number of these legal cases, the federal government has already made several changes to the IDR process, including delaying the initial launch of a portal for IDR cases and revising its initial guidance related to the IDR process, with more changes under way.¹⁴ Additional factors, such as a significantly higher than expected number of IDR disputes, complexities in determining eligibility of disputes under the NSA, and significant technical issues with the IDR portal, have resulted in IDR decisions in only a small fraction of the disputes initiated to date.¹⁵

Study Approach

Between October 1, 2022, and January 31, 2023, researchers conducted 32 structured interviews with federal and state regulators and organizations representing a broad spectrum of critical stakeholders, specifically, those representing consumers, employers, payors, physicians, hospitals, air ambulance providers, and medical billing companies.¹⁶ During the interviews, researchers sought to understand whether consumers are being protected from balance billing within the scope of the NSA; what steps providers, facilities, and payors have taken to ensure consumers are protected from balance billing under the NSA; how complaints are being handled by regulators; and whether opportunities had emerged for further regulatory or legislative action to protect consumers from surprise medical bills. Researchers also sought to understand early impacts of the NSA on costs, payment rates, provider networks, and other health system features, while recognizing that it is too early to assess long-term impacts. Because implementation of the IDR process has been delayed by start-up challenges and ongoing litigation, this brief does not focus on the IDR process.

Findings

One year after implementation of the NSA, informants largely agreed that consumers are being well protected from surprise balance bills covered under the law. However, it is too early to assess whether the NSA will constrain the growth in health insurance premiums and encourage broader provider networks, and concerns remain that coverage gaps in the NSA, such as for ground ambulance services, can leave consumers with unexpected financial liability.

Reportedly, consumers are being well protected under the NSA.

In general, state and federal regulators report relatively few NSA-related inquiries that rise to the level of violating the law. For example, insurance regulators in one state said that of 1,800 insurance-related consumer complaints received in 2022, only two were for NSA-related claims. Another state regulator was “a little surprised by the low volume [of consumer complaints]” but attributes this to insurers’ and providers’ cooperative efforts to eliminate balance bills and correct them when they occur. This state regulator also said consumer complaints for large out-of-network bills—generally for surgery and air ambulance services—have notably decreased, a reflection of the NSA’s “significant” impact on consumers. Regulators with one federal agency suggested that while the number of NSA-related inquiries received is in line with expectations, the majority are just “general questions about the NSA.” Officials at another federal agency noted that the bulk of complaints have come from providers trying to understand “how it all works, including...how to navigate the [IDR process].”

Of the few consumer complaints that constitute violations of the NSA, regulators have found that most providers and payors, when requested, will adjust patients’ bills to reflect only in-network cost sharing. That said, one state insurance regulator cautioned against declaring complete victory over surprise balance bills. Given how few consumers ever complain about billing issues, that this state regulator still receives NSA-related consumer complaints suggests that the law is “not completely protecting consumers.” On that note, officials in another state reported that a few providers continue to balance bill consumers, even after regulator intervention. The state is reporting these potential violations of the NSA to federal regulators for further enforcement action.

Like regulators, payors report few complaints from enrollees related to NSA-covered services. A large national insurer reported receiving few NSA-related inquiries from consumers with questions about their rights under the law. A small insurer serving a single state said the number of balance billing cases resolved through litigation dropped from “seven to eight a year” to zero. A regional insurer pointed to receiving a high number of IDR requests as evidence that consumers are protected from balance bills, saying providers are turning to the IDR process instead of balance billing patients.

In addition, insurers report that providers do not appear to be asking many patients to sign consent waivers in the in-network hospital setting. After flagging a claim as covered by the NSA, one insurer reported relying on an electronic indication from the provider that the patient consented and therefore could be billed. This insurer noted that it would know if a high number of consent waivers were reported because “it would impact that way we process the claims.” Another insurer noted that if for some reason

the provider did not identify a consent waiver during the claims process, it “would hear about that from one of our grievance or complaint channels” and “there’s not a lot of cases where that is happening.”

Provider representatives report that NSA protections are “absolutely in place.” For example, before enactment of the NSA, one emergency medicine provider balance billed patients about 20 percent of the time, sometimes going to collections. The provider reported that this is no longer the case. Another noted that, before the NSA, many patients would be balance billed for out-of-network care, but the provider group would waive the charge if the patient complained. This group has not had any patient complaints about balance billing this year. Representatives for surgeons and anesthesiologists reported widespread compliance, prompting one informant to note that the potential for fines from the federal government “gets [providers’] attention.”

