



American Hospital
Association™

Advancing Health in America

No Surprises Act Implementation

National Council of State Legislatures
Insurance Task Force

Nov. 2, 2021

Agenda

- **Priority Issues: No Surprises Act Implementing Regulations**
 - Patient Protections
 - Preventing Network & Patient Access Distortions

- **Specific Considerations for States**
 - Interaction of State and Federal Law
 - Enforcement

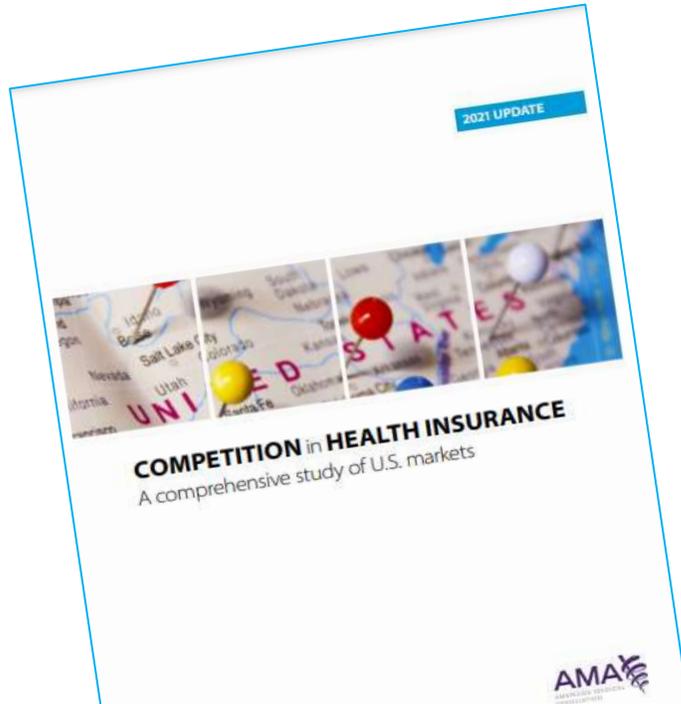
Protecting Patients

Hospitals and health systems unequivocally support protecting patients from surprise medical bills.

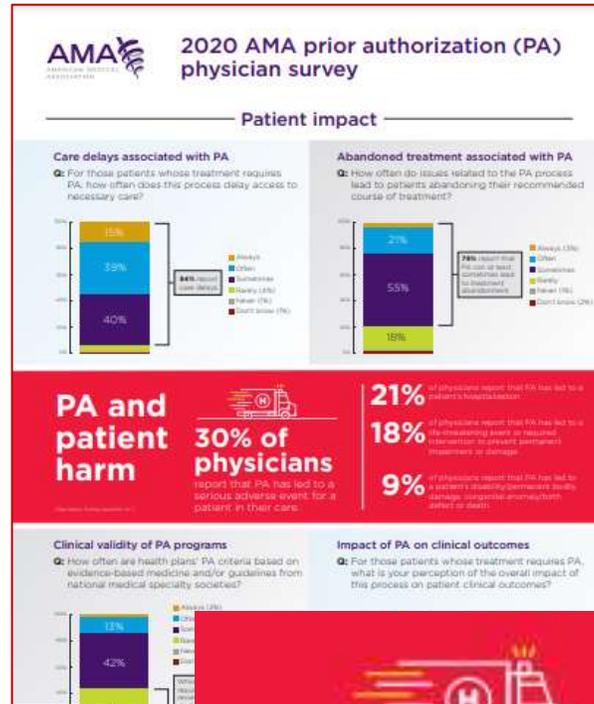
Our Objective:

Protect patients while not unintentionally empowering issuers/plans to implement problematic policies that will reduce access to care or challenge providers' ability to coordinate care.

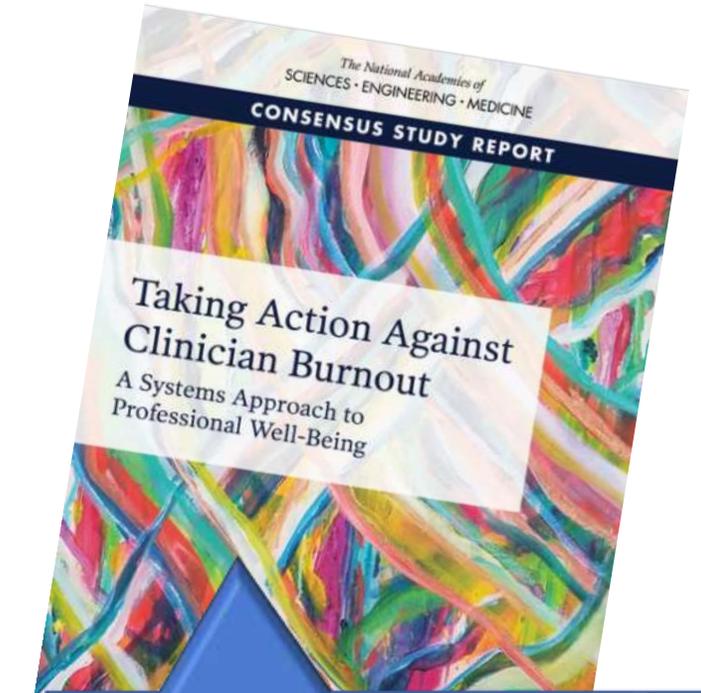
Today's Health Care Coverage Context



Market characteristic	% of MSA-level markets
Highly concentrated	73%
An insurer's market share $\geq 30\%$	91%
An insurer's market share $\geq 50\%$	46%
An insurer's market share $\geq 70\%$	10%



30% of physicians report that PA has led to a serious adverse event for a patient in their care.



