

Implement “No Surprises Act” through Notice of Proposed Rulemaking Process

The American Society of Anesthesiologists® (ASA®) applauds Congress for its recent actions to protect patients from surprise medical bills through provisions included in the “No Surprises Act” section of HR 133, the Consolidated Appropriations Act of 2021. ASA encourages the relevant agencies to utilize a transparent Notice of Proposed Rulemaking (NPRM) process to ensure that key stakeholders have input into the rulemaking process for this complex law.

Stakeholder input can inform rulemaking for important issues such as:

- Protecting patients from surprise medical bills
- Ensuring patients are only responsible for in-network cost-sharing
- Defining an accurate “qualified payment amount”
- Ensuring patients and physicians have the information they need to make informed decisions
- Creating an accessible and fair Independent Dispute Resolution (IDR) process that includes:
 - Equal consideration of all relevant information presented to the qualified arbiter
 - No minimum billing amount threshold to enter into arbitration and clarity around the bundling or batching of disputed claims
 - Clarity regarding the “90 day cooling off” period where providers can continue to collect and batch for subsequent submission to the IDR process
 - Recognition of anesthesiology’s unique payment methodology
- Defining the appropriate treatment of state law and federally regulated ERISA health plans within the new federal law

Most Physician Anesthesiologists are a Part of their Patients’ Health Plans

Physician anesthesiologists recognize that being an “in-network” provider in their patients’ health plans is better for patients, easing both expenses and paperwork burdens, and for providers, easing billings and administrative responsibilities. Data indicates more than 90% of physician anesthesiologists’ claims are ‘in network’ with their patients’ insurance plans, thereby limiting patient exposure to surprise medical bills.

Unfortunately, ASA is aware of insurers using aggressive negotiating tactics that force physicians out of network. An informal survey conducted by ASA in February 2021 found that physician anesthesiologists are being forced out of network as insurance companies terminate their contracts, often with little or no notice: 73% of respondents had contracts terminated in the last year; 54% of respondents experienced dramatic payment cuts from insurers, both mid-contract and at renewal and 70% faced a payor giving an ultimatum between accepting a rate reduction or being forced out of contract. The results included 120 responses from 31 states.

REQUEST:

Congress should urge the Administration to advance rulemaking through a Notice of Proposed Rulemaking process that is consistent with Congressional intent. Such a process will ensure informed consideration of key rulemaking issues such as holding patients harmless from additional bills, establishing a fair and equitable process for resolving payment disputes, and bringing clarity to the treatment of existing state laws and federally regulated ERISA plans.