Consumer advocates and employer representatives also say the law appears to be working as intended. One consumer group, which fielded a significant number of surprise billing complaints from consumers in past years, reported having not received one complaint about NSA-related surprise billing in 2022. Similarly, an employer coalition said that before the NSA, there was “enough noise to know there was a problem [with balance billing]; since then, we have no noise in this area.”

Informants see reason for caution and close monitoring: concerns about consumer awareness, insurance literacy, and billing lags.

One simple way to assess the impact of the NSA is to count the number of complaints that regulators and others receive. But that number is correlated to consumer awareness. It is difficult to assess how well consumers know and understand the protections available to them under the NSA. An employer representative pointed out that if employees are balance billed, they might not realize the bill is prohibited and thus may not seek help from insurance regulators or advocates. One insurer suggested that the NSA’s requirement that payors include a disclosure of NSA protections in each explanation of benefits has been useful in “informing their enrollees” of protections under the NSA. However, other informants questioned whether the law’s transparency and disclosure requirements—despite being “important” and “well-intentioned”—significantly increase consumer awareness, raising doubts that patients will read and retain the information. It would require a “savvy consumer” to discover a violation of the NSA and then proceed with a complaint, suggested one insurer.

Another limiting factor in using complaints as a marker of NSA success is consumers’ lack of health coverage literacy, specifically a limited understanding of their cost-sharing obligations. One employer representative stressed that this “[makes] it more difficult for a consumer to know when they are facing legitimate cost sharing or inappropriate balance billing under the NSA.” Consumer advocates said the lack of health literacy is a significant ongoing problem for privately insured consumers, for whom insurance bills can prompt “fear and indignation.” Consumers often do not feel empowered to question bills they did not expect or do not understand. Even when consumers know they have a problem with their insurance or care, consumer advocates stressed, most do not file formal complaints. As a result, the few complaints that are received allow regulators “only ever to see the tip of the iceberg.”

Finally, multiple informants say the typical lag between when a service is rendered and when the patient receives the bill means balance billing cases will not show up immediately in complaint systems. One state official pointed out that if a consumer does not receive a questionable bill until months after the service was received, tries to resolve the billing problem, and then formally appeals the claim with the insurance carrier, regulators may not hear about a balance billing problem until long after it occurred.

Providers and payors have taken significant steps to comply with the NSA.

The law includes transparency and disclosure requirements for providers, facilities, and payors. For example, providers and facilities are required to share information about patients' rights under the NSA directly with patients and display it on site and on their website. Similarly, payors must share this information with enrollees with each explanation of benefits sent to patients after they receive care, along with posting on the plan website. According to several stakeholders, meeting these requirements was not a "big lift," although a hospital representative offered the caveat that preparing these materials was generally more challenging for small rural hospitals.

Providers and payors have had to invest greater time and resources into coding, billing, and other operational processes needed to comply with the NSA. These back-office adjustments shifted how providers and billing companies prepare and submit bills and how insurers and third-party administrators process claims for NSA-applicable services.

Providers have taken various steps to comply with the NSA's consumer protections, the scope often depending on the importance of balance billing to pre-NSA revenue. Some physician groups described working closely with billing companies to "turn off" balance billing, while others did not balance bill before NSA and relied on existing processes. For example, one informant reported that some air ambulance companies had more recently transitioned their billing systems to identify NSA claims and limit patients' responsibility to the applicable in-network copayment under their health plan. However, some informants noted that smaller provider groups may not have the resources to navigate NSA implementation. Consumers who did receive a balance bill in 2022 may have "slipped through the cracks" of billing algorithms—but most informants believed such occurrences were rare.

For services covered by the NSA, plan enrollees' financial responsibility is limited to the in-network cost-sharing amount. To flag NSA-related claims, payors reported making intensive technical updates to claims processing systems. For some, this process initially required manual claims adjudication to ensure all NSA-eligible claims were identified correctly. Payors reported that they have now largely succeeded in automating this system. After flagging NSA claims, payors send providers an explanation of payments that instructs them to write off the claim's balance instead of balance billing the patient. In some cases, health plans appear to be relying heavily on vendors to manage these processes and comply with the NSA.

The NSA Help Desk is open for business, but there are opportunities for improvements.

Federal informants said that inquiries that come to the NSA Help Desk from consumers and other stakeholders are reviewed and triaged to determine whether more information is needed and whether they should be handled internally at HHS or referred to another agency or to a state government. Cases that fall under HHS jurisdiction are investigated according to their circumstances.