“Perhaps the most prominent current complaint by clinicians about their workplaces is the excessive amount of time they must spend on administrative tasks.”

Independent Dispute Resolution Process

- Consistent with the law, the regulations direct providers/facilities and plans/issuers to first negotiate to determine reimbursement.
- Absent agreement, the parties may trigger an IDR process.
- However, the rule directs arbiters to presume that the plan's/issuer's median in-network rate is an appropriate payment amount.
- The other factors are only taken into account if they clearly demonstrate that the QPA is “materially different” from the appropriate out-of-network rate.

By skewing the process so heavily towards plans/issuers, the process is essentially unavailable to providers, losing a critical check on the system.

Implications of Overweighting the QPA

- **Further reduction in incentive to contract in-network with providers**
 - Highest risk for certain types of ancillary providers for which network adequacy rules do not apply
 - Loss of access to tertiary hospitals in the network, their expert physicians, and the specialized care they provide... knowledge these can still be accessed in emergencies
 - Closure of certain providers that cannot stay afloat (or independent) – hitting rural and underserved urban areas

The consequences will go far beyond the narrow scope of surprise medical bills, and there is nothing in federal law or regulation to ensure plans or issuers share savings with enrollees.

Specific Considerations for States

Which Law Applies?

	Federal Balance Billing Protections	Federal Notice and Consent Requirements	Good Faith Estimates	State Balance Billing Protections
Individual Market <ul style="list-style-type: none"> • On and off marketplace plans • Student health insurance 	Yes, if state law doesn't apply	Yes (compliance *may* be met through state policies)	Yes	Yes, if state has an applicable law
Fully Insured Group Market	Yes, if state law doesn't apply	Yes (compliance *may* be met through state policies)	Yes	Yes, if state has an applicable law
Group Health Plans <ul style="list-style-type: none"> • ERISA-regulated self-funded plans • Non-federal governmental plans • Church Plans • Federal Employee Health Benefits Program 	Yes, unless plan opts into state law	Yes (compliance *may* be met through state policies)	Yes	Yes, if plan opts into state law
Account-based Health Plans, Excepted Benefit Plans	No	No	Yes	No
Medicare, including Medicare Advantage	No	No	Yes	No
Medicaid, including Medicaid Managed Care	No	No	Yes	Maybe, depends on state law
Short-term Limited Duration Health Plans	No	No	Yes	Maybe, depends on state law
Health Sharing Ministries	No	No	Yes	Maybe, depends on state law

Which Law Applies, Continued

Scenario: Patient care occurs in the same state that regulates the provider/facility.	Federal Law Applies	State Law Applies	Both State & Federal Law Applies
State-regulated plan, no state law	Yes	N/A	N/A
State-regulated plan, state law covers full scope of services and includes policy for provider reimbursement	No	Yes	No
State-regulated plan, state law covers some of the services or otherwise is not as comprehensive as federal law	Partial	Partial	Yes
Federally-regulated plan, no state law and/or has not opted into state law	Yes	No	No
Federally-regulated plan, opted in to state law that covers full scope of services and includes policy for provider reimbursement	No	Yes	No
Federally-regulated plan, opted in to state law that covers some of the services or otherwise is not as comprehensive as federal law	Partial	Partial	Yes



State Primary on Oversight/Enforcement

Oversight and Enforcement

States have primary responsibility for oversight.

- Which oversight body in the state?
- Will the states need to pass laws to enable them to fulfill their duties? If so, will those be in place by Jan. 1?
- Will there be national standards to minimize variation? What is the standard the federal government will use to determine a state is not meeting an acceptable oversight standard?
- What data and reporting infrastructure exists to ensure tracking of complaints and outcomes nationally?

Key Oversight and Enforcement Challenge: Timeline

Timeline & Standards for Implementation

	Date to Implement	Standard Transaction Available	Dependent on Implementation of Other Provisions
Balance Billing Protections Requirements	January 1, 2021	N/A	Yes – Calculation of QPA
Notice/ Consent	January 1, 2021	No – needed to share forms with plans	Yes – Good Faith Estimates
Good Faith Estimate	January 1, 2021 for uninsured/self-pay only	No – needed to collect information from various providers	No
Advanced EOB	TBD	No – needed to share information with providers	Yes, AEOB dependent on GFE; patient consent (?)
Qualifying Payment Amount	January 1, 2021	No	No

Priority Recommendations

- Move forward with patient protections for Jan. 1, 2022.
- Revise the independent dispute resolution process regulations to enable providers to meaningfully participate.
- Provide a definitive crosswalk between the federal and state laws and clear assessment of which states meet the standards for compliance on relevant provisions, e.g., notice and consent; and protections against balance billing.

Thank You and Discussion

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