Cases related to self-funded plans are regularly transferred “in batches” electronically from HHS to the DOL, where benefit advisors provide further analysis and investigation. Similarly, federal informants noted that NSA-related cases related to the Federal Employees Health Benefits Program are transferred to staff at OPM for the same.

Federal informants report significant interagency coordination to resolve NSA-related inquiries: “An interagency group meets regularly, just to make sure that if we’re all getting questions, we’re answering them consistently. If we’ve got interpretive questions, we can coordinate there.” One federal informant found the coordination an improvement over past efforts to monitor and enforce federal consumer protections in health insurance.

States also play an important role in collecting and resolving consumer complaints related to the NSA. Two states that had their own state balance billing protections are handling complaints largely the same way they did before the NSA. For example, if a provider continues to pursue a consumer for an inappropriate balance bill even after being informed of the NSA’s requirements, state regulators will send a cease and desist letter with the option to take further legal action. Other states have the authority to enforce the NSA only for insurers, not providers. However, a regulator in one such state noted that when contacting insurers about a suspected violation, the insurers are often “proactively working with providers” to resolve the complaints. If needed, the regulator would then share any unresolved complaints with the federal government for further action against the provider.

State-federal coordination with respect to monitoring and enforcement remains challenging. Although states reported that federal regulators have been available to answer technical questions about interpretation of the law, coordinating over enforcement of consumer protections has been more limited. First, state officials in two states were uncertain how best to share their state’s NSA-related complaints with the federal government. One state regulator pointed out that it was unclear how the state would do a “soft hand-off” if elevating a consumer complaint to HHS.

Second, some state regulators suggested that nationwide data tracking how complaints are being resolved would be helpful. Though federal regulators are not doing so currently, they indicated a willingness to consider it in the future.

Finally, some state officials pointed out that they do not hear back from federal regulators on cases they refer onto federal agencies. For example, most states refer consumers in self-funded employer plans to the DOL. One state official said that not knowing whether the consumer’s issue was resolved is

frustrating. The official sometimes feels the need to tell consumers enrolled in plans outside the state jurisdiction that if they “continue to have a problem, to reach back out” to the state.

Informants see opportunities to expand the scope of NSA consumer protections.

Informants broadly agreed that the NSA has successfully protected patients from the most pervasive forms of balance billing. Still, informants suggested that some critical services and settings are not covered by the NSA, and further legislative or regulatory action is needed.

Most informants found ground ambulance services to be a notable omission in the NSA. A state regulator noted that consumers can expect to be balance billed for ground ambulance services “nine out of ten times, that’s just how it is.” Congress’s failure to include ground ambulance services in the scope of NSA protections can be attributed to a “mishmash” of state and local regulations and concerns about the fiscal impact on local governments that operate these services. One informant pointed out that regulatory complexity at the state level makes ground ambulance services “ripe for a little federal intervention.” The federal government recently announced the launch of an advisory committee required by the NSA that will be responsible for “reviewing options to improve the disclosure of charges and fees for ground ambulance services, better inform consumers of insurance options for such services, and protect consumers from balance billing.”¹⁷

Several informants also described examples of consumers receiving balance bills for out-of-network lab work or imaging services, such as a CT scan, that they received during a visit with an in-network outpatient provider. Although such bills often come as a surprise to the patient, this type of situation is not covered by the NSA.

Some areas warrant close monitoring for future regulatory action.

Informants also noted that some services warrant close monitoring for balance billing and, if needed, further regulatory action. Despite the reported infrequent use of consent waivers, some informants believe that patients might still give up their protections without realizing the consequences of signing one. Consumer advocates said patients are presented with “stacks and stacks” of paper before a procedure and will “sign everything put in front of them.” Other informants said patients may sign them because they feel pressured to do so. If a patient refuses to sign the waiver, then the physician can refuse treatment. An informant noted that relying on providers to use their judgment about whether a patient is capable of signing without coercion is a situation like “leaving the fox in charge of the hen house.”

Post-stabilization services after a medical emergency also warrant close monitoring for inappropriate balance billing. The NSA extends protections against balance billing for emergency services until a patient is stabilized and able to provide consent to receive additional services from a nonnetwork provider or facility or to be transferred to a network facility. One insurer noted that this particular area of protection is new—post-stabilization protections are generally unique to the federal law—making it an area to “keep an eye on.”

Informants also pointed to the need to closely monitor services not currently on the list of ancillary services for which providers are banned from requesting consent waivers. The NSA allows HHS to add to this list. Currently, providers of these ancillary services, such as those related to anesthesiology, pathology, and radiology, cannot seek a waiver from patients to allow balance billing. Two insurer informants pointed out that neuromonitoring services, used to monitor a patient’s nervous system during and after surgery, are “almost ancillary” but are not specified on the list. If providers of these services start to employ consent waivers, patients could be at risk for balance billing.

Finally, several informants reported concerns that consumers are at risk for balance billing when seeking emergency services outside traditional emergency departments, including urgent care centers. An insurer said these are “one of the biggest opportunities for confusion” for consumers under the NSA but could not offer quantitative data of incidence. Currently, federal rules apply NSA protections only to urgent care centers licensed by states to provide emergency services, but few states do so.¹⁸ If balance billing increases at urgent care centers, the federal government may reconsider its regulatory approach to better protect consumers.

The longer-term impact of the NSA on provider prices and networks is uncertain.

Most informants assert that it is too early to understand the full impact of the law on provider prices and networks. Ongoing litigation, particularly challenges to the IDR process and calculation of the qualifying payment amount, has delayed the IDR process and left patterns of decisionmaking uncertain. CMS released its first report on the IDR process in December 2022 but deferred reporting on IDR payment determinations, information necessary to assess the NSA’s impact (HHS, DOL, and Treasury 2022).

PROVIDER PRICES

Nearly all provider informants raised concerns about the payments they receive from plans, although one physician suggested that while a particular insurer is paying less, it is “not to the degree I was worried about.” Providers told us that some payors are lowering their standard reimbursement rates for out-of-network care. In some cases, providers may accept lower payments unhappily, but many are requesting negotiations with payors and are taking claims to the IDR process when negotiations fail.

Payors typically rejected the notion that they are underpaying providers. They pointed to the high level of billed charges they receive for out-of-network claims. In the past, payors may have paid full charges for some claims to protect their enrollees; in those cases, they are now making lower payments—closer to the qualifying payment amount. Furthermore, they contended that providers are overwhelming the IDR process with excessive claims while litigating in an effort to tilt the process more in their favor. Payors raised concerns about the potential inflationary effect of high IDR awards on premiums, especially if providers prevail in court. But these effects may vary by state.

NETWORKS

Providers have raised concerns that the NSA will prompt payors to reduce their provider networks, especially if payors believe they can avoid contracting with higher-priced providers to pay prevailing

network rates.¹⁹ Providers cited instances in which payors dropped providers from networks or reopened contract negotiations in an attempt to lower in-network reimbursement rates. One hospital informant noted that she knew of threats to drop providers if rates were not lowered.

But payors generally denied any systematic moves in that direction. In fact, some noted that they are seeking to bring into network providers that frequently dispute payments.

Research on the impact of state surprise billing laws is mixed (Hoadley and Lucia 2022, 97). Some informants pointed to research suggesting that network access did not decrease after California's state balance billing law was implemented.²⁰

POSSIBLE FUTURE IMPACTS

Broadly speaking, stakeholders and regulators agreed that understanding the impact of the NSA on prices and networks will require several years of experience. In particular, any conclusions drawn before the IDR process is fully functional with discernible patterns of payment decisions would be premature. But any such patterns will not be clear until the litigation is resolved and the IDR entities integrate any new rules or standards required by the courts. Only then will payors and providers respond to decisionmaking patterns and fully assess the value of sending cases to IDR.

Decisions by payors and providers on what initial payments to make and whether to invoke IDR will eventually influence payor-provider negotiations over in-network payment levels and network membership. Even so, the impact may not become clear until multiyear contracts come up for renewal. Furthermore, the impact may be focused more narrowly on the specialties most affected by surprise billing—especially emergency medicine, anesthesiology, radiology, and pathology—which could in turn limit the impact on overall health costs and plan premiums.

Conclusion

Based on structured interviews with federal and state regulators and a broad spectrum of stakeholders, the NSA appears to be protecting patients from the most pervasive forms of balance billing and getting consumers “out of the middle” of payment disputes between providers and payors. Providers, hospitals, and payors have taken critical steps to adjust operational processes to mitigate the risk of consumers receiving balance bills for services covered by the NSA. As a result, consumers pay only in-network cost sharing for those services.

Although the limited evidence to date suggests that consumers are being well protected from balance billing in the situations covered by the NSA, some stakeholders remain concerned that gaps in the law can leave consumers with unexpected financial liability. The failure to include emergency ground ambulance services, in particular, means that many patients will continue to be balance billed for out-of-network services they had no choice but to accept. In addition, it is not yet clear how often providers are asking (and potentially coercing) patients to sign consent waivers that enable balance billing. The law may also need to be extended to certain ancillary services not currently covered, such as neuromonitoring, if evidence suggests that these providers are sending patients surprise medical bills.

The NSA also sought to help constrain the growth in health insurance premiums and to encourage broader provider networks. It is too early to assess the effect of the NSA on these issues. Federal and state policymakers need to monitor insurer and provider compliance and respond swiftly if new patterns of balance billing emerge. It is important for the federal government to begin collecting the data necessary to fulfill the law's requirements in order to assess its effects on health costs, consumer access to services, plan provider networks, new patterns of vertical or horizontal integration among providers or plans, and provider relationships with private equity firms.

Notes

- ¹ KFF, "Health Insurance Coverage of the Total Population," State Health Facts, 2021, <https://www.kff.org/other/state-indicator/total-population/?currentTimeframe=0&sortModel=%7B%22collid%22:%22Location%22,%22sort%22:%22asc%22%7D>.
- ² Jack Hoadley, Maanasa Kona, and Kevin Lucia, "States Can Prevent Surprise Bills for Patients Seeking Coronavirus Care," *To the Point* (blog), Commonwealth Fund, April 29, 2020, <https://www.commonwealthfund.org/blog/2020/states-can-prevent-surprise-bills-coronavirus-care>; see associated map, "State Laws Protecting Consumers against Balance Billing, as of February 5, 2021," https://www.commonwealthfund.org/sites/default/files/2021-11/Hoadley_balance_billing_state_map_02052021_v2.pdf.
- ³ Consolidated Appropriations Act of 2021, Pub. L. No. 116–260, 134 Stat. 1182.
- ⁴ With permission from the coauthors, this background material draws substantially from a series of articles published in the Health Affairs blog *Forefront* that examines the No Surprises Act and significant regulatory guidance related to its implementation, including Jack Hoadley, Katie Keith, and Kevin Lucia, "Unpacking the No Surprises Act: An Opportunity to Protect Millions," December 18, 2020, <https://www.healthaffairs.org/doi/10.1377/forefront.20201217.247010>, "Banning Surprise Bills: Biden Administration Issues First Rule on the No Surprises Act," July 6, 2021, <https://www.healthaffairs.org/doi/10.1377/forefront.20210706.903518>, and "Proposed Rule on No Surprises Act Focuses on Data Collection and Enforcement," September 13, 2021, <https://www.healthaffairs.org/doi/10.1377/forefront.20210913.576338>.
- ⁵ Hoadley, Kona, and Lucia, "States Can Prevent Surprise Bills" and associated map.
- ⁶ Madeline O'Brien, Jack Hoadley, and Maanasa Kona, "Protecting Consumers from Surprise Ambulance Bills," *To the Point* (blog), Commonwealth Fund, November 15, 2021, <https://www.commonwealthfund.org/blog/2021/protecting-consumers-surprise-ambulance-bills>.
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¹⁴ Noting the impact of *Texas Medical Association et al. v. US DHHS et al.*, No. 6:21-CV-425, (E.D. Tex.) on the delayed launch of the IDR portal, see HHS, DOL, and Treasury (2022, 3). In addition, noting further delays and federal action related to the IDR process in response to *Texas Medical Association et al. v. US DHHS et al.*, No. 6:22-cv-372 (E.D. Tex.), see Centers for Medicare and Medicaid Services, “Payment Disputes Between Providers and Health Plans,” notices issued on February 10 and 24, 2023, <https://www.cms.gov/nosurprises/help-resolve-payment-disputes/payment-disputes-between-providers-and-health-plans>.

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¹⁶ Nine of the structured interviews included regulators engaged with NSA implementation from three federal agencies and six states, while the remaining 23 interviews covered a broad spectrum of critical stakeholders, specifically, those representing consumers, employers, payors, physicians, hospitals, air ambulance providers, and medical billing companies.

¹⁷ “Advisory Committee on Ground Ambulance and Patient Billing (GAPB),” Centers for Medicare and Medicaid Services, last updated January 11, 2023, <https://www.cms.gov/regulations-guidance/advisory-committees/advisory-committee-ground-ambulance-and-patient-billing-gapb>.

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